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ADVISORY COMMITTEE ON FEDERAL PAY

5 CFR Chapter IV

Removal of CFR chapter

Effective January 25, 1991, the Advisory Committee on Federal Pay was terminated. Therefore, the **Office of the Federal Register** is removing ACFP regulations pursuant to its authority to maintain an orderly system of codification under 44 U.S.C. 1510 and 1 CFR part 8.

Accordingly, 5 CFR is amended by removing parts 1400 through 1499 and vacating Chapter IV.

[FR Doc. 99–55530 Filed 9–13–99; 8:45 am]
BILLING CODE 1505–01–D

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2634

RIN 3209–AA00

Revisions to the Public Financial Disclosure Gifts Waiver Provision

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule amendments.

SUMMARY: The Office of Government Ethics is amending portions of the executive branch regulation which allows the OGE Director to grant a waiver of certain gift disclosure requirements for filers of the public financial disclosure report form, SF 278. The amendments permit the grant of a waiver in appropriate cases, if the basis of the relationship between the grantor and grantee of a gift and the motivation behind a gift are personal. The changes also clarify that the cover letter requesting a waiver will be publicly available if the Director of OGE approves the waiver request, either in whole or in part. Additionally, the amendments expressly require that a description of the gift and its value be included in a waiver request. Finally, the changes explicitly require that the information required to be in a waiver request pertaining to the donor must include the necessary information for each donor when a gift has multiple donors.

EFFECTIVE DATE: October 14, 1999.

FOR FURTHER INFORMATION CONTACT: Judy H. Mann, Attorney-Advisor, or Norman B. Smith, Senior Associate General Counsel, Office of Government Ethics; telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: On May 13, 1999, OGE published proposed minor amendments to the executive branch regulation which requires the disclosure of certain gifts received by the filers of the Standard Form (SF) 278 Public Financial Disclosure Report forms, their spouses, and their dependent children. See 64 FR 25849–25851. After a 60-day comment period, no outside comments from the public or agencies were received. Therefore, OGE is publishing the proposed amendments, subject to a few minor modifications that OGE has decided to make, as a final rule, effective October 14, 1999. A summary of the amendments follows.

Under 5 CFR 2634.304, and 5 U.S.C. app., section 102(a)(2) of the Ethics in Government Act, a person who files an SF 278 is required to report certain gifts that he, his spouse, or his dependent child receives. Section 2634.304, as authorized by the Ethics Act, permits a filer not to disclose certain gifts if the filer receives a waiver from OGE. These final rule amendments to OGE's financial disclosure regulation permit the OGE Director to grant a waiver of reporting if he determines that the basis of the relationship between the grantor and the grantee and the motivation behind the gift are "personal," rather than "entirely personal," provided that no countervailing public purpose requires public reporting. In addition, the final amendments will provide a few technical clarifications. First, the amendments clarify at § 2634.304(f)(2) that the public can access the cover letter of a waiver request for which the Director of OGE has granted full or partial approval. Second, new § 2634.304(f)(3)(ii)(D) will require the filer explicitly to include both a description of the gift and its value in the waiver request. Finally, under § 2634.304(f)(3)(iii) as revised, a filer must provide the required information with respect to each donor of the gift.

The Office of Government Ethics has determined on its own to make a few minor adjustments which will further clarify the rule. First, we are now amending the passage in the introductory text of § 2634.304(f)(1), which states that a gift for which a waiver is granted "need not be aggregated under this section by public filers," to state that "the value of a gift as defined in § 2634.105(h) need not be aggregated for reporting threshold purposes under this section by public filers, and therefore the gift need not be reported on an SF 278" if a waiver is granted. The revised language will help clarify the relationship between aggregation and reporting by stating that the waiver of the requirement for SF 278 filers to aggregate a gift has the effect of waiving the requirement to report the gift, since gifts are only reportable if they aggregate more than the dollar value threshold from any single source. The new wording also reemphasizes that the waiver procedure applies to filers of SF 278s rather than filers of the OGE Form 450. Because the OGE Form 450 is nonpublic, no purpose would be served by a procedure for waiving public disclosure of information which they contain. In the final minor technical modification, the language as proposed in paragraph ii of the new example to paragraph (f)(1) of § 2634.304 will be changed from stating that "the Director of OGE will consider a request for a waiver of reporting for each of these gifts" to "the Director of OGE may grant a request for a waiver of the requirement to aggregate and report on an SF 278 each of these gifts." This new language will clarify that the waiver is for the requirement to aggregate and report on an SF 278 and that the Director, depending on the facts, may grant a waiver request for each particular gift.

Matters of Regulatory Procedure

Executive Order 12866

In promulgating these final rule amendments, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866,

Regulatory Planning and Review. These amendments have not been reviewed by the Office of Management and Budget under that Executive order, since they are not deemed "significant" thereunder.

Executive Order 12988

As Deputy Director of the Office of Government Ethics, I have reviewed this final amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Deputy Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch departments and agencies and certain of their employees who file SF 278 reports.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply, because this rulemaking does not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Government employees, Penalties, Reporting and recordkeeping requirements, Trusts and trustees.

Approved: September 9, 1999.

F. Gary Davis,

Deputy Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR part 2634 as follows:

PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Section 2634.304 is amended by:

a. Revising the introductory text of paragraph (f)(1);

b. Revising paragraph (f)(1)(i);

c. Adding an Example after paragraph (f)(1)(ii);

d. Revising paragraph (f)(2); and

e. Revising paragraph (f)(3).

The revisions and addition read as follows:

§ 2634.304 Gifts and reimbursements.

* * * * *

(f) * * * (1) *In general.* In unusual cases, the value of a gift as defined in § 2634.105(h) need not be aggregated for reporting threshold purposes under this section by public filers, and therefore the gift need not be reported on an SF 278, if the Director of OGE receives a written request for and issues a waiver, after determining that:

(i) Both the basis of the relationship between the grantor and the grantee and the motivation behind the gift are personal; and

(ii) * * *

Example to paragraph (f)(1). i. The Secretary of Education and her spouse receive the following two wedding gifts:

A. Gift 1—A crystal decanter valued at $285 from the Secretary's former college roommate and lifelong friend, who is a real estate broker in Wyoming.

B. Gift 2—A gift of a print valued at $300 from a business partner of the spouse, who owns a catering company.

ii. Under these circumstances, the Director of OGE may grant a request for a waiver of the requirement to aggregate and report on an SF 278 each of these gifts.

(2) *Public disclosure of waiver request.* If approved in whole or in part, the cover letter requesting the waiver shall be subject to the public disclosure requirements in § 2634.603 of this part.

(3) *Procedure.* (i) A public filer seeking a waiver under this paragraph (f) shall submit a request to the Office of Government Ethics, through his agency. The request shall be made by a cover letter which identifies the filer and his position and which states that a waiver is requested under this section.

(ii) On an enclosure to the cover letter, the filer shall set forth:

(A) The identity and occupation of the donor;

(B) A statement that the relationship between the donor and the filer is personal in nature;

(C) A statement that neither the donor nor any person or organization who employs the donor or whom the donor represents, conducts or seeks business with, engages in activities regulated by, or is directly affected by action taken by, the agency employing the filer. If the preceding statement cannot be made without qualification, the filer shall indicate those qualifications, along with a statement demonstrating that he plays no role in any official action which might directly affect the donor or any organization for which the donor works or serves as a representative; and

(D) A brief description of the gift and the value of the gift.

(iii) With respect to the information required in paragraph (f)(3)(ii) of this section, if a gift has more than one donor, the filer shall provide the necessary information for each donor.

[FR Doc. 99–23930 Filed 9–13–99; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 97–006F]

RIN 0583–AC33

Addition of Mexico to the List of Countries Eligible to Export Poultry Products into the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is adding Mexico to the list of countries eligible to export poultry products to the United States. Reviews of Mexico's laws, regulations, and other materials show that the requirements of its poultry processing system are equivalent to relevant provisions in the Poultry Products Inspection Act (PPIA) and its implementing regulations.

Only products processed from poultry slaughtered in federally inspected establishments in the United States or in establishments in other countries eligible to export poultry from certified slaughter establishments to the United States may be imported into the United States after processing in certified Mexican establishments. FSIS inspectors will reinspect poultry products exported from Mexico to the United States at U.S. ports of entry. This action enables certified poultry processing establishments in Mexico to export processed poultry products to the United States.

EFFECTIVE DATE: October 14, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Manis, Director, International Policy Development Division, Office of Policy, Program Development and Evaluation; (202) 720–6400.

SUPPLEMENTARY INFORMATION:

Background

On November 28, 1997, FSIS published a proposal in the **Federal Register** (62 FR 63284) to add Mexico to the list of countries eligible to export poultry products to the United States. In the proposal, FSIS reported that Mexico had met the certification requirements imposed in the U.S.' poultry products inspection regulations, that its poultry processing inspection system is equivalent to that of the United States, and that its official residue control laboratory is fully capable of testing poultry products. Therefore, FSIS proposed to permit Mexico to export processed poultry products to the United States, provided the poultry processed in Mexican establishments approved for export to the United States is slaughtered in the United States under USDA inspection or in establishments certified by countries that are eligible to export slaughtered poultry and poultry products to the United States.

Comments

FSIS received six comments on the proposed rule. Three were from American poultry products companies, two from Mexican poultry products companies, and one from a trade association. Five commenters fully supported finalizing the rule as proposed; one commenter supported the proposed rule provided FSIS ensures that the Mexican poultry processing system is equivalent to the U.S. poultry processing system before any Mexican establishments are certified to export processed poultry products to the United States.

All commenters support free and open trade between Mexico and the United States. Many noted that the proposal would help both countries compete in the global economy. According to three commenters, allowing Mexico to export processed poultry products to the United States would support the North American Free Trade Agreement. A fourth commenter noted that allowing such imports is consistent with U.S. obligations under the Agreement on the Application of Sanitary and Phytosanitary Measures.

Three commenters mentioned that both the Mexican and U.S. poultry industries will benefit if the proposed rule is finalized. One commenter, a Mexican corporation, said that besides the increased sales to be reaped by U.S. poultry producers, U.S. producers of other products will benefit as well, including producers of packaging materials, brokers, and distributors. The commenter went on to say that there is little or no possibility of Mexican poultry-based processed foods displacing sales by U.S. processed food suppliers, at least by the corporation's poultry-based products, because those products consist primarily of distinctive Mexican foods that will not compete directly with the products marketed by U.S. suppliers.

The second commenter of these three commenters pointed out that not only will the proposed rule benefit the economy of Mexico, in that more jobs will be created for Mexican citizens, but that the U.S. economy will also benefit because of the increase in poultry exports. This commenter also pointed out that consumers will benefit from the proposed rule because they will have additional choices as to the processed poultry products they buy and possibly lower prices for those products. Another commenter echoed this idea by stating that the proposal would keep jobs in the United States, since Mexican establishments will only be able to process poultry that has been slaughtered in establishments certified by countries that are eligible to export to the U.S.

One commenter supported the proposal, provided certain conditions are met. First, FSIS must ensure that the Mexican system continues to comply with the requirements of 9 CFR 381.196, specifically, that the foreign system is equivalent to the U.S. system. The commenter indicated that its support is conditioned upon FSIS review and determination that the Mexican establishments certified to export processed poultry products to the United States meet equivalent requirements for Sanitation Standard Operating procedures (SSOPs) and the Hazard Analysis and Critical Control Points System (HACCP). Second, the commenter continued, FSIS should issue a schedule of the on-site reviews of the Mexican establishments, in operation, at the time any final rule is published. Finally, the commenter stated that Mexico must develop a program to ensure that the limitations on the approval to export poultry products to the United States are followed, and that FSIS must find the program satisfactory, before a final rule is issued.

To ensure that all foreign establishments certified to export to the U.S. comply with all relevant FSIS laws and regulations, including SSOPs and HACCP, FSIS conducts periodic on-site audits of each eligible foreign country's inspection system to verify that its regulatory authority is implementing the system as described in the country's application to export poultry to the U.S. No Mexican establishment may begin exporting processed poultry products to the United States until Mexico has certified that (1) the establishment is eligible to export processed poultry products to the United States, (2) establishments randomly selected for review during the on-site audit by FSIS operate in a way that shows FSIS that the country's inspection system is working as described, *and* (3) the country has been added to the poultry products inspection regulations as a country eligible to export poultry products to the United States.

Since publication of the proposed rule, FSIS has conducted an on-site audit of Mexico's inspection system. As part of that audit, FSIS has verified that Mexico will enforce the Pathogen Reduction/HACCP final rule in establishments that will be certified to export to the U.S. by the required date (January 1999 for establishments with less than 500 employees), including the SSOPs, and *Salmonella* testing requirements. At the same time, FSIS also reviewed the program Mexico has developed to ensure that only poultry from eligible countries and establishments is used in poultry products processed in Mexico destined for the United States. FSIS is satisfied that the program does so and that it has been satisfactorily implemented.

After reviewing all of the documents submitted by Mexico and evaluating the findings of the on-site audits and subsequent written assurances of government officials, FSIS has determined that the government of Mexico will enforce the Pathogen Reduction/HACCP rule in establishments it has certified as eligible to prepare processed poultry products for export to the United States, and that reliance can be placed upon the certificates from the authorities of Mexico that are required under the PPIA.

Accordingly, FSIS is amending § 381.196 of the poultry products inspection regulations to add Mexico as a country eligible to export processed poultry products to the United States. As a country eligible to export such products to the United States, the government of Mexico will certify to FSIS which establishments are operating in accordance with U.S. requirements. FSIS retains the right to verify that establishments certified by the Mexican government are meeting U.S. requirements.

Although a foreign country may be listed as eligible to export processed poultry products, those processed products must also comply with other U.S. requirements, including

restrictions under Title 9, Part 94 of the Animal and Plant Health Inspection Service's regulations (9 CFR Part 94) relating to the importation of processed poultry products from foreign countries into the United States.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule: (1) Preempts all state and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Executive Order 12866

This final rule has been determined to be significant and, therefore, has been reviewed by the Office of Management and Budget under Executive Order 12866. This Order requires FSIS to identify, and if possible, quantify and monetize potential incremental benefits and costs associated with this rule. This section provides such an analysis.

In 1995, Mexico requested a determination of eligibility to export poultry and poultry products to the United States. From October 1995 to June 1996, FSIS conducted a study to evaluate the equivalence of the Mexican poultry inspection system with that of the United States. After completing that study, FSIS concluded that the Mexican poultry processing system is equivalent to that of the United States and therefore began developing this rule.

This rule will allow U.S. poultry establishments to export slaughtered birds to Mexico, have the birds processed in Mexico, import the processed poultry products back into the U.S., and then sell those products to U.S. consumers.

To determine Mexico's potential exports of poultry products, FSIS requested the Office of Agricultural Affairs of the U.S. Embassy in Mexico to collect information from Mexican exporters. FSIS has learned that, at this time, there are only two plants that plan to export processed poultry products to the U.S. These establishments intend to export cut-up chicken, cooked chicken, and chicken products. The total quantity of these exports is estimated to be 6 million pounds or 2,727 metric tons (MT). The most likely initial volume of exports to the U.S., therefore, will be no more than 3,000 MT.

Because only two Mexican establishments have expressed an interest in exporting processed poultry products to the U.S., and because their anticipated export volume is less than 3,000 MT, FSIS does not believe that the volume of processed poultry products exported to the U.S. will exceed 5,000 MT in the near future. Mexico has not had yearly world exports of poultry meat and poultry products in excess of this number in over 30 years. FSIS does believe, however, that the potential growth of Mexican exports of processed poultry products to the U.S. is significant. Unfortunately, FSIS has no way of assessing the future interest of Mexican establishments in processing U.S. poultry for export back to the U.S.

Between 1993 and 1997, U.S. exports of cut-up broilers to Mexico increased almost 40 percent, from 77,909 MT in 1993 to 108,364 MT in 1997. The value of U.S. exports of cut-up broilers increased 32.6 percent during this period. At the same time, U.S. exports of whole broilers fell almost 62 percent, from 7,765 MT in 1993 to 2,995 MT in 1997, while the corresponding value of whole broilers fell by 60.5 percent. However, the estimated price of cut-up broilers fell by nearly 5 percent, while the estimated price of whole broilers rose 3.5 percent (*See* Table 1).

TABLE 1.—TRENDS IN U.S. EXPORTS OF BROILERS TO MEXICO, 1993–1997

Calendar year	Cut-up			Whole		
	Quantity metric tons	Value $000	Average price $/mt	Quantity metric tons	Value $000	Average price $/mt
1993	77,909	63,384	810	7,765	8,911	1,150
1994	93,963	74,404	790	6,252	7,672	1,230
1995	87,208	70,999	810	5,519	4,618	890
1996	96,622	87,483	900	2,353	2,764	1,170
1997	108,364	84,060	770	2,995	3,521	1,190
Average	92,813	76,066	816	4,977	5,497	1,126
Change (97 minus 93)	30,455	20,676	−40	4,770	−5,390	40
Percent Change	39.09	32.62	−4.93	−61.43	−60.49	3.48

Source: U.S. Department of Agriculture, Foreign Agricultural Service
Note: 1 Metric Ton = 2,204 pounds

Table 2 shows U.S. exports of turkey to Mexico, classified into cut-up and whole products, over the last five calendar years. Similar to exports of cut-up broilers, the quantity and value of cut-up turkey exported between 1993 and 1997 rose 28.6 percent and 27.4 percent, respectively. Also, the quantity of whole turkeys exported to Mexico increased 3.6 percent. However, the value of whole turkeys exported to Mexico during that period decreased 4.9 percent. The price for both cut-up and whole turkeys fell: the price for cut-up turkey fell by 1.4 percent, while the price for whole turkeys fell more than 8 percent.

TABLE 2.—TRENDS IN U.S. EXPORTS OF TURKEY TO MEXICO, 1993–1997

Calendar year	Cut-up			Whole		
	Quanity metric tons	Value $000	Average price $/MT	Quantity metric tons	Value $000	Average price $/MT
1993	63,205	89,926	1,420	1,803	3,059	1,690
1994	62,829	97,292	1,550	3,903	6,445	1,650
1995	54,543	69,618	1,270	689	1,165	1,690
1996	67,880	93,782	1,380	2,583	4,223	1,630
1997	81,271	114,579	1,400	1,868	2,910	1,550

TABLE 2.—TRENDS IN U.S. EXPORTS OF TURKEY TO MEXICO, 1993–1997—Continued

Calendar year	Cut-up			Whole		
	Quanity metric tons	Value $000	Average price $/MT	Quantity metric tons	Value $000	Average price $/MT
Average	65,945	93,039	1,404	2,169	3,560	1,642
Change (97 minus 93)	18,066	24,653	−20	65	−149	−140
Percent Change	28.58	27.41	−1.41	3.61	−4.87	−8.28

Source: U.S. Department of Agriculture, Foreign Agricultural Service
Note: 1 Metric Ton = 2,204 pounds

Adoption of this rule will stimulate increased exports of whole and partial birds from the U.S. to Mexico for processing for various reasons. Poultry processing is labor intensive. Therefore, the U.S. poultry industry will most likely attempt to reduce its processing costs by shifting that activity to Mexico, where labor is relatively less costly. U.S. companies will be able to import the products that have been processed in Mexico and still save money over the cost of doing the processing in the U.S. This will result in employment increases in the poultry processing industry in Mexico and earnings increases in U.S. poultry slaughter establishments.

Poultry exports to Mexico from the U.S. will also increase because Mexican establishments will, for the first time, be able to export processed poultry products to the U.S. At the present time, poultry processed in Mexico may not be exported to the U.S., even if the birds were produced and slaughtered in the U.S. The fact that Mexican establishments will be able to process only birds that have been slaughtered in the U.S. (or in countries eligible to export poultry to the U.S.) will also limit the market from which Mexican establishments can obtain birds to process. (Realistically, the great majority, if not all of the carcasses, will come from the U.S.)

The expected lower prices of poultry products processed in Mexico will increase the quantity demanded in the U.S., but the change should be insignificant. This is because the U.S. demand for poultry and poultry products is relatively inelastic, i.e., insensitive to price. Price elasticity of demand is the percent change in demand associated with a 1 percent change in price. A review of 11 economic studies of the demand for poultry shows that the elasticity ranges from (−0.1) to (−0.94). In other words, a decrease in the price of poultry by 1 percent would be associated with an increase in demand of 0.1 to 0.94 percent (see Table 3). Table 3 also shows that the estimated elasticities vary with the time periods for which the data were analyzed and the types of models employed by the analysts.

Since the estimated elasticities are pure numbers, FSIS calculated an average elasticity. It is (−0.46). Therefore, an average decrease in price of poultry by 1 percent would be associated with an increase in demand of poultry by approximately only −0.5 percent. As a result, any decrease in price due to imports from Mexico is unlikely to increase demand for poultry significantly in the U.S. Therefore, U.S. processors of poultry products are unlikely to lose their market shares as a result of imports from Mexico, and employment decreases will be small.

TABLE 3.—PRICE ELASTICITY OF DEMAND FOR POULTRY
[A Review of Economic Studies]

Study No.	Author(s)	Price elasticity	Time period	Model
1	Alston & Chalfont (1993)	−0.94	1967–1988 Quarterly	Rotterdam.
2	Brester & Wohlgenant (1991)	−0.296	1962–1989 Annual	Interrelated demand.
3	Capps et al. (1994)	−0.893	January 1986 to June 1987 Weekly	Retail Demand Functions.
4	Eales, J. (1994)	−0.63	1966–1992 Quarterly	Inverse Lewbel Demands.
5	Eales & Unnevehr (1993)	−0.233	1966–1988 Quarterly	Simultaneity & Structural Change.
6	Gao & Shankwiler (1993)	−0.47	1956–1987 Annual	Taste Change.
7	Hahn, W. (1994)	−0.299	1981–1992 Monthly	Random Coefficient.
8	Hahn, W. (1988)	−0.14	1960–1987 Quarterly	Income Differences.
9	Moschini & Meilke (1989)	−0.10	1967–1987 Quarterly	Structural Change.
10	Thurman (1987)	−0.64	1955–1981 Annual	Demand Stability.
11	Wohlgenant (1989)	−0.42	1956–1983 Annual	Complete System.

Regulatory Flexibility Analysis

The Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities Data from the 1994 Survey of Industries suggest that the poultry slaughtering and processing industry in the U.S. is highly competitive, with 332 firms owning 567 establishments. The industry consists of relatively large size (employment of 500 or more) establishments. For example, in 1994, almost 51 percent of all establishments were classified as large according to the definition of employment used by the U.S. Small Business Administration. In 1994, this industry employed 207,875 workers, with a payroll of $3.5 billion. The estimated revenue of this industry amounted to $27.1 billion in 1994.

The effects of the importation of processed poultry products from Mexico on national, regional and local poultry producers are dependent on many factors, such as where the products would enter U.S. marketing and distribution channels, and where they would ultimately be consumed. Transporting whole birds is relatively costly. Therefore, to save transportation costs, it is likely that export of whole

birds to Mexico and import of cut-up products to the U.S. would be by truck and concentrated in border areas of the U.S., including the States of Arizona, California, New Mexico and Texas.

If a local retail chain or wholesaler purchases processed poultry products from Mexico, they are likely to be consumed regionally. If a national wholesaler purchases them, they could be consumed anywhere in the U.S. The effect on small producers would be more pronounced if the imports affect only Arizona, California, New Mexico, and Texas.

Because exports of whole birds and imports of cut-up products are likely to be confined to states bordering Mexico due to transport costs from other states in the U.S. to Mexico, FSIS analyzed data for four border states: Arizona, California, New Mexico, and Texas. The U.S. Bureau of the Census collected these data for the Survey of Industries, 1994. These data do not separate statistics of slaughtering establishments from those of processing establishments. There are no poultry slaughtering/processing establishments in Arizona and only one in New Mexico. There are 37 slaughtering/processing establishments in California and 22 in Texas.

The "very small" size establishments are defined, as in FSIS's Pathogen Reduction/HACCP final rule, as having less than 10 employees. The "small" and "large" size establishments are defined, according to the Small Business Administration's definition of employment, as having 500 or less employees, and more than 500 employees, respectively.

Some of the establishments in California (11 out of 37, or 34 percent) are very small. In Texas, 6 out of 22 (27 percent) establishments are very small. No data were available for New Mexico. In 1997, California's total broiler production was 107,532 MT, while Texas produced 206,443 MT. California also produced 9,528 MT of turkey.

If processed poultry products enter national distribution channels, and, therefore, economic effects are shared by all U.S. producers, there would not be a significant economic impact on small entities no matter the volume (low (100 MT), medium (1,000 MT) or high (5,000 MT)) of imports assumed.[1] Even under a high-volume scenario, where Mexico exports approximately 5,000 MT (2,000 MT more than the most likely amount anticipated) of poultry products to the U.S., to be consumed locally in Arizona, California, New Mexico and Texas, there likely will not be a significant economic impact on small entities in the U.S. Combined, California and Texas produced 323,503 MT of poultry products in 1997. If Mexico exports 5,000 MT of poultry, it will be only .02 percent of California's and Texas' combined annual poultry production. Adding New Mexico's poultry production numbers to the equation (data unavailable) will make this percentage fall even lower.

[1] These volumes (low-100 MT per year, medium-1,000 MT per year and high-5,000 MT per year) were chosen because they reflect the range of Mexican worldwide exports of broilers since 1990. Mexico had yearly world exports of 5,000 MT of poulty and products in 1990, 1991 and 1992. However, in 1993, 1994 and 1995, Mexico exported no poultry and other poultry products, and, since 1996, has exported less than 1,000 MT of poultry and other poultry products annually. *U.S. Department of Agriculture, Production, Supply, and Distribution database.*

Civil Rights Impact Analysis

Pursuant to Departmental Regulation 4300–4, "Civil Rights Impact Analysis," dated September 22, 1993, FSIS has considered the potential civil rights impacts of this final rule on minorities, women, and persons with disabilities.

This final rule will add Mexico to the list of countries eligible to export poultry products to the U.S. Only products processed from poultry slaughtered in federally inspected establishments in the U.S. or in establishments in other countries eligible to export poultry from certified slaughter establishments to the U.S. may be imported into the U.S. after processing in certified Mexican establishments. This action will enable certified poultry processing establishments in Mexico to export processed poultry products to the U.S.

With the possibility of U.S. poultry establishments exporting slaughtered poultry to Mexico for further processing, there is the potential for an adverse impact on minorities, women, and persons with disabilities. One such impact might be the potential loss of employment as a result of the processing work being done in Mexico, rather than the U.S. However, further processing in Mexico may improve the competitiveness of poultry relative to other foods and expand production and consequently employment elsewhere in the poultry industry. While there may be an adverse impact on hiring or loss of jobs, FSIS has no data on poultry processing establishments and their employment rates, nor does FSIS have data on the race, sex, national origin, and disabilities of employees hired by such establishments.

As the rule points out, however, if poultry products further processed in Mexico enter national distribution chains in the U.S., and, therefore, all U.S. producers share economic effects, there will not be a significant negative economic impact on small entities, no matter the volume of imports assumed. If U.S. producers do not suffer a negative economic impact, there should be no adverse impact on hiring or loss of jobs by minorities, women, and persons with disabilities.

Between 1973 and 1991, the poultry dressing and processing industry showed a 3.9 percent increase in productivity gains. This was the largest such gain for a manufacturing industry (with employment in 1992 of more than 100,000) during that time period. Poultry employment had a 4 percent annual growth rate from 1980 to 1992, due to new product innovations and markets, for a total 96 percent increase over the period. While productivity gains slowed after 1992, the poultry dressing and processing industry still showed a 0.1 percent increase in productivity in 1994. (Compare this to meat packing plants, where productivity in 1994 dropped 3.7 percent.)

Poultry production is expected to remain strong in the year 2000. Broiler production is expected to increase between 5 and 6 percent in the year 2000. Stronger production increases might be realized if exports strengthen between now and then. Turkey production is expected to increase about 2 percent in the year 2000. As with broilers, strengthening of the export market should provide a boost for turkey production.

Continued productivity gains in the U.S. poultry dressing and processing industry should result in continued and additional poultry employment through and beyond the year 2000. As a result, FSIS anticipates that there will be no adverse impact on hiring or loss of jobs by minorities, women, and persons with disabilities.

Paperwork Requirements

FSIS has submitted a request for emergency approval for the reinstatement of information collection package 0583–0094, which includes burden associated with any recordkeeping requirements imposed by this rulemaking. On November 19, 1998, FSIS announced, in the **Federal Register**, its request for the Office of Management and Budget (OMB) to extend the approval of this package. The following is the request as published in that notice.

FSIS has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et*

seq.) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. FSIS is requesting an extension and revision to the information collection package addressing meat and poultry paperwork and recordkeeping requirements regarding exportation, transportation, and importation of meat and poultry products. FSIS requires that meat and poultry establishments exporting product to foreign countries complete an export certificate. Establishments must supply the type, amount, and destination of product being exported. The information required by this form does not duplicate any information required by other Federal agencies. The form is necessary to certify to the importing countries that FSIS inspectors have inspected the product and have found it sound and wholesome. Additionally, FSIS uses the information from the form in its annual Report to Congress as required by sections 301(c)(4) and 20(e) of the FMIA and sections 27 and 5(c)(4) of the PPIA.

Meat and poultry products not marked with the mark of inspection and shipped from one official establishment to another for further processing must be transported under FSIS seal to prevent such unmarked product from entering into commerce. To track products shipped under seal, FSIS requires shipping establishments to complete a form that identifies the type, amount, and weight of the product.

A foreign country exporting meat or poultry products to the U.S. must establish eligibility for importation of product into the U.S. and annually certify that its inspection systems are equivalent to the U.S. inspection system. To maintain eligibility, a representative of the foreign inspection system must prepare a written report for each establishment listed in the certification. Additionally, a health certificate must accompany meat and poultry products intended for import into the U.S. It must be signed by an official of the foreign government and state that certified foreign establishments have produced the products. Establishments or brokers wishing to import product into the United States must complete a form that specifies the type, amount, originating country, and destination of the meat and poultry product. The amount of meat and poultry product imported into the United States is included in FSIS's annual Report to Congress. Additionally, FSIS has established procedures allowing establishments importing product to stamp such product with the inspection legend prior to FSIS inspection, if they receive FSIS prior approval.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average .0773501 hours per response.

Respondents: Meat and poultry establishments.

Estimated Number of Respondents: 7,374

Estimated Number of Responses per Respondent: 295.88866

Estimated Total Annual Burden on Respondents: 168,769 hours

Copies of this information collection assessment and comments can be obtained from Lee Puricelli, Paperwork Specialist, Food Safety and Inspection Service, USDA, 300 12th Street SW, Room 109, Washington, DC 20250–3700, (202) 720–0346. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology.

List of Subjects 9 CFR Part 381

Imports, Poultry and Poultry products.

For the reasons set out in the preamble, 9 CFR part 381 is amended as follows:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

2. Section 381.196 is amended by adding "Mexico [2]" in alphabetical order to the list of countries in paragraph (b) to read as follows:

§ 381.196 Eligibility of foreign countries for importation of poultry products into the United States.

* * * * *

(b) * * *

Mexico.[2]

Done at Washington, DC, on: September 2, 1999.

Thomas J. Billy,

Administrator.

Appendix 1—References

Note: This appendix will not appear in the Code of Federal Regulations.

Alston, J.M. and J.A. Chalfant (1993). "The Silence of the Lambdas: A Test of the Almost Ideal and Rotterdam Models." *American Journal of Agricultural Economics*, Vol. 75, No. 2, (May 1993), pp. 304–313.

Brester, G.W. and M.K. Wohlgenant (1993). "Correcting for Measurement Error in Food Demand Estimation." *Review of Economics and Statistics*, Vol. 75, No. 2, (May 1993), pp. 352–356.

Capps, O., Jr., D.E. Farris, P.J. Byrune, J.C. Namken, and C.D. Lambert (1994). "Determinants of Wholesale Beef-Cut Prices." *American Journal of Agricultural Economics*, Vol. 26, No. 1 (July), pp. 183–199.

Eales, J.S. (1994). "The Inverse Lewbel Demand System." *Journal of Agricultural and Resource Economics*, Vol. 19, No. 1 (July), pp. 173–182.

Eales, J.S. and L.J. Unnevehr (1993). "Simultaneity and Structural Change in a Model of U.S. Meat Demand." *American Journal of Agricultural Economics*, Vol. 75, No. 2 (May), pp. 259–268.

Gao, X.M. and J.S. Shonkwiler (1993). "Characterizing Taste Change in a Model of U.S. Meat Demand: Correcting for Spurious Regression and Measurement Errors." *Review of Agricultural Economics*, Vol. 15, No. 2 (May), pp. 313–324.

Hahn, W.F. (1994). "A Random Coefficient Meat Demand Model." *Journal of Agricultural Economics Research*, Vol. 45, No. 3 (Fall), pp. 21–30.

Hahn, W.F. (1988). "Effects of Income Distribution on Meat Demand." *Journal of Agricultural Economic Research*, Vol. 40, No. 2 (Spring), pp. 19–24.

Moschini, G. and K.D. Meilke (1989). "Modeling the Pattern of Structural Change in U.S. Meat Demand." *American Journal of Agricultural Economics*, Vol. 71, No. 2 (May), pp.253–261.

Thurman, W.N. (1987). "The Poultry Market: Demand Stability and Industry Structure." *American Journal of Agricultural Economics*, Vol. 69, No. 1 (February), pp. 30–37.

Wohlgenant, M.K. (1989) 'Demand for Farm Output in a Complete System of Demand Functions." *American Journal of Agricultural Economics*, Vol. 71, No.2 (May), pp. 241–252.

[FR Doc. 99–23794 Filed 9–13–99; 8:45 am]

BILLING CODE 3410–DM–P

[2] May export to the United States only processed poultry products slaughtered under Federal inspection in the United States or in a country eligible to export slaughtered poultry products to the United States.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–11]

Airport Name Change and Revision of Legal Description of Class D, Class E2 and Class E4 Airspace Areas; Barbers Point NAS, HI

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule, correction and delay of effective date.

SUMMARY: This action corrects a final rule that was published in the **Federal Register** on Thursday, August 12, 1999 (64 FR 43907), Airspace Docket No. 99–AWP–11, changing the name of Barbers Point NAS, HI, and it's associated airspace areas to Kalaeloa Airport and delaying the effective date of the rule.

EFFECTIVE DATE: The final rule published on August 12, 1999 (64 FR 43907) as corrected by this document is effective 0901 UTC, November 14, 1999.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Airspace Specialist, Airspace Branch, AWP–520.10, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 99–20524, Airspace Docket No. 99–AWP–11, published on August 12, 1999, changed the name of Barbers Point NAS and it's associated Class D, Class E2, and Class E4 airspace areas to Kalaeloa Airport, Kapeloi, HI. The airport geographical reference points and the spelling of the city of reference listed in that document were incorrect. This action corrects those errors. The effective date of the rule was originally published as September 13, 1999, and is delayed until November 4, 1999.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for Kalaeloa Airport, Kapolei, HI, it's associated airspace areas, and the spelling of the city of reference are corrected as follows:

PART 71—[CORRECTED]

§ 71.1 [Corrected]

On page 43908, columns 1 and 2, correct the geographical coordinates of the Kalaeloa Airport, it's associated airspace areas, and the spelling of the city of reference, incorporated by reference in § 71.1, as follows:

* * * * *

AWP HI D Kalaeloa Airport, Kapolei, HI [Corrected]

Kalaeloa Airport, HI
(lat. 21°18′26″N, long. 158°04′13″W)

That airspace extending upward from the surface up to and including 2,500 feet MSL within a 4.3 mile radius of Kalaeloa Airport, excluding the airspace within the Honolulu, HI, Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory, Pacific Chart Supplement.

AWP HI E2 Kalaeloa Airport, Kapolei, HI [Corrected]

Kalaeloa Airport, HI
(lat. 21°18′26″N, long. 158°04′13″W)

That airspace extending upward from the surface within a 4.3 mile radius of Kalaeloa Airport, excluding the airspace within the Honolulu, HI, Class B airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AWP HI E4 Kalaeloa Airport, Kapolei, HI [Corrected]

Kalaeloa Airport, HI
(lat. 21°18′21″N, long. 158°04′13″W)
Point of Origin
(lat. 21°18′21″N, long. 158°03′54″W)

That airspace extending upward from the surface within 3 miles each side of the 242° bearing from the Point of Origin, extending from the 4.3 mile radius of Kalaeloa Airport to 8.5 miles west of the Point of Origin and within 1.8 miles each side of the 289° bearing from the Point of Origin, extending from the 4.3 mile radius of the airport to 6.6 miles west of the Point of Origin, excluding the airspace within the Honolulu, HI, Class B airspace area.

Issued in Los Angeles, California, on August 27, 1999.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc 99–23722 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–44]

Amendment to Class E Airspace; Winfield/Arkansas City, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Strother Field, Winfield/Arkansas City, KS. A review of the Class E airspace area for Strother Field, KS indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D. The review also indicates the extension to the south can be eliminated.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), eliminate the extension, and comply with the criteria of FA Order 7400.2D.

DATES: Effective date: 0901 UTC, December 30, 1999.

Comments for inclusion in the Rules Docket must be received on or before October 25, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–44, 601 East 12th Street, Kansas City, MO 64106.

The official may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Winfield/Arkansas City, KS. A review of the Class E airspace for Strother Field, KS, indicates it does not meet the criteria for 700 feet

AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1,200 feet AGL is based on a standard climb gradient for 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Strother Field, KS, will provide additional controlled airspace for aircraft operating under IFR, eliminate the extension, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–44." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Winfield/Arkansas City, KS [Revised]

Winfield/Arkansas City, Strother Field, KS
(Lat. 37°10′05″N., long. 97°02′14″W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Strother Field.

* * * * *

Issued in Kansas City, MO, on September 3, 1999.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 99–23938 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–38]

Modification of Class E Airspace; Bryan, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice modifies Class E airspace at Bryan, OH. A Global Positioning System (GPS) Standard

Instrument Approach Procedure (SIAP) to Runway (Rwy) 07, and a GPS SIAP to Rwy 25, have been developed for Williams County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action increases the radius of the existing controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, July 23, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Bryan, OH (64 FR 39950). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Bryan, OH, to accommodate aircraft executing the proposed GPS Rwy 07 SIAP and GPS Rwy 25 SIAP at Williams County Airport by modifying the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Bryan, OH [Revised]

Bryan, Williams County Airport, OH
(Lat. 41°28′03″N., long. 84°30′24″W)
Bryan NDB
(Lat. 41°28′47″N., long. 84°27′58″W)
Community Hospitals of Williams County, Inc., OH, Point in Space Coordinates
(Lat. 41°27′47″N., long. 84°33′28″W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Williams County Airport and within 1.7 miles each side of the 068° bearing from the Bryan NDB, extending from the NDB to 7.0 miles east of the NDB, and within a 6.0-mile radius of the Point in Space serving Community Hospitals of Williams County, Inc., excluding the airspace within the Defiance, OH, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on August 30, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–23945 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Airspace Docket No. 99–AGL–34]

Modification of Class E Airspace; Escanaba, MI.; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the legal description of a final rule that was published in the Federal Register on Friday, August 27, 1999 (64 FR 46817), Airspace Docket No. 99–AGL–34. The final rule modified Class E Airspace at Escanaba, MI.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone: (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 99–22295, Airspace Docket No. 99–AGL–34, published on August 27, 1999 (64 FR 46817), modified Class E Airspace at Escanaba, MI. An incomplete legal description for the Class E airspace for Escanaba, MI, was published. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for the Class E airspace, Escanaba, MI, as published in the **Federal Register** August 27, 1999 (64 FR 46817), (FR Doc. 99–22295), is corrected as follows:

PART 71—[CORRECTED]

§ 71.1 [Corrected]

On page 46818, Column 1, replace the Class E airspace designation for Escanaba, MI, incorporated by reference in Sec. 71.1, with the following:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL MI E2 Escanaba, MI [Revised]

Escanaba, Delta County Airport, MI

(Lat. 45° 43′ 22″N., long. 87° 05′ 37″W.)
Escanaba VORTAC
(Lat. 45° 43′ 22″N., long. 87° 05′ 23″W.)

Within a 4.3-mile radius of the Escanaba, Delta County airport, and within 2.6 miles each side of the Escanaba VORTAC 007° radial, extending from the 4.3-mile radius to 7.4 miles north of the VORTAC, and within 2.6 miles each side of the Escanaba VORTAC 101° radial, extending from the 4.3-mile radius to 7.4 miles east of the VORTAC, and within 2 6 miles each side of the Escanaba VORTAC 266° radial, extending from the 4.3-mile radius to 7.0 miles west of the VORTAC, and within 3.2-miles each side of the Escanaba VORTAC 171° radial, extending from the 4.3 mile radius to 7.0 miles south of the VORTAC.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Escanaba, MI [Revised]

Escanaba, Delta County Airport, MI
(Lat. 45° 43′ 22″N., long. 87° 05′ 37″W.)
Escanaba VORTAC
(Lat. 45° 43′ 22″N., long. 87° 05′ 23″W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Escanaba, Delta County Airport, and within 2.6 miles each side of the Escanaba VORTAC 007° radial, extending from the 6.8-mile radius to 7.4 miles north of the VORTAC, and within 2.6 miles each side of the Escanaba VORTAC 101° radial, extending from the 6.8-mile radius to 7.8 miles east of the VORTAC, and within 2.6 miles north and 3.5 miles south of the Escanaba VORTAC 270° radial extending from the 6.8-mile radius to 11.7 miles west of the VORTAC, and within 3.2 miles each side of the Escanaba VORTAC 171° radial, extending from the 6.8-mile radius to 7.0 miles south of the VORTAC.

* * * * *

Issued in Des Plaines, Illinois on September 1, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–23940 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29734; Amdt. No. 1949]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (404) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

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

The Rule

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

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

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air

commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on September 3, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended as follows:

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

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

. . . *EFFECTIVE UPON PUBLICATION*

FDC date	State	City	Airport	FDC No.	SIAP
08/18/99	FL	DELAND	DELAND MUNI-SIDNEY H. TAYLOR FIELD.	9/6063	GPS RWY 12, ORIG...
08/18/99	FL	DELAND	DELAND MUNI-SIDNEY H. TAYLOR FIELD.	9/6064	GPS RWY 5, ORIG...
08/18/99	FL	DELAND	DELAND MUNI-SIDNEY H. TAYLOR FIELD.	9/6065	NDB OR GPS RWY 30, AMDT 1...
08/18/99	FL	DELAND	DELAND MUNI-SIDNEY H. TAYLOR FIELD.	9/6066	VOR OR GPS RWY 23, AMDT 2...
08/18/99	MO	KANSAS CITY	KANSAS CITY INTL	9/6035	ILS RWY 27, ORIG...
08/18/99	TN	BRISTOL/JOHNSON/ KING-SPORT.	TRI-CITIES REGIONAL	9/6041	ILS RWY 23, AMDT 24B...
08/18/99	VA	HOT SPRINGS	INGALLS FIELD	9/6075	ILS RWY 24 AMDT 2C...
08/18/99	VA	HOT SPRINGS	INGALLS FIELD	9/6078	GPS RWY 6 ORIG...
08/18/99	VA	HOT SPRINGS	INGALLS FIELD	9/6080	GPS RWY 24 ORIG...
08/19/99	DE	WIILMINGTON	NEW CASTLE COUNTY	9/6107	NDB RWY 1, AMDT 18...
08/19/99	DE	WIILMINGTON	NEW CASTLE COUNTY	9/6108	GPS RWY 27, ORIG...
08/19/99	MD	HAGERSTOWN	HAGERSTOWN REGIONAL-RICHARD A. HENSON FLD.	9/6109	VOR OR GPS RWY 9, AMDT 6A...
08/19/99	MI	CLARE	CLARE MUNI	9/6128	VOR OR GPS–A AMDT 1...
08/19/99	NJ	TRENTON	TRENTON MERCER	9/6110	VOR OR GPS RWY 24, AMDT 4...
08/19/99	PR	SAN JUAN	LUIS MUNOZ MARIN INTL	9/6120	HI–ILS/DME RWY 8...
09/19/99	PR	SAN JUAN	LUIS MUNOZ MARIN INTL	9/6121	ILS RWY 8, AMDT 15B...
08/20/99	LA	ALEXANDRIA	ALEXANDRIA ESLER REGIONAL	9/6187	LOC BC RWY 8, AMDT 10A...
08/20/99	LA	ALEXANDIA	ALEXANDRIA ESLER REGIONAL	9/6188	ILS RWY 26, AMDT 13...
08/20/99	NJ	ATLANTIC CITY	ATLANTIC CITY INTL	9/6189	VOR OR GPS RWY 31 AMDT 15A...
08/20/99	NJ	TRENTON	TRENTON MERCER	9/6159	VOR/DME RNAV RWY 34 AMDT 5...
08/20/99	NJ	TRENTON	TRENTON MERCER	9/6160	NDB OR GPS RWY 6 AMDT 6...
08/20/99	NJ	TRENTON	TRENTON MERCER	9/6165	GPS RWY 34 ORIG...
08/20/99	NJ	TRENTON	TRENTON MERCER	9/6166	GPS RWY 16 ORIG...
08/20/99	NJ	WILDWOOD	CAPE MAY COUNTY	9/6190	GPS RWY 10 ORIG–A...
08/20/99	PR	SAN JUAN	LUIS MUNOZ MARIN INTL	9/6148	GPS RWY 8 ORIG–A...
08/20/99	PR	SAN JUAN	LUIS MUNOZ MARIN INTL	9/6150	GPS RWY 10 ORIG....
08/20/99	PR	SAN JUAN	LUIS MUNOZ MARIN INTL	9/6151	VOR OR GPS RWY 26 AMDT 18A...
08/24/99	FL	FORT PIERCE	ST. LUCIE COUNTY INTL	9/6301	ILS RWY 9 AMDT 1...
08/24/99	FL	FORT PIERCE	ST. LUCIE COUNTY INTL	9/6302	NDB OR GPS RWY 27 ORIG...
08/24/99	FL	FORT PIERCE	ST. LUCIE COUNTY INTL	9/6303	NDB–A ORIG...
08/24/99	FL	FORT PIERCE	ST. LUCIE COUNTY INTL	9/6304	VOR/DME OR GPS RWY 14 AMDT 7A...
08/24/99	FL	FORT PIERCE	ST. LUCIE COUNTY INTL	9/6305	NDB RWY 9 ORIG...
08/24/99	FL	FORT PIERCE	ST. LUCIE COUNTY INTL	9/6306	GPS RWY 9 ORIG...
08/24/99	MI	DETROIT	DETROIT METROPOLITAN WAYNE COUNTY.	9/6320	ILS RWY 6L AMDT 14A (CAT I, II, III)...
08/24/99	MI	IRON MOUNTAIN/ DINGS-FORD.	FORD	9/6294	LOC/DME BC RWY 19 AMDT 12...

FDC date	State	City	Airport	FDC No.	SIAP
08/25/99	FL	FORT LAUDERDALE	FORT LAUDERDALE-HOLLYWOOD INTL.	9/6339	ILS RWY 27R AMDT 5A...
08/25/99	FL	ORLANDO	KISSIMMEE MUNI	9/6358	GPS RWY 6, ORIG...
08/25/99	FL	ORLANDO	KISSIMMEE MUNI	9/6359	GPS RWY 15, ORIG...
08/25/99	FL	ORLANDO	KISSIMMEE MUNI	9/6360	GPS RWY 33, ORIG...
08/25/99	FL	ORLANDO	KISSIMMEE MUNI	9/6361	VOR/DME OR GPS–A, ORIG...
08/25/99	MT	BAKER	BAKER MUNI	9/6337	GPS RWY 31 ORIG...
08/25/99	NY	MASSENA	MASSENA INTL-RICHARDS FIELD	9/6340	VOR/DME RNAV OR GPS RWY 23 AMDT 7...
08/25/99	NY	MASSENA	MASSENA INTL-RICHARDS FIELD	9/6341	VOR OR GPS RWY 27 AMDT 4...
08/25/99	NY	SARANCA LAKE	ADIRONDACK REGIONAL	9/6357	VOR/DME OR GPS RWY5 AMDT 2A...
08/27/99	CA	PALM SPRINGS	PALM SPRINGS INTL	9/6491	VOR OR GPS–B AMDT 2...
08/27/99	CA	SANTA MARIA	SANTA MARIA PUBLIC/CAPTAIN G. ALLAN HANCOCK FIELD.	9/6485	ILS RWY 12 AMDT 9...
08/27/99	CT	BRIDGEPORT	IGOR I. SIKORSKY MEMORIAL	9/6466	GPS RWY 29 AMDT 1...
08/27/99	CT	BRIDGEPORT	IGOR I. SIKORSKY MEMORIAL	9/6471	VOR RWY 29 AMDT 1...
08/27/99	CT	WINDSOR LOCKS	BRADLEY INTL	9/6474	VOR OR TACAN RWY 15 AMDT 2...
08/27/99	CT	WINDSOR LOCKS	BRADLEY INTL	9/6476	GPS RWY 15 AMDT 3...
08/27/99	MA	BEDFORD	LAURENCE G. HANSCOM FIELD	9/6470	GPS RWY 23 ORIG...
08/27/99	MA	NANTUCKET	NANTUCKET MEMORIAL	9/6478	LOC BC RWY 6 AMDT 9...
08/27/99	MA	NANTUCKET	NANTUCKET MEMORIAL	9/6482	GPS RWY 33 ORIG–A...
08/27/99	MA	VINEYARD HAVEN	MARTHA'S VINEYARD	9/6481	VOR OR GPS RWY 6 ORIG–B...
08/27/99	MA	WORCESTER	WORCESTER REGIONAL	9/6612	VOR/DME RWY 33 ORIG–B...
08/27/99	MA	WORCESTER	WORCESTER REGIONAL	9/6613	GPS RWY 33 AMDT 1...
08/27/99	MD	SALISBURY	SALISBURY-OCEAN CITY WICOMICO REGIONAL.	9/6483	VOR OR GPS RWY 5 AMDT 8A...
08/27/99	MD	WESTMINSTER	CARROL COUNTY REGIONAL/JACK B. POAGE FIELD.	9/6432	VOR OR GPS–A, ORIG...
08/27/99	MO	POPLAR BLUFF	POPLAR BLUFF MUNI	9/6494	SDF RWY 36, AMDT 1A...
08/27/99	MO	POPLAR BLUFF	POPLAR BLUFF MUNI	9/6495	GPS RWY 36, ORIG...
08/27/99	MO	POPLAR BLUFF	POPLAR BLUFF MUNI	9/6496	GPS RWY 18, ORIG...
08/27/99	MO	POPLAR BLUFF	POPLAR BLUFF MUNI	9/6497	NDB RWY 36, AMDT 1A...
08/27/99	NY	JAMESTOWN	CHAUTAUQUA COUNTY/JAMESTOWN.	9/6437	VOR/DME RNAV OR GPS RWY 31 AMDT 2...
08/27/99	NY	JAMESTOWN	CHAUTAUQUA COUNTY/JAMESTOWN.	9/6440	VOR/DME OR GPS RWY 7 AMDT 3...
08/27/99	NY	OGDENSBURG	OGDENSBURG INTL	9/6442	NDB OR GPS RWY 27 ORIG...
08/27/99	NY	OGDENSBURG	OGDENSBURG INTL	9/6443	LOC RWY 27 AMDT 1A...
08/27/99	RI	PROVIDENCE	THEODORE FRANCIS GREEN STATE.	9/6484	VOR/DME RWY 16 AMDT 4...
08/27/99	VA	DANVILLE	DANVILLE REGIONAL	9/6473	GPS RWY 20 ORIG...
08/27/99	VA	LYNCHBURG	LYNCHBURG REGIONAL/PRESTON GLENN FIELD.	9/6456	GPS RWY 21 ORIG...
08/27/99	VA	LYNCHBURG	LYNCHBURG REGIONAL/PRESTON GLENN FIELD.	9/6460	VOR/DME RWY 21, AMDT 8...
08/27/99	VA	NEWPORT NEWS	NEWPORT NEWS/WILLIAMSBURG INTL.	FDC 9/6486	NDB RWY 25, AMDT 48...
08/27/99	VA	NORFOLK	NORFOLK INTL	9/6458	VOR/DME RWY 32, AMDT 4A...
08/27/99	VA	NORFOLK	NORFOLK INTL	9/6461	GPS RWY 32, AMDT 1A...
08/27/99	VA	NORFOLK	NORFOLK INTL	9/6463	GPS RWY 14, ORIG–A...
08/27/99	VA	NORFOLK	NORFOLK INTL	9/6467	VOR/DME RWY 14, AMDT 2A...
08/27/99	VA	NORFOLK	NORFOLK INTL	9/6469	VOR/DME RNAV RWY 14, AMDT 4A...
08/27/99	WV	BECKLEY	RALEIGH COUNTY MEMORIAL	9/6445	ILS RWY 19 AMDT 4...
08/27/99	WV	BECKLEY	RALEIGH COUNTY MEMORIAL	9/6447	VOR OR GPS RWY 19 AMDT 3A...
08/27/99	WV	BECKLEY	RALEIGH COUNTY MEMORIAL	9/6448	VOR OR GPS RWY 10 AMDT 12A...
08/27/99	WV	BECKLEY	RALEIGH COUNTY MEMORIAL	9/6571	VOR/DME OR GPS RWY 1 AMDT 3...
08/27/99	WV	HUNTINGTON	TRI-STATE/MILTON J. FERGUSON FIELD.	9/6477	NDB OR GSP RWY 12 AMDT 17...
08/27/99	WV	MORGANTOWN	MORGANTOWN-MUNI-WALTER L. BILL HART FIELD.	9/6480	VOR/DME RWY 18 AMDT 6B...
08/27/99	WV	PARKERSBURG	WOOD COUNTY AIRPORT-GILL ROBB WILSON FIELD.	9/6444	VOR OR GPS RWY 21 AMDT 15...
08/27/99	WV	WHEELING	WHEELING OHIO COUNTY	9/6475	VOR OR GPS RWY 21 AMDT 14...
08/30/99	AR	LITTLE ROCK	ADAMS FIELD	9/6598	NDB RWY 22R, AMDT 7...
08/30/99	AR	LITTLE ROCK	ADAMS FIELD	9/6599	GPS RWY 22R, ORIG...

FDC date	State	City	Airport	FDC No.	SIAP
08/30/99	AR	LITTLE ROCK	ADAMS FIELD	9/6600	VOR/DME RNAV RWY 22R, AMDT 11...
08/30/99	CA	RAMONA	RAMONA	9/6551	VOR/DME OR GPS–A AMDT 1B...
08/30/99	CA	RAMONA	RAMONA	9/6552	GPS RWY 9 ORIG...
08/30/99	CA	SANTA YNEZ	SANTA YNEZ	9/6553	GPS–A ORIG–A...
08/30/99	CA	SANTA YNEZ	SANTA YNEZ	9/6557	VOR OR GPS–B AMDT 7B...
08/30/99	FL	LAKELAND	LAKELAND LINDER REGIONAL	9/6592	NDB OR GPS RWY 5, AMDT 2A...
08/30/99	FL	LAKELAND	LAKELAND LINDER REGIONAL	9/6593	ILS RWY 5, AMDT 5A...
08/30/99	FL	LAKELAND	LAKELAND LINDER REGIONAL	9/6594	VOR OR GPS RWY 27, AMDT 5A...
08/30/99	FL	LAKELAND	LAKELAND LINDER REGIONAL	9/6595	VOR OR GPS RWY 9, AMDT 2...
08/30/99	GUA	AGANA	GUAM INTL	9/6555	NDB/DME RWY 24R ORIG...
08/30/99	MA	HYANNIS	BARNSTABLE MUNI-BOARDMAN/ POLANDO FIELD.	9/6581	VOR OR GPS RWY 6 AMDT 7B...
08/30/99	MD	SALISBURY	SALISBURY-OCEAN CITY WICOMICO REGIONAL.	9/6569	VOR OR GPS RWY 32 AMDT 8A...
08/30/99	MN	LITTLE FALLS	LITTLE FALLS-MORRISON COUNTY	9/6565	NDB RWY 30 AMDT 6...
08/30/99	MN	LITTLE FALLS	LITTLE FALLS-MORRISON COUNTY	9/6566	GPS RWY 30 ORIG...
08/30/99	OR	ASTORIA	ASTORIA REGIONAL	9/6591	ILS RWY 26 AMDT 2...
08/30/99	OR	EUGENE	EUGENE/MAHLON SWEET FIELD	9/6588	NDB RWY 16 AMDT 29A..
08/30/99	OR	PORTLAND	PORTLAND INTL	9/6585	ILS RWY 28R AMDT 12...
08/30/99	OR	SALEM	MCNARY FIELD	9/6587	ILS RWY 31 AMDT 27A...
08/30/99	RI	PROVIDENCE	THEODORE FRANCIS GREEN STATE.	9/6583	GPS RWY 16 ORIG...
08/30/99	WA	MOSES LAKE	GRANT COUNTY INTL	9/6582	ILS RWY 32R, AMDT 19...
08/30/99	WA	MOSES LAKE	GRANT COUNTY INTL	9/6584	HI–IL/DME RWY 32R AMDT 1...
08/30/99	WA	MOSES LAKE	GRANT COUNTY INTL	9/6586	HI–VOR/DME OR TACAN RWY 32R, AMDT 1...
08/30/99	WA	MOSES LAKE	GRANT COUNTY INTL	9/6589	MLS RWY 32R, ORIG...
08/30/99	WA	SEATTLE	SEATTLE-TACOMA INTL	9/6580	ILS/DME RWY 34L, AMDT 1...
08/30/99	WY	TORRINGTON	TORRINGTON MUNI	9/6560	GPS RWY 28, ORIG...
08/30/99	WY	TORRINGTON	TORRINGTON MUNI	9/6561	GPS RWY 10, ORIG...
08/30/99	WY	TORRINGTON	TORRINGTON MUNI	9/6562	NDB RWY 28, AMDT 1...
08/30/99	WY	TORRINGTON	TORRINGTON MUNI	9/6563	NDB RWY 10, AMDT 1...
08/31/99	CA	FIREBAUGH	FIREBAUGH	9/6637	VOR/DME OR GPS–A, AMDT 2A...
08/31/99	DE	WILMINGTON	NEW CASTLE COUNTY	9/6633	GPS RWY 9 ORIG–A...
08/31/99	PA	BRADFORD	BRADFORD REGIONAL	9/6625	VOR/DME OR GPS RWY 14 AMDT 8A...
08/31/99	PA	FRANKLIN	VENAGO REGIONAL	9/6626	VOR OR GPS RWY 2 AMDT 3A...
08/31/99	PA	JOHNSTOWN	JOHNSTOWN-CAMBRIA COUNTY	9/6629	VOR/DME OR GPS RWY 15 AMDT 4A...
08/31/99	PA	STATE COLLEGE	UNIVERSITY PARK	9/6627	VOR/DME RNAV OR GPS RWY 6 AMDT 6A...
08/31/99	WV	MARTINSBURG	EASTERN WEST VIRGINIA REGIONAL/SHEPHERD FIELD.	9/6639	LOC/DME BC RWY 8 AMDT 5A...

[FR Doc. 99–23726 Filed 9–13–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 343

[Docket No. 77N–094A]

Internal Analgesic, Antipyretic, and Antirheumatic Drug Products for Over-the-Counter Human Use; Final Rule for Professional Labeling of Aspirin, Buffered Aspirin, and Aspirin in Combination with Antacid Drug Products; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for internal analgesic, antipyretic, and antirheumatic drug products for over-the-counter (OTC) use to correct inadvertent errors and to clarify the labeling for over-the-counter drug products written for health professionals.

EFFECTIVE DATE: The regulation is effective October 25, 1999.

FOR FURTHER INFORMATION CONTACT: Ida I. Yoder, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION: FDA has discovered that inadvertent errors were incorporated into the agency's regulations for internal analgesic, antipyretic, and antirheumatic drug products (21 CFR part 343), that published on October 23, 1998 (63 FR 56802). This document corrects those errors and clarifies the labeling for over-the-counter drug products written for health professionals. Publication of this document constitutes final action under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because this amendment is nonsubstantive.

List of Subjects in 21 CFR Part 343

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 343 is amended as follows:

PART 343—INTERNAL ANALGESIC, ANTIPYRETIC, AND ANTIRHEUMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 343 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

2. Section 343.80 is amended by revising paragraph (a)(1) to read as follows:

§ 343.80 Professional labeling.

(a) * * *

(1) The labeling contains the following prescribing information under the heading "Comprehensive Prescribing Information" and the subheadings "Description," "Clinical Pharmacology," "Clinical Studies," "Animal Toxicology," "Indications and Usage," "Contraindications," "Warnings," "Precautions," "Adverse Reactions," "Drug Abuse and Dependence," "Overdosage," "Dosage and Administration," and "How Supplied" in the exact language and the exact order provided as follows:

COMPREHENSIVE PRESCRIBING INFORMATION

DESCRIPTION

(*Insert the proprietary name and the established name (if any) of the drug, type of dosage form (followed by the phrase "for oral administration"), the established name(s) and quantity of the active ingredient(s) per dosage unit, the total sodium content in milligrams per dosage unit if the sodium content of a single recommended dose is 5 milligrams or more, the established name(s) (in alphabetical order) of any inactive ingredient(s) which may cause an allergic hypersensitivity reaction, the pharmacological or therapeutic class of the drug, and the chemical name(s) and structural formula(s) of the drug.*) Aspirin is an odorless white, needle-like crystalline or powdery substance. When exposed to moisture, aspirin hydrolyzes into salicylic and acetic acids, and gives off a vinegary-odor. It is highly lipid soluble and slightly soluble in water.

CLINICAL PHARMACOLOGY

Mechanism of Action

Aspirin is a more potent inhibitor of both prostaglandin synthesis and platelet aggregation than other salicylic acid derivatives. The differences in activity between aspirin and salicylic acid are thought to be due to the acetyl group on the aspirin molecule. This acetyl group is responsible for the inactivation of cyclo-oxygenase via acetylation.

Pharmacokinetics

Absorption: In general, immediate release aspirin is well and completely absorbed from the gastrointestinal (GI) tract. Following absorption, aspirin is hydrolyzed to salicylic acid with peak plasma levels of salicylic acid occurring within 1–2 hours of dosing (see **Pharmacokinetics**—*Metabolism*). The rate of absorption from the GI tract is dependent upon the dosage form, the presence or absence of food, gastric pH (the presence or absence of GI antacids or buffering agents), and other physiologic factors. Enteric coated aspirin products are erratically absorbed from the GI tract.

Distribution: Salicylic acid is widely distributed to all tissues and fluids in the body including the central nervous system (CNS), breast milk, and fetal tissues. The highest concentrations are found in the plasma, liver, renal cortex, heart, and lungs. The protein binding of salicylate is concentration-dependent, i.e., nonlinear. At low concentrations (< 100 micrograms/milliliter (µg/mL)), approximately 90 percent of plasma salicylate is bound to albumin while at higher concentrations (> 400 µg/mL), only about 75 percent is bound. The early signs of salicylic overdose (salicylism), including tinnitus (ringing in the ears), occur at plasma concentrations approximating 200 µg/mL. Severe toxic effects are associated with levels > 400 µg/mL. (See **Adverse Reactions** and **Overdosage.**)

Metabolism: Aspirin is rapidly hydrolyzed in the plasma to salicylic acid such that plasma levels of aspirin are essentially undetectable 1–2 hours after dosing. Salicylic acid is primarily conjugated in the liver to form salicyluric acid, a phenolic glucuronide, an acyl glucuronide, and a number of minor metabolites. Salicylic acid has a plasma half-life of approximately 6 hours. Salicylate metabolism is saturable and total body clearance decreases at higher serum concentrations due to the limited ability of the liver to form both salicyluric acid and phenolic glucuronide. Following toxic doses (10–20 grams (g)), the plasma half-life may be increased to over 20 hours.

Elimination: The elimination of salicylic acid follows zero order pharmacokinetics; (i.e., the rate of drug elimination is constant in relation to plasma concentration). Renal excretion of unchanged drug depends upon urine pH. As urinary pH rises above 6.5, the renal clearance of free salicylate increases from < 5 percent to > 80 percent. Alkalinization of the urine is a key concept in the management of salicylate overdose. (See **Overdosage.**) Following therapeutic doses, approximately 10 percent is found excreted in the urine as salicylic acid, 75 percent as salicyluric acid, and 10 percent phenolic and 5 percent acyl glucuronides of salicylic acid.

Pharmacodynamics

Aspirin affects platelet aggregation by irreversibly inhibiting prostaglandin cyclo-oxygenase. This effect lasts for the life of the platelet and prevents the formation of the platelet aggregating factor thromboxane A2. Nonacetylated salicylates do not inhibit this enzyme and have no effect on platelet aggregation. At somewhat higher doses, aspirin reversibly inhibits the formation of prostaglandin I_2 (prostacyclin), which is an arterial vasodilator and inhibits platelet aggregation.

At higher doses aspirin is an effective anti-inflammatory agent, partially due to inhibition of inflammatory mediators via cyclo-oxygenase inhibition in peripheral tissues. In vitro studies suggest that other mediators of inflammation may also be suppressed by aspirin administration, although the precise mechanism of action has not been elucidated. It is this nonspecific suppression of cyclo-oxygenase activity in peripheral tissues following large doses that leads to its primary side effect of gastric irritation. (See **Adverse Reactions.**)

CLINICAL STUDIES

Ischemic Stroke and Transient Ischemic Attack (TIA): In clinical trials of subjects with TIA's due to fibrin platelet emboli or ischemic stroke, aspirin has been shown to significantly reduce the risk of the combined endpoint of stroke or death and the combined endpoint of TIA, stroke, or death by about 13–18 percent.

Suspected Acute Myocardial Infarction (MI): In a large, multi-center study of aspirin, streptokinase, and the combination of aspirin and streptokinase in 17,187 patients with suspected acute MI, aspirin treatment produced a 23-percent reduction in the risk of vascular mortality. Aspirin was also shown to have an additional benefit in patients given a thrombolytic agent.

Prevention of Recurrent MI and Unstable Angina Pectoris: These indications are supported by the results of six large, randomized, multi-center, placebo-controlled trials of predominantly male post-MI subjects and one randomized placebo-controlled study of men with unstable angina pectoris. Aspirin therapy in MI subjects was associated with a significant reduction (about 20 percent) in the risk of the combined endpoint of subsequent death and/or nonfatal reinfarction in these patients. In aspirin-treated unstable angina patients the event rate was reduced to 5 percent from the 10 percent rate in the placebo group.

Chronic Stable Angina Pectoris: In a randomized, multi-center, double-blind trial designed to assess the role of aspirin for prevention of MI in patients with chronic stable angina pectoris, aspirin significantly reduced the primary combined endpoint of nonfatal MI, fatal MI, and sudden death by 34 percent. The secondary endpoint for vascular events (first occurrence of MI, stroke, or vascular death) was also significantly reduced (32 percent).

Revascularization Procedures: Most patients who undergo coronary artery revascularization procedures have already had symptomatic coronary artery disease for which aspirin is indicated. Similarly, patients with lesions of the carotid bifurcation sufficient to require carotid endarterectomy are likely to have had a precedent event. Aspirin is recommended for patients who undergo revascularization procedures if there is a preexisting condition for which aspirin is already indicated.

Rheumatologic Diseases: In clinical studies in patients with rheumatoid arthritis, juvenile rheumatoid arthritis, ankylosing spondylitis and osteoarthritis, aspirin has been shown to be effective in controlling various indices of clinical disease activity.

ANIMAL TOXICOLOGY

The acute oral 50 percent lethal dose in rats is about 1.5 g/kilogram (kg) and in mice 1.1 g/kg. Renal papillary necrosis and decreased urinary concentrating ability occur in rodents chronically administered high doses. Dose-dependent gastric mucosal injury occurs in rats and humans. Mammals may develop aspirin toxicosis associated with GI symptoms, circulatory effects, and central nervous system depression. (See **Overdosage.**)

INDICATIONS AND USAGE

Vascular Indications (Ischemic Stroke, TIA, Acute MI, Prevention of Recurrent MI, Unstable Angina Pectoris, and Chronic Stable Angina Pectoris): Aspirin is indicated to: (1) Reduce the combined risk of death and nonfatal stroke in patients who have had ischemic stroke or transient ischemia of the brain due to fibrin platelet emboli, (2) reduce the risk of vascular mortality in patients with a suspected acute MI, (3) reduce the combined risk of death and nonfatal MI in patients with a previous MI or unstable angina pectoris, and (4) reduce the combined risk of MI and sudden death in patients with chronic stable angina pectoris.

Revascularization Procedures (Coronary Artery Bypass Graft (CABG), Percutaneous Transluminal Coronary Angioplasty (PTCA), and Carotid Endarterectomy): Aspirin is indicated in patients who have undergone revascularization procedures (i.e., CABG, PTCA, or carotid endarterectomy) when there is a preexisting condition for which aspirin is already indicated.

Rheumatologic Disease Indications (Rheumatoid Arthritis, Juvenile Rheumatoid Arthritis, Spondyloarthropathies, Osteoarthritis, and the Arthritis and Pleurisy of Systemic Lupus Erythematosus (SLE)): Aspirin is indicated for the relief of the signs and symptoms of rheumatoid arthritis, juvenile rheumatoid arthritis, osteoarthritis, spondyloarthropathies, and arthritis and pleurisy associated with SLE.

CONTRAINDICATIONS

Allergy: Aspirin is contraindicated in patients with known allergy to nonsteroidal anti-inflammatory drug products and in patients with the syndrome of asthma, rhinitis, and nasal polyps. Aspirin may cause severe urticaria, angioedema, or bronchospasm (asthma).

Reye's Syndrome: Aspirin should not be used in children or teenagers for viral infections, with or without fever, because of the risk of Reye's syndrome with concomitant use of aspirin in certain viral illnesses.

WARNINGS

Alcohol Warning: Patients who consume three or more alcoholic drinks every day should be counseled about the bleeding risks involved with chronic, heavy alcohol use while taking aspirin.

Coagulation Abnormalities: Even low doses of aspirin can inhibit platelet function leading to an increase in bleeding time. This can adversely affect patients with inherited (hemophilia) or acquired (liver disease or vitamin K deficiency) bleeding disorders.

GI Side Effects: GI side effects include stomach pain, heartburn, nausea, vomiting, and gross GI bleeding. Although minor upper GI symptoms, such as dyspepsia, are common and can occur anytime during therapy, physicians should remain alert for signs of ulceration and bleeding, even in the absence of previous GI symptoms. Physicians should inform patients about the signs and symptoms of GI side effects and what steps to take if they occur.

Peptic Ulcer Disease: Patients with a history of active peptic ulcer disease should avoid using aspirin, which can cause gastric mucosal irritation and bleeding.

PRECAUTIONS

General

Renal Failure: Avoid aspirin in patients with severe renal failure (glomerular filtration rate less than 10 mL/minute).

Hepatic Insufficiency: Avoid aspirin in patients with severe hepatic insufficiency.

Sodium Restricted Diets: Patients with sodium-retaining states, such as congestive heart failure or renal failure, should avoid sodium-containing buffered aspirin preparations because of their high sodium content.

Laboratory Tests

Aspirin has been associated with elevated hepatic enzymes, blood urea nitrogen and serum creatinine, hyperkalemia, proteinuria, and prolonged bleeding time.

Drug Interactions

Angiotensin Converting Enzyme (ACE) Inhibitors: The hyponatremic and hypotensive effects of ACE inhibitors may be diminished by the concomitant administration of aspirin due to its indirect effect on the renin-angiotensin conversion pathway.

Acetazolamide: Concurrent use of aspirin and acetazolamide can lead to high serum concentrations of acetazolamide (and toxicity) due to competition at the renal tubule for secretion.

Anticoagulant Therapy (Heparin and Warfarin): Patients on anticoagulation therapy are at increased risk for bleeding because of drug-drug interactions and the effect on platelets. Aspirin can displace warfarin from protein binding sites, leading to prolongation of both the prothrombin time and the bleeding time. Aspirin can increase the anticoagulant activity of heparin, increasing bleeding risk.

Anticonvulsants: Salicylate can displace protein-bound phenytoin and valproic acid, leading to a decrease in the total concentration of phenytoin and an increase in serum valproic acid levels.

Beta Blockers: The hypotensive effects of beta blockers may be diminished by the concomitant administration of aspirin due to inhibition of renal prostaglandins, leading to decreased renal blood flow, and salt and fluid retention.

Diuretics: The effectiveness of diuretics in patients with underlying renal or cardiovascular disease may be diminished by the concomitant administration of aspirin due to inhibition of renal prostaglandins, leading to decreased renal blood flow and salt and fluid retention.

Methotrexate: Salicylate can inhibit renal clearance of methotrexate, leading to bone marrow toxicity, especially in the elderly or renal impaired.

Nonsteroidal Anti-inflammatory Drugs (NSAID's): The concurrent use of aspirin with other NSAID's should be avoided because this may increase bleeding or lead to decreased renal function.

Oral Hypoglycemics: Moderate doses of aspirin may increase the effectiveness of oral hypoglycemic drugs, leading to hypoglycemia.

Uricosuric Agents (Probenecid and Sulfinpyrazone): Salicylates antagonize the uricosuric action of uricosuric agents.

Carcinogenesis, Mutagenesis, Impairment of Fertility

Administration of aspirin for 68 weeks at 0.5 percent in the feed of rats was not carcinogenic. In the Ames Salmonella assay, aspirin was not mutagenic; however, aspirin did induce chromosome aberrations in cultured human fibroblasts. Aspirin inhibits ovulation in rats. (See *Pregnancy.*)

Pregnancy

Pregnant women should only take aspirin if clearly needed. Because of the known effects of NSAID's on the fetal cardiovascular system (closure of the ductus arteriosus), use during the third trimester of pregnancy should be avoided. Salicylate products have also been associated with alterations in maternal and neonatal hemostasis mechanisms, decreased birth weight, and with perinatal mortality.

Labor and Delivery

Aspirin should be avoided 1 week prior to and during labor and delivery because it can result in excessive blood loss at delivery. Prolonged gestation and prolonged labor due to prostaglandin inhibition have been reported.

Nursing Mothers

Nursing mothers should avoid using aspirin because salicylate is excreted in breast milk. Use of high doses may lead to rashes, platelet abnormalities, and bleeding in nursing infants.

Pediatric Use

Pediatric dosing recommendations for juvenile rheumatoid arthritis are based on well-controlled clinical studies. An initial dose of 90–130 mg/kg/day in divided doses, with an increase as needed for anti-inflammatory efficacy (target plasma salicylate levels of 150–300 µg/mL) are effective. At high doses (i.e., plasma levels of greater than 200 µg/mL), the incidence of toxicity increases.

ADVERSE REACTIONS

Many adverse reactions due to aspirin ingestion are dose-related. The following is a list of adverse reactions that have been reported in the literature. (See **Warnings.**)

Body as a Whale: Fever, hypothermia, thirst.

Cardiavascular: Dysrhythmias, hypotension, tachycardia.

Central Nervaus System: Agitation, cerebral edema, coma, confusion, dizziness, headache, subdural or intracranial hemorrhage, lethargy, seizures.

Fluid and Electrolyte: Dehydration, hyperkalemia, metabolic acidosis, respiratory alkalosis.

Gastraintestinal: Dyspepsia, GI bleeding, ulceration and perforation, nausea, vomiting, transient elevations of hepatic enzymes, hepatitis, Reye's Syndrome, pancreatitis.

Hematologic: Prolongation of the prothrombin time, disseminated intravascular coagulation, coagulopathy, thrombocytopenia.

Hypersensitivity: Acute anaphylaxis, angioedema, asthma, bronchospasm, laryngeal edema, urticaria.

Musculoskeletal: Rhabdomyolysis.

Metabalism: Hypoglycemia (in children), hyperglycemia.

Reproductive: Prolonged pregnancy and labor, stillbirths, lower birth weight infants, antepartum and postpartum bleeding.

Respiratary: Hyperpnea, pulmonary edema, tachypnea.

Special Senses: Hearing loss, tinnitus. Patients with high frequency hearing loss may have difficulty perceiving tinnitus. In these patients, tinnitus cannot be used as a clinical indicator of salicylism.

Uragenital: Interstitial nephritis, papillary necrosis, proteinuria, renal insufficiency and failure.

DRUG ABUSE AND DEPENDENCE

Aspirin is nonnarcotic. There is no known potential for addiction associated with the use of aspirin.

OVERDOSAGE

Salicylate toxicity may result from acute ingestion (overdose) or chronic intoxication. The early signs of salicylic overdose (salicylism), including tinnitus (ringing in the ears), occur at plasma concentrations approaching 200 µg/mL. Plasma concentrations of aspirin above 300 µg/mL are clearly toxic. Severe toxic effects are associated with levels above 400 µg/mL. (See **Clinical Pharmacology.**) A single lethal dose of aspirin in adults is not known with certainty but death may be expected at 30 g. For real or suspected overdose, a Poison Control Center should be contacted immediately. Careful medical management is essential.

Signs and Symptams: In acute overdose, severe acid-base and electrolyte disturbances may occur and are complicated by hyperthermia and dehydration. Respiratory alkalosis occurs early while hyperventilation is present, but is quickly followed by metabolic acidosis.

Treatment: Treatment consists primarily of supporting vital functions, increasing salicylate elimination, and correcting the acid-base disturbance. Gastric emptying and/or lavage is recommended as soon as possible after ingestion, even if the patient has vomited spontaneously. After lavage and/or emesis, administration of activated charcoal, as a slurry, is beneficial, if less than 3 hours have passed since ingestion. Charcoal adsorption should not be employed prior to emesis and lavage.

Severity of aspirin intoxication is determined by measuring the blood salicylate level. Acid-base status should be closely followed with serial blood gas and serum pH measurements. Fluid and electrolyte balance should also be maintained.

In severe cases, hyperthermia and hypovolemia are the major immediate threats to life. Children should be sponged with tepid water. Replacement fluid should be administered intravenously and augmented with correction of acidosis. Plasma electrolytes and pH should be monitored to promote alkaline diuresis of salicylate if renal function is normal. Infusion of glucose may be required to control hypoglycemia.

Hemodialysis and peritoneal dialysis can be performed to reduce the body drug content. In patients with renal insufficiency or in cases of life-threatening intoxication, dialysis is usually required. Exchange transfusion may be indicated in infants and young children.

DOSAGE AND ADMINISTRATION

Each dose of aspirin should be taken with a full glass of water unless patient is fluid restricted. Anti-inflammatory and analgesic dosages should be individualized. When aspirin is used in high doses, the development of tinnitus may be used as a clinical sign of elevated plasma salicylate levels except in patients with high frequency hearing loss.

Ischemic Strake and TIA: 50–325 mg once a day. Continue therapy indefinitely.

Suspected Acute MI: The initial dose of 160–162.5 mg is administered as soon as an MI is suspected. The maintenance dose of 160–162.5 mg a day is continued for 30 days post-infarction. After 30 days, consider further therapy based on dosage and administration for prevention of recurrent MI.

Prevention of Recurrent MI: 75–325 mg once a day. Continue therapy indefinitely.

Unstable Angina Pectoris: 75–325 mg once a day. Continue therapy indefinitely.

Chranic Stable Angina Pectaris: 75–325 mg once a day. Continue therapy indefinitely.

CABG: 325 mg daily starting 6 hours post-procedure. Continue therapy for 1 year post-procedure.

PTCA: The initial dose of 325 mg should be given 2 hours pre-surgery. Maintenance dose is 160–325 mg daily. Continue therapy indefinitely.

Caratid Endarterectamy: Doses of 80 mg once daily to 650 mg twice daily, started presurgery, are recommended. Continue therapy indefinitely.

Rheumataid Arthritis: The initial dose is 3 g a day in divided doses. Increase as needed for anti-inflammatory efficacy with target plasma salicylate levels of 150–300 µg/mL. At high doses (i.e., plasma levels of greater than 200 µg/mL), the incidence of toxicity increases.

Juvenile Rheumataid Arthritis: Initial dose is 90–130 mg/kg/day in divided doses. Increase as needed for anti-inflammatory efficacy with target plasma salicylate levels of 150–300 µg/mL. At high doses (i.e., plasma levels of greater than 200 µg/mL), the incidence of toxicity increases.

Spandylaarthrapathies: Up to 4 g per day in divided doses.

Osteaarthritis: Up to 3 g per day in divided doses.

Arthritis and Pleurisy of SLE: The initial dose is 3 g a day in divided doses. Increase as needed for anti-inflammatory efficacy with target plasma salicylate levels of 150–300 µg/mL. At high doses (i.e., plasma levels of greater than 200 mµ/mL), the incidence of toxicity increases.

HOW SUPPLIED

(Insert specific information regarding, strength af dasage farm, units in which the dasage farm is generally available, and infarmatian ta facilitate identification of the dasage farm as required under § 201.57(k)(1), (k)(2), and (k)(3).) Stare in a tight cantainer at 25 °C (77 °F); excursions permitted to 15–30 °C (59–86 °F).

REV: October 23, 1998.

Dated: Septeınber 7, 1999.

Margaret M. Dotzel,

Acting Assaciate Cammissioner far Policy.

[FR Doc. 99–23684 Filed 9–13–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid and Virginiamycin

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 Roche Vitamins, Inc. The NADA provides for

use of approved lasalocid and virginiamycin Type A medicated articles to make Type C medicated feeds used for prevention of coccidiosis and for increased rate of weight gain and improved feed efficiency in growing turkeys.

EFFECTIVE DATE: September 14, 1999.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600.

SUPPLEMENTARY INFORMATION: Roche Vitamins, Inc., 45 Waterview Blvd., Parsippany, NJ 07054–1298, filed NADA 141–150 that provides for use of Avatec® (90.7 grams per pound (g/lb) of lasalocid as lasalocid sodium) and Stafac® (20 or 227 g/lb of virginiamycin) Type A medicated articles to make Type C medicated feeds for growing turkeys. The Type C medicated feeds are used for prevention of coccidiosis caused by *Eimeria meleagrimitis*, *E. gallopavonis*, and *E. adenoeides*, and for increased rate of weight gain and improved feed efficiency in growing turkeys. The NADA is approved as of August 6, 1999, and the regulations are amended in 21 CFR 558.311 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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.

The agency has determined under 21 CFR 25.33(a)(2) 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 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.311 is amended in the table in paragraph (e)(1)(xiv), under the "Combination in grams per ton" column, by alphabetically adding an entry for "Virginiamycin 10 to 20" to read as follows:

§ 558.311 Lasalocid.

* * * * *

(e)(1) * * *

Lasalocid sodium activity in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
* *	*	*	* *	*
(xiv) 68 (0.0075 pct) to 113 (0.0125 pct).		* * *	* * *	* * *
* *	*	*	* *	*
	Virginiamycin 10 to 20	Growing turkeys; for prevention of coccidiosis caused by *E. meleagrimitis*, *E. gallopavonis*, and *E. adenoeides*, and for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration. As lasalocid sodium provided by 063238 and virginiamycin provided by 000069.	063238
* *	*	*	* *	*

* * * * *

Dated: August 30, 1999.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 99–23970 Filed 9–13–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR–4428–C–03]

RIN 2577–AB91

Section 8 Tenant-Based Assistance Programs Statutory Merger of Section 8 Certificate and Voucher Programs; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Correction.

SUMMARY: This document makes various corrections to HUD's May 14, 1999 interim rule amending the regulations for the Section 8 tenant-based rental voucher program. The interim rule implemented most of the Section 8 tenant-based program provisions contained in the Quality Housing and Work Responsibility Act of 1998 (the "Public Housing Reform Act"). Of particular significance, the May 14, 1999 interim rule implemented section 545 of the Public Housing Reform Act. Section 545 provides for the complete merger of the Section 8 tenant-based Certificate and Voucher programs. The purpose of this document is to make

various corrections to the May 14, 1999 interim rule.

DATES: *Effective Date:* October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–0477, extension 4069 (this is not a toll-free number). Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. HUD's May 14, 1999 Interim Rule

On May 14, 1999 (64 FR 26632), HUD published for public comment an interim rule amending the regulations for the Section 8 tenant-based rental voucher program.

The interim rule implemented most of the Section 8 tenant-based program provisions contained in the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105–276, approved October 21, 1998; 112 Stat. 2461) (the "Public Housing Reform Act"). Of particular significance, the May 14, 1999 interim rule implemented section 545 of the Public Housing Reform Act, which provides for the complete merger of the Section 8 tenant-based Certificate and Voucher programs. Accordingly, the May 14, 1999 established a new merged program known as the Housing Choice Voucher program.

HUD had previously promulgated regulations (known as the "conforming rule") which combined and conformed rules for Section 8 tenant-based assistance to the extent permitted by prior law. The new Housing Choice Voucher program has features of the previously authorized certificate and voucher programs plus new features, as described in the preamble to the interim rule.

The May 14, 1999 interim rule provided for a 90-day delayed effective date for the interim rule (in contrast to the customary 30-day delayed effective date for most HUD rules issued for effect), in order to afford public housing agencies (PHAs) additional time to prepare for the implementation of the interim rule. The interim was scheduled to become effective on August 12, 1999.

On August 11, 1999 (64 FR 43613), HUD published a notice in the **Federal Register** delaying the effective date of the May 14, 1999 interim rule until October 1, 1999. HUD decided to delay the effective date in order to provide decided to delay the effective date until October 1, 1999, to allow PHAs more time to prepare for implementation of the Housing Choice Voucher Program and to allow PHAs to revise their computer software to accommodate the new subsidy formula.

II. This Document

The purpose of this document is to make various corrections to the May 14, 1999 interim rule. The major corrections made by this document are as follows:

1. *Definition of "merger date."* The definition of "merger date" in § 982.4 is corrected to specify that this term means October 1, 1999, the delayed effective date of the interim voucher merger rule pursuant to HUD's August 11, 1999 **Federal Register** notice.

2. *Use of "family size" to determine initial eligibility.* Section 982.201(b)(4) is corrected to specify that the PHA must use the income limit "for the family size" to determine initial eligibility at admission to the program. The published rule incorrectly indicated that the PHA should use the "family unit size" for this purpose (emphasis supplied). "Family *unit* size" is used to determine the appropriate unit size and maximum subsidy for a family, not to determine eligibility for admission to the program.

3. *Screening of family behavior.* Section 982.307(a)(1) of the published rule provides that the PHA may opt to screen "family behavior" or suitability for tenancy. This provision is intended to implement section 8(o)(6)(B) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(6)(B)) (the "1937 Act"), as amended by section 545 of the Public Housing Reform Act, which provides that a PHA "may elect to screen applicants for the program. . . ." The interim rule is corrected:

- To clarify, as originally intended (see the interim rule preamble discussion at 64 FR 26632), that § 982.307(a)(1) is only intended to authorize PHA screening of program applicants, not to authorize PHA screening of a program participant seeking to move to another unit (either within the PHA jurisdiction or under portability procedures) (§ 982.307(a)(1)).
- To specify that such PHA screening of program applicants must be "in accordance with policies stated in the PHA administrative plan" (§ 982.307(a)(1)).
- To add a reference to such PHA screening in the regulation that lists PHA policies that must be included in the administrative plan (§ 982.54(d)(23)).
- To add a conforming provision which clarifies that the PHA may at any time deny program assistance for an applicant in accordance with the PHA administrative plan policy on screening of applicants for family behavior or suitability for tenancy (§ 982.552(e)).

4. *Approval of acceptability criteria variations.* Section 982.401(a)(4)(iii)(A) is revised to correct the description of requirements for approval of acceptability criteria variations in accordance with section 8(o)(8)(B) of the 1937 Act. The corrected rule specifies that HUD may approve variations that meet or exceed the "performance requirements," which describe minimum program Housing Quality Standards (HQS) requirements.

5. *Payment standard amount and schedule.* Section 982.503 is corrected:

- By adding a new paragraph (b)(1)(iii)) to specify that a PHA may establish a higher payment standard within the basic range (between 90 percent and 110 percent of the published Fair Market Rent (FMR)) when required as a reasonable accommodation for a family that includes a person with disabilities.
- By adding the term "upper range" (in redesignated § 982.503(c)(2)(i)) to refer to the interval from 110 percent to 120 percent of the published FMR.
- By adding new paragraph (c)(2)(ii) to specify that the HUD field office may approve PHA establishment of a payment standard in the "upper range" when required as a reasonable accommodation for a family that includes a person with disabilities.

6. *Payment standard used to calculate subsidy in an exception area.* Section 982.505(c)(2) is corrected to clarify that the payment standard used to calculate the subsidy for a dwelling unit located in an exception area is calculated in accordance with § 982.503, which describes the process for establishing the payment standard for an exception area.

7. *Title of § 982.508.* The title of § 982.508 is revised to clarify that this section specifies the maximum "family share" (defined as gross rent minus the amount of the housing assistance payment) at initial occupancy, rather than the maximum "rent to owner," as suggested by the original title.

8. *Description of amortization cost.* Section 982.623(b)(3) is corrected by restoring the description of "amortization cost," which is used to calculate the amount of assistance for a manufactured home space rental under the pre-merger certificate program (for a tenancy commenced before the "merger date"). This provision was inadvertently deleted by the interim rule.

9. *FMR for manufactured home space.* Section 982.623 is corrected by consolidating two paragraphs

concerning determination of the FMR for a manufactured home space (§ 982.623(c)(1)).

Accordingly, in the interim rule captioned "Section 8 Tenant-Based Assistance; Statutory Merger of Section 8 Certificate and Voucher Programs," FR Document 99–12082, beginning at 64 FR 26632, in the issue of Friday, May 14, 1999, the following corrections are made:

1. On page 26641, in the first column, the definition of "Merger date" in § 982.4 is corrected to read as follows:

§ 982.4 Definitions.

* * * * *

(b) * * *

Merger date. October 1, 1999.

* * * * *

2. On page 26641, in the third column, regulatory amendment 31 is corrected to read as follows:

31. Amend § 982.54 as follows:

a. Revise paragraphs (d)(1), (d)(2), (d)(14) and (d)(15);

b. Remove paragraph (d)(16);

c. Redesignate paragraphs (d)(17), (d)(18), (d)(19), (d)(20), (d)(21) and (d)(22) as paragraphs (d)(16), (d)(17), (d)(18), (d)(19), (d)(20) and (d)(21) respectively;

d. Revise newly designated paragraphs (d)(20) and (d)(21); and

e. Add paragraphs (d)(22) and (d)(23).

The revisions and additions read as follows:

§ 982.54 Administrative plan.

* * * * *

(d) * * *

(1) Selection and admission of applicants from the PHA waiting list, including any PHA admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the PHA waiting list;

(2) Issuing or denying vouchers, including PHA policy governing the voucher term and any extensions or suspensions of the voucher term. "Suspension" means stopping the clock on the term of a family's voucher after the family submits a request for approval of the tenancy. If the PHA decides to allow extensions or suspensions of the voucher term, the PHA administrative plan must describe how the PHA determines whether to grant extensions or suspensions, and how the PHA determines the length of any extension or suspension;

* * * * *

(14) The process for establishing and revising voucher payment standards;

(15) The method of determining that rent to owner is a reasonable rent (initially and during the term of a HAP contract);

* * * * *

(20) Restrictions, if any, on the number of moves by a participant family (see § 982.314(c));

(21) Approval by the Board of Commissioners or other authorized officials to charge the administrative fee reserve;

(22) Procedural guidelines and performance standards for conducting required HQS inspections; and

(23) PHA screening of applicants for family behavior or suitability for tenancy.

§ 982.201 [Corrected]

3. On page 26643, in the second column, § 982.201(b)(4) is corrected by revising the reference to "(for the family unit size)" to read "(for the family size)".

4. On page 26645, in the first column, § 982.307(a)(1) is corrected to read as follows:

§ 982.307 Tenant screening.

(a) *PHA option and owner responsibility.* (1) The PHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy. However, the PHA may opt to screen applicants for family behavior or suitability for tenancy. The PHA must conduct any such screening of applicants in accordance with policies stated in the PHA administrative plan.

* * * * *

§ 982.401 [Corrected]

5. On page 26646, in the third column, § 982.401(a)(4)(iii)(A) is corrected by revising the reference to "Acceptability criteria" to read "Performance requirements".

6. On page 26648, in the second and third columns, § 982.503 is corrected by adding paragraph (b)(1)(iii) and revising paragraph (c)(2) to read as follows:

§ 982.503 Voucher tenancy: Payment standard amount and schedule.

* * * * *

(b) * * *

(1) * * *

(iii) The PHA may establish a higher payment standard within the basic range if required as a reasonable accommodation for a family that includes a person with disabilities.

(c) * * *

(2) *Above 110 percent of FMR to 120 percent of FMR.* (i) The HUD Field Office may approve an exception payment standard amount from above 110 percent of the published FMR to 120 percent of the published FMR (upper range) if such office determines that such approval is justified by either the median rent method or the 40th percentile rent as described below (and that such approval is also supported by an appropriate program justification in accordance with paragraph (c)(4) of this section).

(A) *Median rent method.* In the median rent method, HUD determines the exception payment standard amount by multiplying the FMR times a fraction of which the numerator is the median gross rent of the exception area and the denominator is the median gross rent of the entire FMR area. In this method, HUD uses median gross rent data from the most recent decennial United States census, and the exception area may be any geographic entity within the FMR area (or any combination of such entities) for which median gross rent data is provided in decennial census products.

(B) *40th percentile rent method.* In this method, HUD determines that the area exception rent equals the 40th percentile of rents to lease standard quality rental housing in the exception area. HUD determines the 40th percentile rent in accordance with the methodology described in § 888.113 of this title for determining fair market rents. A PHA must present statistically representative rental housing survey data to justify HUD approval.

(ii) The HUD Field Office may approve an exception payment standard amount within the upper range if required as a reasonable accommodation for a family that includes a person with disabilities.

* * * * *

7. On page 26649, in the third column, § 982.505(c)(2) is corrected to read as follows:

§ 982.505 Voucher tenancy: How to calculate housing assistance payment.

* * * * *

(c) * * *

(2) If the dwelling unit is located in an exception area, the PHA must use the appropriate payment standard amount established by the PHA for the exception area in accordance with § 982.503.

* * * * *

8. On page 26649, in the third column, the section heading for § 982.508 is corrected to read as follows:

§ 982.508 Maximum family share at initial occupancy.

* * * * *

9. On page 26650, in the third column. § 982.552 is corrected by adding paragraph (e) to read as follows:

§ 982.552 PHA denial or termination of assistance for family.

* * * * *

(e) *Applicant screening.* The PHA may at any time deny program assistance for an applicant in accordance with the PHA policy, as stated in the PHA administrative plan, on screening of applicants for family behavior or suitability for tenancy.

10. On page 26651, in the second and third columns, § 982.623 is corrected as follows:

a. Remove paragraph (a);

b. Redesignate paragraphs (b) and (c) as paragraphs (a) and (b), respectively;

c. Add paragraph (a)(3); and

c. Revise newly designated paragraph (b)(1).

§ 982.623 Manufactured home space rental: Housing assistance payment.

(a) * * *

(3) *Amortization cost.* (i) The amortization cost may include debt service to amortize cost (other than furniture costs) included in the purchase price of the manufactured home. The debt service includes the payment for principal and interest on the loan. The debt service amount must be reduced by 15 percent to exclude debt service to amortize the cost of furniture, unless the PHA determines that furniture was not included in the purchase price.

(ii) The amount of the amortization cost is the debt service established at time of application to a lender for financing purchase of the manufactured home if monthly payments are still being made. Any increase in debt service due to refinancing after purchase of the home is not included in amortization cost.

(iii) Debt service for set-up charges incurred by a family that relocates its home may be included in the monthly amortization payment made by the family. In addition, set-up charges incurred before the family became an assisted family may be included in the amortization cost if monthly payments are still being made to amortize such charges.

(b) *Housing assistance payment for voucher tenancy.* (1) There is a separate FMR for a family renting a manufactured home space. The FMR for a manufactured home space is determined in accordance with § 888.113(e) of this title. The FMR for rental of a manufactured home space is generally 30 percent of the published FMR for a two-bedroom unit (see FMR notices published by HUD pursuant to part 888).

* * * * *

Dated: September 8, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–23895 Filed 9–13–99; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF JUSTICE

28 CFR Part 68

[EOIR No. 116F; A.G. ORDER No. 2255–99]

RIN 1125–AA17

Office of the Chief Administrative Hearing Officer; Executive Office for Immigration Review; Rules of Practice and Procedure for Administrative Hearings Before Administrative Law Judges in Cases Involving Allegations of Unlawful Employment of Aliens, Unfair Immigration-Related Employment Practices, and Document Fraud

AGENCY: Office of the Chief Administrative Hearing Officer, Executive Office for Immigration Review, Justice.

ACTION: Final rule.

SUMMARY: This final rule adopts the interim rule of the Office of the Chief Administrative Hearing Officer (OCAHO), published February 12, 1999, at 64 FR 7066. This final rule amends the regulations of OCAHO pertaining to employer sanctions, unfair immigration-related employment practice cases, and immigration-related document fraud. The final rule implements various provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and the Debt Collection Improvement Act of 1996, makes various other changes to the OCAHO's procedural regulations, and sets forth clerical and technical corrections to the interim rule.

DATES: This final rule is effective September 14, 1999.

FOR FURTHER INFORMATION CONTACT: Charles Adkins-Blanch, Acting General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041, telephone number (703) 305–0470.

SUPPLEMENTARY INFORMATION: The IIRIRA, enacted on September 30, 1996, amends the employer sanctions, unfair immigration-related employment practices and document fraud sections of the Immigration and Nationality Act (INA) in several ways (sections 274A, 274B, and 274C of the INA, respectively). The Debt Collection Improvement Act of 1996, Public Law 104–134, Title III ("Debt Collection Improvement Act"), 110 Stat. 1321, 1321–1358 (1996), mandates that the civil penalties in each of these three sections of the INA be adjusted to reflect inflation. In addition, the OCAHO examined its regulations and made various changes perceived as necessary in light of case-by-case experiences since the 1991 amendments to its regulations. On February 12, 1999, the Department of Justice published an interim rule containing changes to the OCAHO's regulations designed to make the regulations comport with one of the aforementioned statutes, clarify any existing ambiguity, and similarly contribute to the fair and efficient administration of sections 274A, 274B, and 274C of the INA. Although comments were requested, none were received. Accordingly, the changes to the regulations, previously published as an interim rule, are now adopted as a final rule with technical corrections.

Need for Correction

Upon further review of the interim rule, the OCAHO is making certain clerical and technical corrections. These corrections are purely technical and non-substantive, and do not impose new requirements.

In the heading and introductory text of § 68.33(c), the final rule replaces the word "respondents" with the phrase "parties other than the Department of Justice." This technical correction is necessary as complainants in cases arising under section 274B of the INA may be individuals or entities other than the Department of Justice. In § 68.33(c)(3)(iii), the word "finds" was inadvertently omitted. The final rule corrects this clerical omission. All other corrections are for punctuation.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or

more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant economic impact on a substantial number of small entities. No additional costs will be incurred as a result of this rule.

Executive Order 12866

The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12866, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This rule has no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612.

Executive Order 12988

This complies with the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order No. 12988

List of Subjects in 28 CFR Part 68

Administrative practices and procedure, Aliens, Citizenship and naturalization, Civil rights, Discrimination in employment, Employment, Equal employment opportunity, Immigration, Nationality, Non-discrimination.

Accordingly, the interim rule amendment 28 CFR Part 68 which was published at 64 FR 7066 on February 12, 1999, is adopted as a final rule with the following corrections:

PART 68—RULES OF PRACTICE AND PROCEDURE FOR ADMINISTRATIVE HEARINGS BEFORE ADMINISTRATIVE LAW JUDGES IN CASES INVOLVING ALLEGATIONS OF UNLAWFUL EMPLOYMENT OF ALIENS, UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES, AND DOCUMENT FRAUD

1. The authority citation for part 68 continues to read as follows:

Authority: 5 U.S.C. 301, 554; 8 U.S.C. 1103, 1324a, 1324b, and 1324c.

2. In § 68.2, remove the period at the end of the sentence defining "Unfair immigration-related employment practice cases" and add, in its place, a semicolon. Remove the semicolon at the end of the sentence defining "Unlawful employment cases" and add, in its place, a period.

3. In § 68.33, revise paragraph (c) heading and introductory text, and paragraph (c)(3)(iii) to read as follows:

§ 68.33 Participation of parties and representation.

(c) *Representation for parties other than the Department of Justice.* Persons who may appear before the Administrative Law Judges on behalf of parties other than the Department of Justice include:

* * * * *

(3) * * *

(iii) *Denial of authority to appear.* Except as provided in paragraph (c)(3)(iv) of this section, the Administrative Law Judge may enter an order denying the privilege of appearing to any individual who the Judge finds does not possess the requisite qualifications to represent others; is lacking in character or integrity; has engaged in unethical or improper professional conduct; or has engaged in an act involving moral turpitude.

* * * * *

4. In § 6852, paragraph (c)(5), remove the comma after the phrase "on or after March 15, 1999" the second time it appears.

Dated: September 4, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–23842 Filed 9–13–99; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF DEFENSE

Defense Security Service

32 CFR Part 321

[Defense Security Service Reg. 01-13]

Defense Security Service Privacy Program

AGENCY: Defense Security Service, DOD.

ACTION: Final rule, with comments.

SUMMARY: The Defense Investigative Service (DIS) has changed its name to the 'Defense Security Service (DSS)'. This agency name change demands administrative updates to 32 CFR part 321. Therefore, DIS is being changed to DSS throughout the rule, addresses are being updated, and two exemption rules are being consolidated into one rule.

EFFECTIVE DATE: September 14, 1999. However, comments received on or before October 14, 1999, will be considered by this agency.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie Blake (703) 325-9450.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, 'Regulatory Planning and Review'

It has been determined that 32 CFR part 321 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more; or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96-354, 'Regulatory Flexibility Act' (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

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

It has been certified that this part does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 321

Privacy.

Accordingly, 32 CFR part 321 is revised to read as follows:

PART 321—DEFENSE SECURITY SERVICE PRIVACY PROGRAM

Sec.

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

§ 321.1 Purpose and applicability.

(a) This part establishes rules, policies and procedures for the disclosure of personal records in the custody of the Defense Security Service (DSS) to the individual subjects, the handling of requests for amendment or correction of such records, appeal and review of DSS decisions on these matters, and the application of general and specific exemptions, under the provisions of the Privacy Act of 1974. It also prescribes other policies and procedures to effect compliance with the Privacy Act of 1974 and DoD Directive 5400.11 [1].

(b) The procedures set forth in this part do not apply to DSS personnel seeking access to records pertaining to themselves which previously have been available. DSS personnel will continue to be granted ready access to their personnel, security, and other records by making arrangements directly with the maintaining office. DSS personnel should contact the Office of Freedom of Information and Privacy, DSSHQ, for access to investigatory records pertaining to themselves or any assistance in obtaining access to other records pertaining to themselves, and may follow the procedures outlined in these rules in any case.

§ 321.2 Definitions.

(a) All terms used in this part which are defined in 5 U.S.C. 552a shall have the same meaning herein.

(b) As used in this part, the term agency means the Defense Security Service.

§ 321.3 Information and procedures for requesting notification.

(a) *General.* Any individual may request and receive notification of whether he is the subject of a record in any system of records maintained by DSS using the information and procedures described in this section.

(1) Paragraphs (b) and (c) of this section give information that will assist an individual in determining in what systems of DSS records (if any) he may be the subject. This information is presented as a convenience to the individual in that he may avoid consulting the lengthy systems notices elsewhere in the Federal Register.

(2) Paragraph (d) of this section details the procedure an individual should use to contact DSS and request notification. It will be helpful if the individual states what his connection with DSS has or may have been, and about what record system(s) he is inquiring. Such information is not required, but its absence may cause some delay.

(b) *DSS Records Systems.* A list of DSS records systems is available by contacting Defense Security Service, Office of FOI and Privacy, 1340 Braddock Place, Alexandria, VA, 22314-1551.

(c) *Categories of individuals in DSS Record Systems.* (1) Any person who is the subject or co-subject of an ongoing or completed investigation by DSS should have an investigative case file/record in system V5-01, if the record meets retention criteria. An index to such files should be in V5-02.

(2) If an individual has ever made a formal request to DSS under the Freedom of Information Act or the Privacy Act of 1974, a record pertaining to that request under the name of the requester, or subject matter, will be in system V1-01.

(3) Persons of Counterintelligence interest who have solicited from industrial contractors/DoD installations information which may appear to be sensitive in nature may have a record in system V5-04.

(4) Individuals who have been applicants for employment with DSS, or nominees for assignment to DSS, but who have not completed their DSS affiliation, may be subjects in systems V4-04, V5-01, V5-02, V5-03, or V6-01.

(5) Any individual who is a subject, victim or cross-referenced personally in an investigation by an investigative element of any DoD component, may be referenced in the Defense Clearance and Investigations Index, system V5-02, in an index to the location, file number, and custodian of the case record.

(6) Individuals who have ever presented a complaint to or have been connected with a DSS Inspector General inquiry may be subjects of records in system V2-01.

(7) If an individual has ever attended the Defense Industrial Security Institute or completed training with the DSS Training Office he should be subject of a record in V7-01.

(8) If an individual has ever been a guest speaker or instructor at the Defense Industrial Security Institute, he should be the subject of a record in V7-01.

(9) If an individual is an employee or major stockholder of a government contractor or other DoD-affiliated company or agency and has been issued, now possesses or has been processed for a security clearance, he may be subject to a record in V5-03.

(d) *Procedures.* The following procedures should be followed to determine if an individual is a subject of records maintained by DSS, and to request notification and access.

(1) Individuals should submit inquiries in person or by mail to the Defense Security Service, Office of FOI and Privacy, 1340 Braddock Place, Alexandria, VA 22314-1651. Inquiries by personal appearance should be made Monday through Friday from 8:30 to 11:30 a.m. and 1:00 to 4:00 p.m. The information requested in Sec. 321.4 must be provided if records are to be accurately identified. Telephonic requests for records will not be honored. In a case where the system of records is not specified in the request, only systems that would reasonably contain records of the individual will be checked, as described in paragraph (b) of this section.

(2) Only the Director or Chief, Office of FOI and Privacy may authorize exemptions to notification of individuals in accordance with § 321.13.

§ 321.4 Requirements for identification.

(a) *General.* Only upon proper identification, made in accordance with the provisions of this section, will any individual be granted notification concerning and access to all releasable records pertaining to him which are maintained in a DSS system.

(b) *Identification.* Identification of individuals is required both for accurate record identification and to verify identity in order to avoid disclosing records to unauthorized persons. Individuals who request notification of, access to, or amendment of records pertaining to themselves, must provide their full name (and additional names such as aliases, maiden names, alternate spellings, etc., if a check of these variants is desired), date and place of birth, and social security number (SSN).

(1) Where reply by mail is requested, a mailing address is required, and a telephone number is recommended to expedite certain matters. For military requesters residing in the United States, home address or P.O. Box number is preferred in lieu of duty assignment address.

(2) Signatures must be notarized on requests received by mail. Exceptions may be made when the requester is well known to releasing officials. For requests made in person, a photo identification card, such as military ID, driver's license or building pass, must be presented.

(3) While it is not required as a condition of receiving notification, in many cases the SSN may be necessary to obtain an accurate search of DCII (V5-02) records.

[1] Copies may be obtained via internet at http://web7.whs.osd.mil/corres.htm

(c) A DSS Form 30 (Request for Notification of/Access to Personal Records) will be provided to any individual inquiring about records pertaining to himself whose mailed request was not notarized. This form is also available at the DSS Office of FOI and Privacy, 1340 Braddock Place, Alexandria, VA 22314-1651, for those who make their requests in person.

§ 321.5 Access by subject individuals.

(a) *General.* (1) Individuals may request access to records pertaining to themselves in person or by mail in accordance with this section. However, nothing in this section shall allow an individual access to any information compiled or maintained by DSS in reasonable anticipation of a civil or criminal action or proceeding, or otherwise exempted under the provisions of § 321.13.

(2) A request for a pending personnel security investigation will be held in abeyance until completion of the investigation and the requester will be so notified.

(b) *Manner of access.* (1) Requests by mail or in person for access to DSS records should be made to the DSS Office of FOI and Privacy, 1340 Braddock Place, Alexandria, VA 22314-1651.

(2) Any individual who makes a request for access in person shall:

(i) Provide identification as specified in Sec. 321.4.

(ii) Complete and sign a request form.

(3) Any individual making a request for access to records by mail shall include a signed and notarized statement to verify his identity, which may be the DSS request form if he has received one.

(4) Any individual requesting access to records in person may be accompanied by an identified person of his own choosing while reviewing the record. If the individual elects to be accompanied, he shall make this known in his written request, and include a statement authorizing disclosure of the record contents to the accompanying person. Without written authorization of the subject individual, records will not be disclosed to third parties accompanying the subject.

(5) During the course of official business, members of DSS field elements may be given access to records maintained by the field elements/ Operations Center without referral to the Office of FOI and Privacy. An account of such access will be kept for reporting purposes.

(6) In all requests for access, the requester must state whether he or she desires access in person or mailed copies of records. During personal access, where copies are made for retention, a fee for reproduction and postage may be assessed as provided in Sec. 321.11. Where copies are mailed because personal appearance is impractical, there will be no fee.

(7) All individuals who are not affiliates of DSS will be given access to records, if authorized, in the Office of FOI and Privacy, or by means of mailed copies.

§ 321.6 Medical records.

General. Medical records that are part of DSS records systems will generally be included with those records when access is granted to the subject to which they pertain. However, if it is determined that such access could have an adverse effect upon the individual's physical or mental health, the medical record in question will be released only to a physician named by the requesting individual.

§ 321.7 Request for correction or amendment.

(a) *General.* Upon request and proper identification by any individual who has been granted access to DSS records pertaining to himself or herself, that individual may request, either in person or through the mail, that the record be amended. Such a request must be made in writing and addressed to the Defense Security Service, Office of FOI and Privacy, 1340 Braddock Place, Alexandria, VA 22314-1651.

(b) *Content.* The following information must be included to insure effective action on the request:

(1) Description of the record. Requesters should specify the number of pages and documents, the titles of the documents, form numbers if there are any, dates on the documents and names of individuals who signed them. Any reasonable description of the document is acceptable.

(2) Description of the items to be amended. The description of the passages, pages or documents to be amended should be as clear and specific as possible.

(i) Page, line and paragraph numbers should be cited where they exist.

(ii) A direct quotation of all or a portion of the passage may be made if it isn't otherwise easily identifiable. If the passage is long, a quotation of its beginning and end will suffice.

(iii) In appropriate cases, a simple substantive request may be appropriate, e.g., 'delete all references to my alleged arrest in July 1970.'

(iv) If the requester has received a copy of the record, he may submit an annotated copy of documents he wishes amended.

(3) Type of amendment. The requester must clearly state the type of amendment he is requesting.

(i) Deletion or expungement, i.e., a complete removal from the record of data, sentences, passages, paragraphs or documents.

(ii) Correction of the information in the record to make it more accurate, e.g., rectify mistaken identities, dates, data pertaining to the individual, etc.

(iii) Additions to make the record more relevant, accurate or timely may be requested.

(iv) Other changes may be requested; they must be specifically and clearly described.

(4) Reason for amendment. Requests for amendment must be based on specific reasons, included in writing. Categories of reasons are as follows:

(i) Accuracy. Amendment may be requested where matters of fact are believed incorrectly recorded, e.g., dates, names, addresses, identification numbers, or any other information concerning the individual. The request, whenever possible, should contain the accurate information, copies of verifying documents, or indication of how the information can be verified.

(ii) Relevance. Amendment may be requested when information in a record is believed not to be relevant or necessary to the purposes of the record system.

(iii) Timeliness. Amendment may be requested when information is thought to be so old as to no longer be pertinent to the stated purposes of the records system. It may also be requested when there is recent information of a pertinent type that is not included in the record.

(iv) Completeness. Amendment may be requested where information in a record is incomplete with respect to its purpose. The data thought to have been omitted should be included or identified with the request.

(v) Fairness. Amendment may be requested when a record is thought to be unfair concerning the subject, in terms of the stated purposes of the record. In such cases, a source of additional information to increase the fairness of the record should be identified where possible.

(vi) Other reasons. Reasons for requesting amendment are not limited to those cited above. The content of the records is authorized in terms of their stated purposes which should be the basis for evaluating them. However, any matter believed appropriate may be submitted as a basis of an amendment request.

(vii) Court orders and statutes may require amendment of a file. While they do not require a Privacy Act request for

execution, such may be brought to the attention of DSS by these procedures.

(c) *Assistance.* Individuals seeking to request amendment of records pertaining to themselves that are maintained by DSS will be assisted as necessary by DSS officials. Where a request is incomplete, it will not be denied, but the requester will be contacted for the additional information necessary to his request.

(d) This section does not permit the alteration of evidence presented to courts, boards and other official proceedings.

§ 321.8 DSS review of request for amendment.

(a) *General.* Upon receipt from any individual of a request to amend a record pertaining to himself and maintained by the Defense Security Service, Office of FOI and Privacy will handle the request as follows:

(1) A written acknowledgment of the receipt of a request for amendment of a record will be provided to the individual within 10 working days, unless final action regarding approval or denial can be accomplished within that time. In that case, the notification of approval or denial will constitute adequate acknowledgment.

(2) Where there is a determination to grant all or a portion of a request to amend a record, the record shall be promptly amended and the requesting individual notified. Individuals, agencies or components shown by accounting records to have received copies of the record, or to whom disclosure has been made, will be notified, if necessary, of the amendment by the responsible official. Where a DoD recipient of an investigative record cannot be located, the notification, if necessary, will be sent to the personnel security element of the parent Component.

(3) Where there is a determination to deny all or a portion of a request to amend a record, the office will promptly:

(i) Advise the requesting individual of the specifics of the refusal and the reasons;

(ii) Inform the individual that he may request a review of the denial(s) from 'Director, Defense Security Service, 1340 Braddock Place, Alexandria, VA 22314-1651.' The request should be brief, in writing, and enclose a copy of the denial correspondence.

(b) DSS determination to approve or deny. Determination to approve or deny and request to amend a record or portion thereof may necessitate additional investigation or inquiry be made to verify assertions of individuals requesting amendment. Coordination will be made with the Director for Investigations and the Director of the Personnel Investigations Center in such instances.

§ 321.9 Appeal of initial amendment decision.

(a) *General.* Upon receipt from any individual of an appeal to review a DSS refusal to amend a record, the Defense Security Service, Office of FOI and Privacy will assure that such appeal is handled in compliance with the Privacy Act of 1974 and DoD Directive 5400.11 and accomplish the following:

(1) Review the record, request for amendment, DSS action on the request and the denial, and direct such additional inquiry or investigation as is deemed necessary to make a fair and equitable determination.

(2) Recommend to the Director whether to approve or deny the appeal.

(3) If the determination is made to amend a record, advise the individual and previous recipients (or an appropriate office) where an accounting of disclosures has been made.

(4) Where the decision has been made to deny the individual's appeal to amend a record, notify the individual:

(i) Of the denial and the reason;

(ii) Of his right to file a concise statement of reasons for disagreeing with the decision not to amend the record;

(iii) That such statement may be sent to the Defense Security Service, Office of FOI and Privacy, (GCF), 1340 Braddock Place, Alexandria, VA 22314-1651, and that it will be disclosed to users of the disputed record;

(iv) That prior recipients of the disputed record will be provided a copy of the statement of disagreement, or if they cannot be reached (e.g., through deactivation) the personnel security element of their DoD component;

(v) And, that he may file a suit in a Federal District Court to contest DSS's decision not to amend the disputed record.

(b) *Time limit for review of appeal.* If the review of an appeal of a refusal to amend a record cannot be accomplished within 30 days, the Office of FOI and Privacy will notify the individual and advise him of the reasons, and inform him of when he may expect the review to be completed.

§ 321.10 Disclosure to other than subject.

(a) *General.* No record contained in a system of records maintained by DSS shall be disclosed by any means to any person or agency outside the Department of Defense, except with the written consent or request of the individual subject of the record, except as provided in this section. Disclosures that may be made without the request or consent of the subject of the record are as follows:

(1) To those officials and employees of the Department of Defense who have a need for the record in the performance of their duties, when the use is compatible with the stated purposes for which the record is maintained.

(2) Required to be disclosed by the Freedom of Information Act.

(3) For a routine use as described in DoD Directive 5400.11.

(4) To the Census Bureau, National Archives, the U.S. Congress, the Comptroller General or General Accounting Office under the conditions specified in DoD Directive 5400.11.

(5) At the written request of the head of an agency outside DoD for a law enforcement activity as authorized by DoD Directive 5400.11.

(6) For statistical purposes, in response to a court order, or for compelling circumstances affecting the health or safety of an individual as described in DoD Directive 5400.11.

(7) Legal guardians recognized by the Act.

(b) *Accounting of disclosures.* Except for disclosures made to members of the DoD in connection with their routine duties, and disclosures required by the Freedom of Information Act, an accounting will be kept of all disclosures of records maintained in DSS systems.

(1) Accounting entries will normally be kept on a DSS form, which will be maintained in the record file jacket, or in a document that is part of the record.

(2) Accounting entries will record the date, nature and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made.

(3) An accounting of disclosures made to agencies outside the DoD of records in the Defense Clearance and Investigations Index (V5-02) will be kept as prescribed by the Director of Systems, DSS.

(4) Accounting records will be maintained for at least 5 years after the last disclosure, or for the life of the record, whichever is longer.

(5) Subjects of DSS records will be given access to associated accounting records upon request, except as exempted under § 321.13.

§ 321.11 Fees.

Individuals may request copies for retention of any documents to which they are granted access in DSS records pertaining to them. Requestors will not be charged for the first copy of any

records provided; however, duplicate copies will require a charge to cover costs of reproduction. Such charges will be computed in accordance with DoD Directive 5400.11.

§ 321.12 Penalties.

(a) An individual may bring a civil action against the DSS to correct or amend the record, or where there is a refusal to comply with an individual request or failure to maintain any record with accuracy, relevance, timeliness and completeness, so as to guarantee fairness, or failure to comply with any other provision of 5 U.S.C. 552a. The court may order correction or amendment. It may assess against the United States reasonable attorney fees and other costs, or may enjoin the DSS from withholding the records and order the production to the complainant.

(b) Where it is determined that the action was willful or intentional with respect to 5 U.S.C. 552a(g)(1) (C) or (D), the United States shall be liable for the actual damages sustained, but in no case less than the sum of $1,000 and the costs of the action with attorney fees.

(c) Criminal penalties may be imposed against an officer or employee of the DSS who fully discloses material, which he knows is prohibited from disclosure, or who willfully maintains a system of records without the notice requirements; or against any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses. These offenses shall be misdemeanors with a fine not to exceed $5,000.

§ 321.13 Exemptions.

(a) *General.* The Director of the Defense Security Service establishes the following exemptions of records systems (or portions thereof) from the provisions of these rules, and other indicated portions of Pub. L. 93-579, in this section. They may be exercised only by the Director, Defense Security Service and the Chief of the Office of FOI and Privacy. Exemptions will be exercised only when necessary for a specific, significant and legitimate reason connected with the purpose of a records system, and not simply because they are authorized by statute. Personal records releasable under the provisions of 5 U.S.C. 552 will not be withheld from subject individuals based on these exemptions.

(b) All systems of records maintained by DSS shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12958 and which is required by the Executive Order to be withheld in the interest of national defense of foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain items of information that have been properly classified.

(c) *System identifier:* V1-01.

(1) System name: Privacy and Freedom of Information Request Records.

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

(ii) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

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

(iv) Any portion of this system that falls under the provisions of 5 U.S.C. 552a(k)(2), (k)(3), (k)(5) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H) and (I); and (f).

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

(4) Reasons: (i) From subsection (c)(3) because it will enable DSS to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise);

(ii) From subsections (e)(1), (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise);

(iii) From subsections (d) and (f) because requiring DSS to grant access to records and agency rules for access and amendment of records would unfairly impede the agency's investigation of allegations of unlawful activities. To require DSS to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of record, disclosure of the record to the subject, and record amendment procedures.

(d) *System identifier:* V5-01.

(1) System name: Investigative Files System

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

(ii) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

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

(iv) Any portion of this system that falls under the provisions of 5 U.S.C. 552a(k)(2), (k)(3), or (k)(5) may be

exempt from the following subsections of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f).

(3) Authority: 5 U.S.C. 552a(k)(2), (k)(3), or (k)(5).

(4) Reasons: (i) From subsection (c)(3) because it will enable DSS to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(ii) From subsections (e)(1), (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(iii) From subsections (d) and (f) because requiring DSS to grant access to records and agency rules for access and amendment of records would unfairly impede the agency's investigation of allegations of unlawful activities. To require DSS to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of record, disclosure of the record to the subject, and record amendment procedures.

(e) *System identifier: V5-02.*

(1) System name: Defense Clearance and Investigations Index (DCII).

(2) Exemption: Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source. Any portion of this system that falls under the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), and (I), and (f).

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

(4) Reasons: (i) From subsection (c)(3) because it will enable DSS to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(ii) From subsections (e)(1), (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(iii) From subsections (d) and (f) because requiring DSS to grant access to records and agency rules for access and amendment of records would unfairly impede the agency's investigation of allegations of unlawful activities. To require DSS to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of record, disclosure of the record to the subject, and record amendment procedures.

(f) *System identifier:* V5-03.

(1) System name: Case Control Management System (CCMS).

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

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Any portion of this system that falls under the provisions of 5 U.S.C. 552a(k)(2) or (k)(5) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f).

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

(4) Reasons. (i) From subsection (c)(3) because it will enable DSS to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(ii) From subsections (e)(1), (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(iii) From subsections (d) and (f) because requiring DSS to grant access to records and agency rules for access and amendment of records would unfairly impede the agency's investigation of allegations of unlawful activities. To require DSS to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of

record, disclosure of the record to the subject, and record amendment procedures.

(g) *System identifier:* V5-04.

(1) System name: Counterintelligence Issues Database (CII-DB).

(2) Exemption: (i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1-R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

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

(iii) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

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

(v) Any portion of this system that falls within the provisions of 5 U.S.C. 552a(k)(1), (k)(2), (k)(3) and (k)(5) may be exempt from the following subsections (c)(3); (d)(1) through (d)(5); (e)(1); (e)(4)(G), (H), and (I); and (f).

(3) Authority. 5 U.S.C. 552a(k)(1), (k)(2), (k)(3) and (k)(5).

(4) Reasons. (i) From subsection (c)(3) because giving the individual access to the disclosure accounting could alert the subject of an investigation to the existence and nature of the investigation and reveal investigative or prosecutive interest by other agencies, particularly in a joint-investigation situation. This would seriously impede or compromise the investigation and case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate with the investigators; lead to suppression, alteration, fabrication, or destruction of evidence; and endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families.

(ii) From subsection (d) because the application of these provisions could impede or compromise an investigation or prosecution if the subject of an investigation had access to the records or were able to use such rules to learn of the existence of an investigation before it would be completed. In addition, the mere notice of the fact of an investigation could inform the subject and others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(iii) From subsection (e)(1) because during an investigation it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear. In other cases, what may appear to be a relevant and necessary piece of information may become irrelevant in light of further investigation. In addition, during the course of an investigation, the investigator may obtain information that related primarily to matters under the investigative jurisdiction of another agency, and that information may not be reasonably segregated. In the interest of effective law enforcement, DSS investigators should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies.

(iv) From subsections (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) because this system is exempt from subsection (d) of the Act, concerning access to records. These requirements are inapplicable to the extent that these records will be exempt from these subsections. However, DSS has published information concerning its notification and access procedures, and the records source categories because under certain circumstances, DSS could decide it is appropriate for an individual to have access to all or a portion of his/her records in this system of records.

§ 321.14 DSS implementation policies.

(a) *General.* The implementation of the Privacy Act of 1974 within DSS is as prescribed by DoD Directive 5400.11. This section provides special rules and information that extend or amplify DoD policies with respect to matters of particular concern to the Defense Security Service.

(b) *Privacy Act rules application.* Any request which cites neither Act, concerning personal record information in a system or records, by the individual to whom such information pertains, for access, amendment, correction, accounting of disclosures, etc., will be governed by the Privacy Act of 1974, DoD Directive 5400.11 and these rules exclusively. Requests for like information which cite only the Freedom of Information Act will be governed by the Freedom of Information Act, DoD Regulation 5400.7R[2]. Any denial or exemption of all or part of a record from notification, access, disclosure, amendment or other provision, will also be processed under these rules, unless court order or other competent authority directs otherwise.

(c) *First amendment rights.* No DSS official or element may maintain any information pertaining to the exercise by an individual of his rights under the First Amendment without the permission of that individual unless such collection is specifically authorized by statute or necessary to and within the scope of an authorized law enforcement activity.

(d) *Standards of accuracy and validation of records.* (1) All individuals or elements within DSS which create or maintain records pertaining to individuals will insure that they are reasonably accurate, relevant, timely and complete to serve the purpose for which they are maintained and to assure fairness to the individual to whom they pertain. Information that is not pertinent to a stated purpose of a system of records will not be maintained within those records. Officials compiling investigatory records will make every reasonable effort to assure that only reports that are impartial, clear, accurate, complete, fair and relevant with respect to the authorized purpose of such records are included, and that reports not meeting these standards or serving such purposes are not included in such records.

(2) Prior to dissemination to an individual or agency outside DoD of any record about an individual (except for a Freedom of Information Act action or access by a subject individual under these rules) the disclosing DSS official will by review, make a reasonable effort to assure that such record is accurate, complete, timely, fair and relevant to the purpose for which they are maintained.

(e) *The Defense Clearance and Investigations Index (DCII).* It is the policy of DSS, as custodian, that each DoD component or element that has

[2] See footnote 1 to 321.1.

direct access to or contributes records to the DCII (V5-02), is individually responsible for compliance with the Privacy Act of 1974 and DoD Directive 5400.11 with respect to requests for notification, requests for access by subject individuals, granting of such access, request for amendment and corrections by subjects, making amendments or corrections, other disclosures, accounting for disclosures and the exercise of exemptions, insofar as they pertain to any record placed in the DCII by that component or element. Any component or element of the DoD that makes a disclosure of any record whatsoever to an individual or agency outside the DoD, from the DCII, is individually responsible to maintain an accounting of that disclosure as prescribed by the Privacy Act of 1974 and DoD Directive 5400.11 and to notify the element placing the record in the DCII of the disclosure. Use of and compliance with the procedures of the DCII Disclosure Accounting System will meet these requirements. Any component or element of DoD with access to the DCII that, in response to a request concerning an individual, discovers a record pertaining to that individual placed in the DCII by another component or element, may refer the requester to the DoD component that placed the record into the DCII without making an accounting of such referral, although it involves the divulging of the existence of that record. Generally, consultation with, and referral to, the component or element placing a record in the DCII should be effected by any component receiving a request pertaining to that record to insure appropriate exercise of amendment or exemption procedures.

(f) *Investigative operations.* (1) DSS agents must be thoroughly familiar with and understand these rules and the authorities, purposes and routine uses of DSS investigative records, and be prepared to explain them and the effect of refusing information to all sources of investigative information, including subjects, during interview, in response to questions that go beyond the required printed and oral notices. Agents shall be guided by DSS Handbook for Personnel Security Investigations in this respect.

(2) All sources may be advised that the subject of an investigative record may be given access to it, but that the identities of sources may be withheld under certain conditions. Such advisement will be made as prescribed in DSS Handbook for Personnel Security Investigations, and the interviewing agent may not urge a source to request a grant of confidentiality. Such pledges of confidence will be given sparingly and then only when required to obtain information relevant and necessary to the stated purpose of the investigative information being collected.

(g) *Non-system information on individuals.* The following information is not considered part of personal records systems reportable under the Privacy Act of 1974 and may be maintained by DSS members for ready identification, contact, and property control purposes only. If at any time the information described in this paragraph is to be used for other than these purposes, that information must become part of a reported, authorized record system. No other information concerning individuals except that described in the records systems notice and this paragraph may be maintained within DSS.

(1) Identification information at doorways, building directories, desks, lockers, name tags, etc.

(2) Identification in telephone directories, locator cards and rosters.

(3) Geographical or agency contact cards.

(4) Property receipts and control logs for building passes, credentials, vehicles, weapons, etc.

(5) Temporary personal working notes kept solely by and at the initiative of individual members of DSS to facilitate their duties.

(h) *Notification of prior recipients.* Whenever a decision is made to amend a record, or a statement contesting a DSS decision not to amend a record is received from the subject individual, prior recipients of the record identified in disclosure accountings will be notified to the extent possible. In some cases, prior recipients cannot be located due to reorganization or deactivations. In these cases, the personnel security element of the receiving Defense Component will be sent the notification or statement for appropriate action.

(i) *Ownership of DSS Investigative Records.* Personnel security investigative reports shall not be retained by DoD recipient organizations. Such reports are considered to be the property of the investigating organization and are on loan to the recipient organization for the purpose for which requested. All copies of such reports shall be destroyed within 120 days after the completion of the final personnel security determination and the completion of all personnel action necessary to implement the determination. Reports that are required for longer periods may be retained only with the specific written approval of the investigative organization.

(j) *Consultation and referral.* DSS system of records may contain records originated by other components or agencies which may have claimed exemptions for them under the Privacy Act of 1974. When any action that may be exempted is initiated concerning such a record, consultation with the originating agency or component will be effected. Where appropriate such records will be referred to the originating component or agency for approval or disapproval of the action.

Dated: September 8, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110 and 165

[CGD 05–99–080]

RIN 2115–AA98

Safety Zone and Anchorage Regulations; Delaware Bay and River

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Army Corps of Engineers will begin dredging parts of the Delaware River, including the Marcus Hook Range Ship Channel. Because of the dredging operations, temporary additional requirements will be imposed in Marcus Hook Anchorage (Anchorage 7), the Deepwater Point Anchorage (Anchorage 6), and the Mantua Creek Anchorage (Anchorage 9). The Coast Guard is also establishing a temporary moving safety zone around the dredge vessel Ozark that will be working in the Marcus Hook Range Ship Channel adjacent to Anchorage 7.

DATES: Sections 110.157(b)(11) and 165.T05–080 are effective from August 28, 1999 until November 28, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the U.S. Coast Guard Captain of the Port, 1 Washington Ave., Philadelphia, PA 19147–4395 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (215) 271–4888.

FOR FURTHER INFORMATION CONTACT: BMCS R.L. Ward, Project Officer, U.S. Coast Guard Captain of the Port, Phone: (215) 271–4888.

SUPPLEMENTARY INFORMATION:

Regulatory History

A Notice of Proposed Rule Making (NPRM) was not published for this regulation. In keeping with 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing an NPRM. In keeping with the requirements of 5 U.S.C. 553(d)(3), the Coast Guard also finds good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. U.S. Army Corps of engineers, Philadelphia District, informed the Coast Guard on 16 July 1999 that dredging operations would commence on 30 August 1999. Publishing a NPRM and delaying its effective date would be contrary to the public interest, since immediate action is needed to protect mariners against potential hazards associated with the dredging operations in the Marcus Hook Range Ship Channel and to modify the anchorage regulations to facilitate vessel traffic.

Background and Purpose

The U.S. Army Corps of Engineers (ACOE) notified the Coast Guard that it needed to conduct dredging operations on the Delaware River, in the vicinity of the Marcus Hook Range Ship Channel. The dredging is needed to maintain the project depth of the channel. Similar dredging is conducted each year. This period of dredging begins 30 August 1999 and is anticipated to end on 28 November 1999.

To reduce the hazards associated with dredging the channel, vessel traffic that would normally transit through the Marcus Hook Range Ship Channel will be diverted through part of Anchorage 7 during the dredging operations. This necessitates additional requirements/ restrictions on the use of Anchorage 7. For the protection of mariners transiting in the vicinity of dredging operations, the Coast Guard is also establishing a safety zone around the dredging vessel OZARK. The safety zone will ensure mariners remain a safe distance from the potentially dangerous dredging equipment.

Discussion of the Regulation

Section 110.157(b)(2) allows vessels to anchor for up to 48 hours in the anchorages listed in § 110.157(a), which includes Anchorage 7. However, because of the limited anchorage space available in Anchorage 7, the Coast Guard is adding a temporary paragraph 33 CFR 110.157(b)(11) to provide additional requirements and restrictions on vessels utilizing Anchorage 7. During the effective period, vessels desiring to use Marcus Hook Anchorage (Anchorage 7) must obtain permission from the Captain of the Port Philadelphia at least 24 hours in advance. The Captain of the Port will permit only one vessel at a time to anchor in Anchorage 7 and will grant permission on a "first come, first serve" basis. A vessel will be directed to a location within Anchorage 7 where it may anchor, and will not be permitted to remain in the Anchorage 7 for more than 12 hours.

The Coast Guard expects that vessels normally permitted to anchor in Anchorage.7 will use Anchorage 6 off Deepwater Point or Anchorage 9 near the entrance to Manuta Creek, because they are the closest anchorages to Anchorage 7. To control access to Anchorage 7, the Coast Guard is requiring a vessel desiring to anchor in Anchorage 7 obtain advance permission from the Captain of the Port. To control access to Anchorages 6 and 9, the Coast Guard is requiring any vessel 700 feet or greater in length obtain advance permission from the Captain of the Port before anchoring. The Coast Guard is also concerned that the holding ground in Anchorages 6 and 9 is not as good as in Anchorage 7. Therefore, a vessel 700 to 750 feet in length is required to have one tug standing alongside while at anchor, and a vessel of over 750 feet in length must have two tugs standing alongside. The tug(s) must have sufficient horsepower to prevent the vessel they're attending from swinging into the channel.

The Coast Guard is also establishing a safety zone within a 150-yard radius of the dredging operations being conducted in the Marcus Hook Range Ship Channel in the vicinity of Anchorage 7 by the dredge vessel OZARK.

The safety zone will protect mariners transiting the area from the potential hazards associated with dredging operations. Vessels transiting the Marcus Hook Range Ship Channel will have to divert from the main ship channel through Anchorage 7, and must operate at the minimum safe speed necessary to maintain steerage and reduce wake. No vessel may enter the safety zone unless it receives permission from the Captain of the Port.

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. The Office of Management and Budget has exempted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation requires certain vessels to have one or two tugs alongside while at anchor, the requirement only applies to vessels 700 feet or greater in length, that choose to anchor in Anchorages 6 and 9. Alternate anchorages, such as Anchorage A (Breakwater) and Anchorage 1 (Big Stone) in Delaware Bay, are also reasonably close and generally available. Vessels anchoring in Anchorage A and 1 are not required to have tugs alongside, except when specifically directed to do so by the Captain of the Port because of a specific hazardous condition. Furthermore, few vessels 700 feet or greater are expected to enter the port during the effective period. The majority of vessels expected are less than 700 feet and thus will not be required to have tugs alongside.

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. This regulation's greatest impact is on vessels greater than 700 feet in length which choose to anchor in Anchorages 6 and 9 will have virtually no impact on any small entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This temporary final rule does not provide for a collection of information 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 it does not have sufficient federalism implications to warrant the preparation of a federalism Assessment.

Environment

The Coast Guard has analyzed this temporary final rule and concluded that, under figure 2–1, paragraph (34)(f) and (34)(g) of Commandant Instruction M16475.1C, this temporary final rule is categorically excluded from further environmental documentation. Regulations changing the size of anchorage grounds and regulations establishing safety zones are excluded under that authority.

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

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

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR 110 and 33 CFR 165 as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. A new temporary section 110.156(b)(11) is added to read as follows:

§ 110.157 Delaware Bay and River

* * * * *

(b) * * *

(11) Additional requirements and restrictions for the anchorages defined in paragraphs (a)(7), (a)(8), and (a)(10).

(i) Prior to anchoring in Anchorage 7 off Marcus Hook, as described in paragraph (a)(8) of this section, a vessel must first obtain permission from the Captain of the Port, Philadelphia, at least 24 hours in advance of arrival. Permission to anchor will be granted on a "first-come, first-serve" basis. The Captain of the Port will allow only one vessel at a time to anchor in Anchorage 7, and no vessel may remain within Anchorage 7 for more than 12 hours.

(ii) For Anchorage 6 as described in paragraph (a)(7) of this section, and Anchorage 9 as described in paragraph (a)(10) of this section.

(A) Any vessel 700 feet or greater in length requesting anchorage shall obtain permission from the Captain of the Port, Philadelphia, Pennsylvania, at least 24 hours in advance.

(B) Any vessel from 700 to 750 feet in length shall have one tug alongside at all times while the vessel is at anchor.

(C) Any vessel greater than 750 feet in length shall have two tugs alongside at all times while the vessel is at anchor.

(D) The master, owner or operator of a vessel at anchor shall ensure that a tug required by this section is of sufficient horsepower to assist with necessary maneuvers to keep the vessel clear of the navigation channel.

(iii) *Captain of the Port or COTP* means the Captain of the Port, Philadelphia, Pennsylvania or any Coast Guard commissioned, warrant, or petty officer authorized to act on his behalf.

(iv) This paragraph is effective from 28 August 1999 until 28 November 1999.

PART 165—[AMENDED]

3. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 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.

4. A new § 165.T05–080 is added to read as follows:

§ 165.T05–080 Safety Zone; Delaware Bay and River

(a) *Location:* The following area is a safety zone: All waters within the arc of a circle with a 150 yard radius having at its center dredging vessel OZARK operating in or near the Marcus Hook Range Ship channel in the vicinity of Anchorage 7.

(b) *Effective Dates:* This section is effective from 28 August 1999 until 28 November 1999.

(c) *Regulations:* The following regulations shall apply within the safety zone.

(1) In accordance with the general regulations in § 165.23, entry into this safety zone is prohibited unless authorized by the Captain of the Port. The remaining general requirements of § 165.23 also apply to this regulation.

(2) The operator of any vessel in the safety zone shall proceed as directed by the Captain of the Port.

(3) The Coast Guard vessel enforcing the safety zone may be contacted on channels 13 and 16 VHF–FM. The Captain of the Port, Philadelphia may be contacted at telephone number (215) 271–4940.

(d) *Captain of the Port or COTP* means The Captain of the Port, Philadelphia, Pennsylvania or any Coast Guard commissioned, warrant, or petty officer authorized to act on his behalf.

Dated: August 27, 1999.

Roger T. Rufe,

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

[FR Doc. 99–23949 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–99–055]

Drawbridge Operating Regulation; Chevron Oil Company Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the SR 3090 swing bridge across the Chevron Oil Company Canal, mile 0.5 near Leeville, Lafourche Parish, Louisiana. This deviation allows the Greater Lafourche Port Commission to maintain the bridge in the closed-to-navigation position continuously from 7 a.m. on Monday, September 13 ,1999 until 5 p.m. on Friday, September 24, 1999. The bridge will open on signal if at least 24 hours notice is given for the subsequent period of 5 p.m. on Friday, September 24, 1999 until 5 p.m. on Friday, October 15, 1999. This temporary deviation was issued to allow for the replacement of the roadway deck surface.

DATES: This deviation is effective from September 13, 1999, through October 15, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch Commander (obc), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130-3396, telephone number 504–580–2965.

SUPPLEMENTARY INFORMATION:

Navigation on the waterway consists of oilfield related equipment, houseboats, and other recreational craft. The Greater Lafourche Port Commission requested a temporary deviation from the regulation 33 CFR 117.5 governing the normal operation of the bridge in order to accommodate the replacement of the roadway decking of the bridge.

The bridge has opened approximately 20 times over the past year for the movement of oil field equipment and houseboats transiting to camp sites. The Port Commission has previously informed the local fisherman and businesses in the area regarding the

work. Vessels needing to move through the bridge have already done so. The vertical clearance of the bridge in the closed to navigation position is 12 feet above mean high water, elevation 3.0 feet Mean Sea Level.

The deviation allows the draw of the SR 3090 swing drawbridge across the Chevron Oil Company Canal, mile 0.5, near Leeville, Lafourche Parish, Louisiana, to remain in the closed-to-navigation position continuously from 7 a.m. on Monday, September 13, 1999 until 5 p.m. on Friday, September 24, 1999. The bridge will open on signal if at least 24 hours is given for the subsequent period of 5 p.m. on Friday, September 24, 1999 until 5 p.m. on Friday, October 15 , 1999. Presently, the draw opens on signal for the passage of vessels. In case of an approaching hurricane, the bridge will be returned to normal operation as soon as practicable.

Dated: September 3, 1999.

K.J. Eldridge,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist., Acting.

[FR Doc. 99–23948 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–147]

RIN 2115–AA97

Safety Zone: Fireworks, 100YR Anniversary for Architect Society, Boston Harbor, Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the 100YR Anniversary for Architect Society Fireworks, Boston Harbor, Boston, MA. This regulation establishes a safety zone on the waters of Boston Harbor, Boston, MA in a radius of four hundred (400) yards around a fireworks barge moored in approximate position 42°21.5′ N. 71°0.3′ W (NAD 1983). The safety zone is in effect from 6 p.m. until 9:30 p.m. on Tuesday, September 14, 1999. This safety zone prevents entry into or movement within this portion of Boston Harbor, and it is needed to protect the boating public from the dangers posed by a fireworks display.

DATES: This rule is effective from 6 p.m. until 9:30 p.m. on Tuesday, September 14, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: ENS Rebecca Montleon, Waterways Management Division, Coast Guard Marine Safety Office Boston, (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective in less than 30 days after **Federal Register** publication. Conclusive information about this event was not provided to the Coast Guard until August 2, 1999, making it impossible to draft or publish an NPRM or a final rule 30 days in advance of its effective date with appropriate time allowed for public comment. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazardous associated with this fireworks display, which is intended for public entertainment.

Background and Purpose

On August 2, 1999 the American Society of Landscape Architects, Washington, DC, filed a marine event permit with the Coast Guard to hold a fireworks program over the waters of Boston Harbor, Boston, MA. This regulation establishes a safety zone on the waters of Boston Harbor in a four hundred (400) yards radius around the fireworks barge moored in approximate position 42°21.5′ N. 71°02.3′ W (NAD 1983). The safety zone is in effect from 6 p.m. until 9:30 p.m. on Tuesday, September 14, 1999. This safety zone prevents entry into or movement within this portion of Boston Harbor, and it is needed to protect the boating public from the dangers posed by a fireworks display.

Regulatory Evaluation

This 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 regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary since the safety zone will be limited in duration, marine advisories will be made in advance of the implementation of the safety zone, and the safety zone will not restrict the entire harbor, allowing traffic to continue without obstruction.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard considered whether this rule would 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 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 impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this 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.

Environment

The Coast Guard has considered the environmental impact of this 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 "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

Regulation

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

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

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

2. Add temporary § 165.T01–147 to read as follows:

§ 165.T01–147 Safety Zone: Fireworks, 100YR Anniversary For Architect Society, Boston Harbor, Boston, MA.

(a) *Location.* The following area is a safety zone: all waters of Boston Harbor, Boston, MA in a four hundred (400) yard radius around the fireworks barge moored in approximate position 42°21.5′N, 71°02.3′W (NAD 1983).

(b) *Effective Date.* This section is effective from 6 p.m. until 9:30 p.m. on Tuesday, September 14, 1999.

(c) *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 Captain of the Port Boston.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include 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: August 14, 199.

M.A. Skordinksi,

Commander, U.S. Coast Guard, Acting Captain of the Port, Boston, Massachusetts.

[FR Doc. 99–23950 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–15–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 96–3C]

Notice and Recordkeeping for Digital Transmission of Sound Recordings Under Statutory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim rule amendment.

SUMMARY: The Copyright Office of the Library of Congress is amending the regulation that requires the filing of an initial notice of digital transmissions of sound recordings under statutory license with the Copyright Office to state that a suggested format for the Initial Notice will be posted on the Office's website, in an effort to better ensure that Initial Notices filed with the Office fully comply with the regulation.

DATES: Effective September 14, 1999.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 1995, Congress enacted the Digital Performance Right in Sound Recordings Act of 1995 ("DPRA"), Pub. L. 104–39, 109 Stat. 336 (1995). The DPRA gave to sound recording copyright owners an exclusive right to perform their works publicly by means of a digital audio transmission subject to a statutory license. 17 U.S.C. 106(6); 17 U.S.C. 114.

The statutory license requires adherence to regulations under which copyright owners may receive reasonable notice of use of their sound recordings under the statutory license and under which entities performing the sound recordings shall keep and make available records of such use. 17 U.S.C. 114(f)(2). On May 13, 1996, the Copyright Office initiated a rulemaking proceeding to promulgate regulations to govern the notice and recordkeeping requirements. 61 FR 22004 (May 13, 1996). This rulemaking concluded with the issuance of interim rules to govern the filing of an initial notice of digital transmissions of sound recordings under statutory license, 37 CFR 201.35, and the filing of reports of use of sound recordings under statutory license, 37 CFR 201.36. *See* 63 FR 34289 (June 24, 1998).

Since promulgation of the interim rules, several entities have filed Initial Notices with the Copyright Office in accordance with § 201.35. However, the majority of these Initial Notices have not provided all of the information required under § 201.35. As stated in § 201.35(c), "[t]he Copyright Office does not provide printed forms for the filing of Initial Notices." However, the Copyright Office is amending this section to state that a suggested format for the Initial Notice will be posted on the Copyright Office website, in an effort to better ensure that Initial Notices filed with the Office provide all of the information required under § 201.35.

List of Subjects in 37 CFR Part 201

Copyright.

Regulations

For the reasons set forth in the preamble, part 201 of title 37 of the Code of Federal Regulations is amended as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

§ 201.35 [Amended]

2. Section 201.35(c) is amended by removing "The Copyright Office does not provide printed forms for the filing of Initial Notices." and adding in its place "A suggested format for the Initial Notices may be found on the Copyright Office website."

Dated: August 19, 1999.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 99–23908 Filed 9–13–99; 8:45 am]

BILLING CODE 1410–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–6437–6]

National Primary Drinking Water Regulation: Consumer Confidence Reports; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA published in the **Federal Register** of August 19, 1998, a final rule setting out the requirements for annual drinking water quality reports that water suppliers must provide to their customers. An appendix to that rule mistakenly referred to "leaching from PVC pipes" as a major source of tetrachloroethylene in drinking water. This rule deletes that incorrect reference. The correction has no impact on water systems that have already produced their reports.

DATES: Effective on September 14, 1999.

FOR FURTHER INFORMATION CONTACT: Rob Allison: 202–260–9836 or allison.rob@epa.gov.

SUPPLEMENTARY INFORMATION: In the August 19, 1998 **Federal Register** (63 FR 44511), EPA published the Consumer Confidence Report Rule. Appendix B to subpart O of that rule (63 FR 44533) lists

"leaching from PVC pipes" as a major source of tetrachloroethylene in drinking water. EPA mistakenly included that listing although in fact leaching from PVC pipes is not a source of tetrachloroethylene in drinking water. This rule deletes that part of the entry, so that the amended Appendix lists only "Discharge from factories and dry cleaners" as a major source of tetrachloroethylene in drinking water supplies.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting a minor error in the promulgated rule. Thus, notice and public comment procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since August 19, 1998, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655, May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined under E.O. 12866. Further, EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This rule is not subject to the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) because it does not involve any technical standards. EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the August 19, 1998 **Federal Register** notice.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of September 14, 1999. 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 action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 141

Environmental protection, Chemicals, Water supply.

Dated: September 7, 1999.

J. Charles Fox,

Assistant Administrator, Office of Water.

For the reasons set out in the preamble, 40 CFR part 141 is amended as follows:

PART 141—[AMENDED]

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

2. Appendix B to Subpart O is amended by revising entry 68 to read as follows:

Appendix B to Subpart O-Regulated Contaminants

* * * * *

Contaminant (units)	MCLG	MCL	Major sources in drinking water
* * *	*	*	* * *
68. Tetrachloroethylene (ppb)	0	5	Discharge from factories and dry cleaners.
* * *	*	*	* * *

[FR Doc. 99–23918 Filed 9–13–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–6422–1]

Texas: Final Authorization and Incorporation by Reference of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Texas has revised its Hazardous Waste Program under the Resource Conservation and Recovery Act (RCRA). With respect to today's document, Texas has made conforming changes to make its regulations internally consistent relative to the revisions made in this document. Texas has also revised its regulations to make them more consistent with the Federal requirements. The EPA has reviewed Texas Natural Resource Conservation Commission's (TNRCC) revisions to its program and has determined that Texas' Hazardous Waste Program revision satisfies all of the requirements necessary to qualify for final authorization. Unless adverse written comments are received during the review and comment period, EPA's decision to approve Texas' Hazardous Waste Program revision will take effect as provided below. In addition, today's document corrects technical errors made in the table of authorities published in the March 1, 1990 (55 FR 7318), April 11, 1994 (59 FR 16987), and September 12, 1997 (62 FR 47947) authorization documents for Texas.

The EPA uses part 272 of Title 40 Code of Federal Regulations (CFR) to provide notice of the authorization status of State programs, and to incorporate by reference those provisions of the State statutes and regulations that are part of the authorized State program. Thus, EPA intends to revise and incorporate by reference, the Texas authorized State program in 40 CFR part 272. The purpose of this action is to incorporate by reference into CFR the currently authorized State hazardous waste program in Texas. This document incorporates by reference provisions of State hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program.

DATES: This rule and final authorization for Texas's program revisions shall be effective November 15, 1999, unless an adverse comment pertaining to the State's revision discussed in this document is received by the end of the comment period. If an adverse written comment is received, EPA will publish either: (1) a withdrawal of the immediate final rule or, (2) a document containing a response to the comment that either affirms that the immediate final rule takes effect or withdraws the rule. All comments on the program revisions must be received by October 14, 1999. The incorporation by reference of certain Texas statutes and regulations was approved by the Director of the **Federal Register** as of November 15, 1999 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Written comments referring to Document number TX 99–1 should be sent to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone (214) 665–8533. Copies of Texas program revisions and materials which EPA used in evaluating the revisions are available for inspection and copying from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: Texas Natural Resource Conservation Commission, 1700 N. Congress Avenue, Austin, TX 78711–3087, phone (512) 239–1000 and EPA Region 6, 1445 Ross Avenue, Dallas, Texas 65202, Phone number: (214) 665–6444.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multi-Media Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

SUPPLEMENTARY INFORMATION:

I. Authorization of State-Initiated Changes

A. Background

States with final authorization under section 3006(b) of the RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal Hazardous Waste Program. Revisions to State Hazardous Waste Programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260–266, 268, 270, 273, and 279.

B. Texas

Texas initially received final authorization on December 26, 1984 (49 FR 48300), to implement its Base Hazardous Waste Management Program. This authorization was clarified in a notice published March 26, 1985 (50 FR 11858). Texas received authorization for revisions to its program on January 31, 1986, effective October 4, 1985 (51 FR 3952), effective February 17, 1987 (51 FR 45320), effective March 15, 1990 (55 FR 7318), effective July 23, 1990 (55 FR 21383), effective October 21, 1991 (56 FR 41626), effective December 4, 1992 (57 FR 45719), effective June 27, 1994 (59 FR 16987), effective June 27, 1994 (59 FR 17273), effective November 26, 1997 (62 FR 47947) and, effective December 3, 1997 (62 FR 49163).

The EPA reviewed Texas's application, and today is making an immediate final decision, subject to public review and comment, that Texas's Hazardous Waste Program revisions satisfies all of the requirements necessary to qualify for final authorization. Consequently, the EPA intends to grant authorization for the additional program modifications to Texas. The public may submit written comments on EPA's final decision until October 14, 1999. Copies of Texas' program revisions are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

Approval of TNRCC's program revision shall become effective 60 days from the date this document is published, unless an adverse comment pertaining to the State's revision discussed in this document is received by the end of the comment period. If an adverse written comment is received, EPA will publish either: (1) a withdrawal of the immediate final rule or, (2) a document containing a response to the comment that either affirms that the immediate final rule takes effect or withdraws the rule.

The EPA grants Texas final authorization to carry out the following provisions of the State's program in lieu of the Federal program. These provisions are analogous to the indicated RCRA regulations found at 40 CFR as of July 1, 1994.

State requirement	Federal requirement
30 Texas Administrative Code (TAC) §305.62(a), effective June 13, 1996 (except the phrase "§305.70 of this title * * * Solid Waste Class I Modifications" and the sentence "If the permittee requests a modification of a municipal solid waste permit * * * Solid Waste Class I Modifications.").	40 CFR 124.5(a).
30 TAC §305.69(d)(2), introductory paragraph, effective February 26, 1996	40 CFR 270.42(c)(2) (introductory paragraph).
30 TAC §305.69(d)(2)(F), effective February 26, 1996	40 CFR 270.42(c)(2)(v).
30 TAC §305.69(g), effective February 26, 1996	40 CFR 270.42(f).
30 TAC §305.141(a), effective June 13, 1996	40 CFR 270.30 (introductory paragraph).
30 TAC §335.19(b), effective March 1, 1996	40 CFR 260.31(b).
30 TAC §335.22, effective November 20, 1996	40 CFR 260.40.
30 TAC §335.23, introductory paragraph, effective November 20, 1996	40 CFR 260.41 (introductory paragraph).
30 TAC §335.23(1), effective November 20, 1996	40 CFR 260.41(a).
30 TAC §335.69(a), introductory paragraph, effective February 26, 1996	40 CFR 262.34(a) (introductory paragraph).
30 TAC §335.112(a)(13), effective November 20, 1996	40 CFR 265, Subpart N (except 265.301(f)–(i), 265.314, and 265.315).
30 TAC §335.112(a)(22), introductory paragraph, effective November 20, 1996	40 CFR 265, Appendices.
30 TAC §335.112(a)(22)(B)–(D), effective November 20, 1996	40 CFR 265, Appendices II–V.
30 TAC §335.152(a)(5), effective November 20, 1996	40 CFR 264.110–264.120.
30 TAC §335.152(a)(20), introductory paragraph, effective November 20, 1996	40 CFR 264, Appendices.
30 TAC §335.152(a)(20)(B)–(E), effective November 20, 1996	40 CFR 264, Appendices IV, V, VI and IX.
30 TAC §335.152(b), effective November 20, 1996	40 CFR 264.18(b).
30 TAC §335.154(a)(3), effective July 14, 1987	40 CFR 264.75(d).
30 TAC §335.164(7)(C), effective October 29, 1990	40 CFR 264.98(g)(3).
30 TAC §335.504(2), effective March 6, 1996	40 CFR 262.11(b).

In addition to the above listed changes, EPA is authorizing changes to the following State provisions. These provisions do not have a direct analog in the Federal RCRA regulations. However, none of these provisions are considered broader in scope than the Federal program. This is so because these provisions were either previously authorized as part of Texas' base authorization or have been added to make the State's regulations internally consistent with changes made for the other authorizations listed in the first paragraph of this section. The EPA has reviewed these provisions and has determined that they are consistent with and no less stringent than the Federal requirements. Additionally, this authorization does not affect the status of State permits and those permits issued by EPA because no new substantive requirements are a part of these revisions.

State Requirement
Texas Solid Waste Disposal Act (TSWDA) §361.063(h); Texas Health and Safety Code Ann. (THSC) (Vernon's Supp. 1997), effective September 1, 1996, as amended.
TSWDA §361.079; THSC (Vernon's Supp. 1997), effective September 1, 1996, as amended.
TSWDA §361.089(d); THSC (Vernon's Supp. 1997), effective September 1, 1996, as amended.
30 Texas Administrative Code (TAC) §281.2, introductory paragraph, effective November, 7, 1994.
30 TAC §281.2(4), effective November 7, 1994.
30 TAC §305.50(1), effective November 20, 1996.
30 TAC §305.69(c)(11), effective February 26, 1996.
30 TAC §305.69(d)(2)(A), effective February 26, 1996.
30 TAC §335.112(b), effective November 20, 1996.
30 TAC §335.112(c), effective February 26, 1996.
30 TAC §335.152(c), effective November 20, 1996.

Texas is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

C. Decision

I conclude that Texas' application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Texas is granted final authorization to operate its hazardous waste program as revised. Upon effective final approval Texas will be responsible for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Texas also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

II. Corrections

A. Corrections to March 1, 1990 (55 FR 7318) Authorization Document

There were omissions in the table published as part of the March 1, 1990 (55 FR 7318), authorization notice for Texas. The affected entry for that table is shown in the table below. The corrections have been bolded and italicized.

Federal citation	State analog
5. Financial Responsibility—Settlement Agreement—changes to 40 CFR part 260, subpart B; 264 subparts G and H; 265, subparts G and H; and 270, subparts B, D, and G—as published in the Federal Register on May 2, 1986..	5. 31 TAC §§ 335.1; 335.152(a)(5) and (6); 335.178; 335.112(a)(6) and (7); 335.118(a) and (b); 335.119; 335.127; 305.50(4); 305.51; 305.62(c)(2)(C)(x) and 305.64(g), revised July 14, 1987.

B. Corrections to April 11, 1994 (59 FR 16987) Authorization Document

There was a typographical error in the table published as part of the April 11, 1994 (59 FR 16987) authorization notice for Texas. The affected entry, No. 26, for that table regarding Checklist 54 incorrectly cites 305.184(1)–(3). Subparagraph (3) was removed by Checklist 54. The correct citation is 305.184(1)–(2).

C. Corrections to the September 12, 1997 (62 FR 47947) Authorization Document

There were numerous typographical and effective date errors in the tables published as part of the September 12, 1997 (62 FR 47947) authorization notice for Texas. The affected entries for that table are shown in the table below. The corrections have been bolded and italicized. In addition, entry No. 39 is added to the table.

Federal citation	State analog
2. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Corrections and Technical Amendments I, July 17, 1991 (56 FR 32688). (Checklist 94).	TSWDA, Chapter 361, Secs. 361.003(12), 361.061, 361.064 THSC Ann., (Vernon 1992 and Supplement 1996), effective September 1, 1995, as amended; TSWDA and THSC Sec. 361.032 (Vernon Supplement 1996), effective August 28, 1995, as amended, TSWDA and THSC Secs. 361.036, 361.078 (Vernon 1992), effective September 1, 1989, Title 30 TAC Sec. 305.50(4)(A), effective November 23, 1993, Sec. 305.69(d)(1)(D), effective February 26, 1996, as amended, Title 30 TAC 305.69(h)(1), effective February 22, 1994, as amended, Sec. 335.69(h)(1)(A), Title 30 TAC Sec. 305.69(h)(1)(D), effective February 26, 1996, as amended, Title 30 TAC 305.69(i), L.5, effective July 29, 1992, as amended, Title 30 TAC Secs. *305.572 (introductory paragraph),* 305.572(1), 305.572(2), and 305.572(5), effective July 29, 1992, as amended, *November 20, 1996,* as amended, Title 30 TAC Sec. 305.42(b), effective October 29, 1990, as amended and Title 30 TAC Sec. 335.43(b), effective November 7, 1991, as amended, Title 30 TAC Sec. 335.24(b), effective September 1, 1986, Title 30 TAC Sec. 335.24(b)(2), effective September 1, 1986, Title 30 TAC Sec. 335.112(a) (112)(a)(15), TAC Secs. 335.221(b)(1), effective *February 26, 1996,* as amended, 335.221(b)(3), effective July 29, 1992, as amended, Title 30 TAC Sec. 335.221(b)(2), effective March 1, 1996, and 1992, as amended, Secs. 335.221(a)(3), 335.221(a)(5), 335.221(a)(6), 335.221(a)(7), 335.221(a)(10), 335.221(a)(11), 335.221(a)(15), 335.221(a)(17), 335.221(a)(13), 335.221(a)(18), 335.221(a)(19), 335.221(a)(20), 335.221(a)(21), 335.221(a)(23), effective March 1, 1996, as amended, Title 30 TAC Sec. 335.224(5), effective February 26, 1996, Title 30 TAC Sec. 335.24(b), effective September 1, 1996, as amended, Title 30 Sec. 335.24(b)(2), effective September 1, 1986, Title 30 TAC Sec. 335.112(a)(15), effective November 23, 1993, as amended, Title 30 TAC Secs. 335.221(a), 335.221(a) (1) and (9) effective March 1, 1996, as amended, Title 30 TAC Sec. 335.112(a)(6), effective February 26, 1996, as amended, Title 30 TAC Secs. 335.224(5)(H), 335.224(5)(H)(i), and 335.224(5)(H)(ii), effective February 26, 1996, as amended, Title 30 TAC Sec. 335.224(7), effective November 23, 1993 as amended, Title 30 TAC Sec. 335.224(14), effective February 26, 1996, as amended, Title 30 TAC Secs. 335.221(a)(4), and 335.221(a)(22), effective March 1, 1996, as amended, Title 30 TAC Sec. 335.1, effective February 26, 1996, as amended, Title 30 TAC Sec. 20.15, effective June 6, 1996, Title 30 TAC 335.41(g), effective March 6, 1996, as amended, Title 30 TAC Sec. 335.222(c)(1), effective July 29, 1992, as amended, and Title 30 TAC Sec. 335.222(c)(2), effective February 26, 1996, as amended.
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4. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendments II, August 27, 1991 (56 FR 42504). (Checklist 96).	TSDWA Chapter 361, THSC Secs. 361.003(34), 361.024(Vernon 1992 & Supp. 1996) effective September 1, 1995, as amended, TSDWA, THSC Sec. 361.078 (Vernon 1992), effective September 1, 1989, Title 30 TAC Sec. 335.1, effective March 1, 1996, as amended, TSWDA, THSC Secs. 361.003(12), 361.024, 361.061 (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC Sec. 361.032 (Vernon Supp 1996), effective August 28, 1995, as amended, TSWDA, THSC Secs. 361.036, 361.078 (Vernon 1992), effective September 1, 1989, TAC Sec. 2001.021 Texas Government Code Ann. (Vernon Supp 1996) effective September 1, 1993, Title 30 TAC Secs. 335.24(b), 335.24(b)(2), effective September 1, 1986, effective November 23, 1993, as amended, Sec. 335.221(b)(1), effective March 6, 1996, as amended, Sec. 335.221(b)(3), effective July 29, 1992, as amended, Sec. 335.221(b)(2), effective March 1, 1996, 1992, as amended, Secs. 335.221(a) *(1),* (3), (5), (6), (7), *(9),* (10), (11), (13), *(14),* (15), (17), (18), (19), (20), (21), (23), Sec. 335.221(a) effective March 1, 1996, Sec. 335.224(5), effective February 26, 1996, Secs. *305.572 (introductory paragraph),* 1992, as amended, Sec. 335.112(a)(6), effective February 26, 1996, Sec. 335.112(a) (1), (9), effective *February 26, 1996,* Secs. 335.224(5)(H), (i)–(ii), effective February 26, 1996, Sec. 335.224(7), effective 335.223(b), effective July 29, November 23, 1993, Sec. 335.224(14), effective February 26, 1996, Sec. 335.221(a)(22), effective March 1, 1996, Sec. 335.1, effective February 26, 1996, Sec. 20.15, effective June 6, 1996, Sec. 335.41(g), effective March 6, 1996, Sec. 335.222(c)(1), July 29, 1992, and Sec. 335.222(c)(2), effective February 26, 1996 as amended.

Federal citation	State analog
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15. Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris, (57 FR 37194–37282) August 18, 1992. (Checklist 109).	TSWDA, THSC, Secs. 361.003(12), 361.024, 361.064, (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC, Sec. 361.078 (Vernon 1992), effective 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC Sec. 361.078 (Vernon 1992), effective September 1, 1989, Title 30 TAC Sec. 355.1, effective July 14, 1987, as amended, Title 30 TAC Sec. 335.431(c)(1) *and (c)(3),* effective March 22, 1995, as amended, Title 30 TAC Sec. 305.50(4)(A), effective November 23, 1993, as amended, TSWDA, THSC, Secs. 361.024 (Vernon 1992 & Supp 1996), effective September 1, 1995, as amended, TSWDA, THSC Sec. 361.078 (Vernon 1992), effective September 1, 1989, Title 30 TAC Sec. 335.1, effective February 26, 1996, as amended, Title 30 TAC Sec. 335.69(a)(1)(C), effective February 26, 1996, as amended, Title 30 TAC Sec. 335.69(a)(1)(D), Title 30, TAC Sec. 335.69(a)(1)(D)(i)–(ii), Title 30 TAC Sec. 335.69(a)(2), Title 30 TAC Sec. 335.152(a)(5)–(6), Title 30 TAC Sec. 335.152(a)(19), Title 30 TAC Sec. 335.112(a)(6), *Sec. 335.112 (a)(7),* Title 30 TAC Sec. 335.118(b), Title 30 TAC Secs. 335.112(a)(10) and (21), effective February 26, 1996, as amended, Title 30 TAC Sec. 305.69(f)(5)(B)(ii), Title 30 TAC Sec. 305.69(i), I.6, Title 30 TAC Sec. 305.69(i),(N), Title 30 TAC Sec. 305.51(c)(6), effective February 26, 1996.
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17. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendment III, [57 FR 38558–38566] August 25, 1992. (Checklist 111).	TSDWA Chapter 361, THSC Secs. 361.003(34), 361.024 (Vernon 1992 & Supp. 1996) effective September 1, 1995, as amended, TSDWA, THSC Sec. 361.078 (Vernon 1992), effective September 1, 1989, Title 30 TAC Sec. 335.1, effective March 1, 1996, as amended, TSWDA, THSC Secs. 361.003(12), 361.024, 361.061 (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC Sec. 361.032 (Vernon Supp 1996), effective August 28, 1995, as amended, TSWDA, THSC Secs. 361.036, 361.078 (Vernon 1992), effective September 1, 1989, TAC Sec. 2001.021 Texas Government Code Ann. (Vernon Supp 1996) effective September 1, 1993, Title 30 TAC Secs. 335.24(b), 335.24(b)(2), effective September 1, 1986, Sec. 335.221(b)(2), effective March 1, 1996, 1992, as amended, Secs. 335.221(a)*(1),* (10), (11), (15), (17), (18), (19), (23), Sec. 335.221(a) effective March 1, 1996, Sec. 335.224(5), effective *February 26, 1996,* Sec. 335.223(b), effective July 29, 1992, as amended, Sec. 335.112(a)(1), (9), effective *February 26, 1996,* Secs. 335.224(5)(H), (i)–(ii), effective February 26, 1996, Sec. 335.224(7), effective November 23, 1993, Sec. 335.224(14), effective February 26, 1996, Sec. 335.221(a)(22), effective March 1, 1996, Sec. 335.1, effective February 26, 1996, Sec. 20.15, effective June 6, 1996, Sec. 335.41(g), effective March 6, 1996, Sec. 335.222(c)(1), July 29, 1992, and Sec. 335.222(c)(2), effective February 26, 1996 as amended.
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18. Consolidated Liability Requirements, (53 FR 33938–33960) July 1, 1991, and [57 FR 42832–42844] September 16, 1992. (Checklists 113, 113.1, & 113.2).	TSWDA, THSC, Secs. 361.024, 361.085 (Vernon 1992 Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC, Sec. 361.078 (Vernon 1992), effective September 1, 1989; Title 30 TAC Secs. 335.152(a)(6), 335.152(a)(6)(C), effective February 26, 1996, as amended, Title 30 TAC Secs. 335.112(a)(7), 335.152(a)(6), effective February 26, 1996, as amended.
19. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendment IV, (57 FR 44999–45001) September 30, 1992. (Checklist 114).	TSDWA Chapter 361, THSC Secs. 361.003(34), 361.024 (Vernon 1992 & Supp. 1996) effective September 1, 1995, as amended, TSDWA, THSC Sec. 361.078 (Vernon 1992), effective September 1, 1989, Title 30 TAC Sec. 335.1, effective March 1, 1996, as amended, TSWDA, THSC Secs. 361.003(12), 361.024, 361.061 (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC Sec. 361.032 (Vernon Supp 1996), effective August 28, 1995, as amended, TSWDA, THSC Secs. 361.036, 361.078 (Vernon 1992), effective September 1, 1989, TAC Sec. 2001.021 Texas Government Code Ann. (Vernon Supp 1996) effective September 1, 1993, Title 30 TAC Secs. 335.24(b), 335.24(b)(2), effective September 1, 1986, Sec. 335.221(b)(2), effective March 1, 1996, 1992, as amended, Secs. 335.221(a) (3), (5), (6), (7), (10), (11), (13), (15), (17), (18), (19), (20), (21), (23), Sec. 335.221(a) effective March 1, 1996, Sec. 335.224(5), effective February 26, 1996, Sec. 335.223(b), effective July 29,1992, as amended, Sec. 335.112(a)(1), (9), effective *February 26, 1996,* Secs. 335.224(5)(H), (i)–(ii), effective February 26, 1996, Sec. 335.224(7), effective November 23, 1993, Sec. 335.224(14), effective February 26, 1996, Sec. 335.221(a)(22), effective March 1, 1996, Sec. 335.1, effective February 26, 1996, Sec. 20.15, effective June 6, 1996, Sec. 335.41(g), effective March 6, 1996, Sec. 335.222(c)(1), July 29, 1992, and Sec. 335.222(c)(2), effective February 26, 1996 as amended.
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20. Chlorinated Teluenes Production Waste Listing, (57 FR 47376–47386) October 15, 1992. (Checklist 115).	TSWDA, THSC, Secs. 361.003(12), 361.024 (Vernon 1992 * Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC Sec. 361.078 (Vernon 1992), effective September 1, 1989, as amended, Title 30 TAC Sec. 335.1, effective July 14, 1987, as amended, Title 30 TAC Sec. 335.29(4), effective *November 20, 1996,* as amended.
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26. Wood Preserving; Revisions to Listings and Technical Requirements, (57 FR 61492–61505) December 24, 1992. (Checklist 120).	Safety Code (THSC) Annotated Secs. 361.003(34), 361.024 (Vernon 1992 and Supplement 1996), effective September 1, 1995, as amended; TSWDA and THSC Sec. 361.078 (Vernon 1992), Title 30 Texas Administrative Code (TAC) Chapter Sec. 335.1, March 1, 1996, as amended, Sec. 335.1 effective July 14, 1987, Title 30 TAC Secs. 335.152(a)(15), 335.112(a)(18), effective November 23, 1993.

Federal citation	State analog
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28. Recycled Used Oil Management Standards, (57 FR 41566) September 10, 1992, (58 FR 26420) May 3, 1993, (58 FR 33341) June 17, 1993, (59 FR 10550) March 4, 1994. (Checklists 112, 122, 122.1 and 130).	Texas Used Oil Collection, Management, and Recycling Act, Chapter 371, THSC (Vernon Supp 1992), effective September 1, 1995, as amended (H&SC); Title 30 TAC Chapter 324, Secs. 324.1 *through 324.21*, effective March 6, 1996, Secs. 335.6(j), 335.41(g), 335.78(j), 335.221(b)(1), 335.504(1), 335.504(4), Secs. 324.1, 324.2, 324.3, and 324.4, effective March 6, 1996. *30 TAC Secs. 335.1 definition of "used oil", 335.24(b) & (c), effective March 1, 1996.* The Texas Used Oil Collection, Management, and Recycling Act in 30 TAC Chapter 324 Subchapter A are more stringent then the federal program for management of used oil. THSC Sec. 371.041(b)(4) expressly prohibits the intentional application of used oil to roads or land for dust suppression without exception. The Code allows Do-it-Yourself Used Oil Collection center that is also a used oil generator to commingle household DIY oil with the used oil it generates. The code also requires a DIY used oil collection center to register biennially and report annually the amount of household used oil collected.
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30. Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated, (58 FR 29860–29887) May 24, 1993. (Checklist 124).	TSWDA, THSC, Secs. 361.024, 361.064 (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC, Sec. 361.078 (Vernon 1992), effective September 1, 1989; Title 30 TAC Secs. 335.41(d)(1) effective *March 6, 1996*, as amended, 335.431(c) (1) effective March 22, 1995, and Title 30 TAC Sec. 305.69(i), B, effective February 26, 1996, as amended.
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32.Testing and Monitoring Activities, (58 FR 46040–46051), August 31, 1993. (Checklist 126).	Tex. Water Code Ann. Sec. 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended; TSWDA Chapter 361, Sec. 361.024, THSC (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA Chapter 361 Sec. 361.078 THSC (Vernon 1992), effective September 1, 1989; TSWDA Chapter 361, Sec. 361.003, THSC (Vernon 1992), effective September 1, 1991, as amended; Title 30 TAC Sec. 335.1 effective January 26, 1994, as amended; Secs. *335.31*, 335.29(2)–(3), 335.152(a)(8), 335.175(c), 335.112(a)(9), 335.125(d), 305.150, 305.172(2)(A)(iii)–(iv), *305.572 (introductory paragraph)* 305.572(2), effective November 20, 1996, as amended, *Secs. 335.431(c)(1), (3), effective March 22, 1995*, and 305.50(A), effective November 23, 1993.
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34. Wastes From the Use of Chlorophenolic Formulations in Wood Surface Protection, (59 FR 458–469) January 4, 1994. (Checklist 128).	Tex. Water Code Ann. Sec. 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended; TSWDA, Chapter 361, Sec. 361.024, THSC (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended; TSWDA, Chapter 361, Sec. 361.078 THSC (Vernon 1992) effective September 1, 1989; Title 30 TAC Secs. 335.29(5) and *335.31*, effective November 20, 1996.
* * * * * * *	
35. Recordkeeping Instructions; Technical Amendment, (59 FR 13891–13893) March 24, 1994. (Checklist 131).	Tex. Water Code Ann. Sec. 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended; TSWDA, Chapter 361, Sec. 361.024, THSC (Vernon 1992 & Supp.1996), effective September 1, 1995, as amended; TSWDA Chapter 361, Sec. 361.078, THSC (Vernon 1992), effective September 1, 1989; Title 30 TAC Secs. 335.152 *(20)*(A), and 335.112(a)*(22)*(A), effective November 20, 1996.
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36. Wood Surface Protection; Correction, (59 FR 28484) June 2, 1994. (Checklist 132).	Tex. Water Code Ann. Sec. 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended; TSWDA, Chapter 361, Sec. 361.024, THSC (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended; TSWDA, Chapter 361, Sec. 361.078 THSC (Vernon 1992) effective September 1, 1989; Title 30 TAC Sec. *335.31*, effective November 20, 1996.
* * * * * * *	
37. Letter of Credit Revision, (59 FR 29958–29960) June 10, 1994. (Checklist 133).	Tex Water Code Ann. Sec. 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended; TSWDA Chapter 361, Sec. 361.024 THSC (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended; TSWDA Chapter 361, Sec. 361.078 THSC (Vernon 1992), effective September 1, 1989; *Title 30 TAC Sec. 335.152(a)(6), effective November 20, 1996.*
* * * * * * *	
38. Correction of Beryllium Powder (P015) Listing, (59 FR 31551–31552) June 20, 1994. (Checklist 134).	Tex. Water Code Ann. Sec. 5.103 (Vernon & Supp. 1996), effective September 1995, as amended; TSWDA, Chapter 361, Sec. 361.024, THSC (Vernon 1992 & Supp. 1996), effective September 1995, amended; TSWDA, Chapter 361, Sec. 361.0 THSC (Vernon 1992) effective September 1989; Title 30 TAC Sec. 335.1, effective January 26, 1994, as amended; *Sec. 335.29(5), effective November 20, 1996; and* 335.431(c)(1), effective *March 22, 1995*, as amended.
* * * * * * *	
39. Revision of Conditional Exemption for Small Scale Treatability Studies (59 FR 8362–8366), February 18, 1994. (Checklist 129).	*Title 30 Texas Administrative Code (TAC) Chapter 335 Sec. 335.2(g) as amended effective November 20, 1996.*

III. Incorporation By Reference

A. Background

Effective December 3, 1997 (62 FR 49163), EPA incorporated by reference Texas' then authorized hazardous waste program. Effective November 26, 1997 (62 FR 47947), EPA granted authorization to Texas for additional program revisions. In this document, EPA is incorporating the currently authorized State hazardous waste program in Texas RCRA Clusters II through IV.

The EPA provides notice of its approval of State programs in 40 CFR part 272 and incorporates by reference therein the State statutes and regulations that are part of the authorized State program under RCRA. This effort will provide clearer notice to the public of the scope of the authorized program in Texas. Such notice is particularly important in light of HSWA, PL 98–616. Revisions to State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By incorporating by reference the authorized Texas program and by amending the CFR whenever a new or different set of requirements is authorized in Texas, the status of Federally approved requirements of the Texas program will be readily discernible.

The Agency will only enforce those provisions of the Texas Hazardous Waste Program for which authorization approval has been granted by EPA.

B. Texas Authorized Hazardous Waste Program

The EPA is revising the incorporation by reference of the Texas authorized hazardous waste program in subpart SS of 40 CFR part 272. The State statutes and regulations are incorporated by reference at 40 CFR 272.2201(b)(1) and the Memorandum of Agreement, the Attorney General's Statement and the Program Description are referenced at §§ 272.2201(b)(5), (b)(6) and (b)(7), respectively.

The Agency retains the authority under sections 3007, 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedure Act rather than the authorized State analogues to these requirements.

Therefore, the Agency does not intend to incorporate by reference for purposes of enforcement such particular, authorized Texas enforcement authorities. Section 272.2201(b)(2) of 40 CFR lists those authorized Texas authorities that are part of the authorized program but are not incorporated by reference.

The public also needs to be aware that some provisions of the State's Hazardous Waste Program are not part of the federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are "broader in scope" than RCRA subtitle C, 40 CFR 271.1(i));

(2) Unauthorized amendments to authorized State provisions.

State provisions which are "broader in scope" than the Federal program are not incorporated by reference for purposes of enforcement in 40 CFR part 272. Section 272.2201(b)(3) of 40 CFR lists for reference and clarity the Texas statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not, therefore, part of the authorized program being incorporated by reference. "Broader in scope" provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions.

Since EPA cannot enforce a State's requirements which have not been reviewed and approved according to the Agency's authorization standards, it is important that EPA clarify any limitations on the scope of a State's approved hazardous waste program. Thus, in those instances where a State has made unauthorized amendments to previously authorized sections of State code, EPA will provide this clarification by: (1) incorporating by reference the relevant State legal authorities according to the requirements of the Office of Federal Register; and (2) subsequently identifying in § 272.2201(b)(4) any requirements which while adopted and incorporated by reference, are not authorized by EPA, and therefore are not federally enforceable. Thus, notwithstanding the language in the Texas hazardous waste regulations incorporated by reference at § 272.2201(b)(1), EPA would only enforce the State provisions that are actually authorized by EPA. For the convenience of the regulated community, the actual State regulatory text authorized by EPA for the citations listed at § 272.2201(b)(4) is compiled as a separate document, Addendum to the EPA–Approved Texas Regulatory and Statutory Requirements Applicable to the Hazardous Waste Management Program, December, 1997. This document is available from EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. With respect to HSWA requirements for which the State has not yet been authorized, EPA will continue to enforce the Federal HSWA standards until the State receives specific HSWA authorization from EPA.

C. HSWA Provisions

As noted above, the Agency is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are immediately effective in Texas and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective.

A HSWA requirement or prohibition supercedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (50 FR 28702, July 15, 1985).

Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and incorporated by reference State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibitions by the deadlines set forth in 40 CFR 271.21, and then to seek authorization for those revisions pursuant to 40 CFR part 271. The EPA expects that the States will be modifying their programs substantially and repeatedly. Instead of amending the 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR part 272 incorporation by reference. In the interim, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

IV. Regulatory Requirements

A. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the Texas program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate hazardous waste treatment, storage or disposal facilities (TSDFs), they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

B. Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under the existing State laws that are now being authorized by EPA. The EPA's authorization does not impose any significant additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

C. Submission to Congress and the Comptroller General

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

D. Compliance With Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this rule from the requirements of Executive Order 12866.

E. Compliance With E.O. 12875-Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, the EPA must 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 any 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."

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1 (a) of E.O. 12875 do not apply to this rule.

F. Compliance With E.O. 13045-Protection of Children From Environmental Health Risk and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) the OMB determines is "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

G. Compliance with E.O. 13084-Consultation and Coordination With Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies with 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 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."

This rule is not subject to E.O. 13084 because it does not significantly or uniquely affects the communities of Indian tribal governments. Texas is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in the Indian country within the State.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority

This document is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 24, 1999

Jerry Clifford,

Deputy Regional Administrator, Region 6.

For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Subpart SS is amended by revising § 272.2201 to read as follows:

§ 272.2201 Texas State-Administered Program: Final Authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), the EPA granted Texas final authorization for Base program effective on December 26, 1984. Subsequent program revision applications were approved effective on October 4, 1985, February 17, 1987, March 15, 1990, July 23, 1990, October 21, 1991, December 4, 1992, June 27, 1994, November 26, 1997, December 3, 1997, and November 15, 1999.

(b) State statutes and regulations.

(1) The Texas statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(i) The EPA Approved Texas Statutory Requirements Applicable to the Hazardous Waste Management Program, December 1997.

(ii) The EPA Approved Texas Regulatory Requirements Applicable to the Hazardous Waste Management Program, December 1997.

(2) The following statutes and regulations concerning State procedures and enforcement, although not incorporated by reference, are part of the authorized State program:

(i) Texas Health and Safety Code (THSC) Annotated, (Vernon, 1992), effective September 1, 1991: Chapter 361, The Texas Solid Waste Disposal Act, sections 361.002, 361.017 (except 361.017(d)&(e)), 361.024(b)-(d), 361.033, 361.036, 361.037(a), 361.063(b), 361.063(e)-(g), 361.063(i), 361.063(k)&(l), 361.066(b), 361.078, 361.080(a), 361.082(b), 381.082(c) (except second sentence), 361.082(e), 361.084(c) (except the phrase ", or evidence of * * * waste management"), 361.085(a)-(d), 361.088(b), 361.089(g), 361.090, 361.095(b)-(f), 361.096, 361.097, 361.098(a) (except the phrase "Except as provided in subsections (b) and (c),"), 361.099(a), 361.100, 361.101, 361.103 through 361.108, 361.109(a), 361.221 (except 361.221(c)&(e), 361.222 (except 361.222(d)-(u)), 361.223(c), 361.227, 361.301, 361.303, 361.321(b),

361.321(c) (except the phrase "Except as provided by section 361.322(a)"), and 361.321(d); Chapter 371, Texas Oil Collection, Management, and Recycling Act, sections 371.043(a)&(b), 371.044(b) and 371.045.

(ii) Texas Health and Safety Code (THSC) Annotated, (Vernon, 1997 Supplement), effective September 1, 1996: Chapter 361, The Texas Solid Waste Disposal Act, sections 361.016, 361.017(d)&(e), 361.018, 361.024(a), 361.024(e), 361.032, 361.061, 361.063(a), 361.063(c), 361.063(d), 361.063(j), 361.063(h), 361.064, 361.067, 361.068(a), 361.069 (except last sentence), 361.079, 361.083, 361.084 (except 361.084(c)), 361.085(e)-(j), 361.088(a)&(c), 361.089(a)-(f), 361.102(a) (except the phrase "Except as provided by subsections (b) and (c)"), 361.223(a)&(b), 361.224(a)&(b), 361.225, 361.226, 361.228, 361.229, 361.301, 361.303, 361.321(a), and 361.321(e) (except the phrase "Except as provided by section 361.322(e)"); Chapter 371, Texas Oil Collection, Management, and Recycling Act, sections 371.0025(b)&(c), 371.003 (introductory paragraph), 371.024(a), 271.024(c)&(d), 371.026(a)&(b), 371.028, 371.041(b)-(d), 371.042, 371.043(c)&(d), and 371.044(a).

(iii) Texas Water Code (TWC), Texas Codes Annotated (Vernon, 1992), effective September 1, 1985, as amended: Chapter 5, sections 5.103, 5.104, 5.105; Chapter 26, section 26.011; and Chapter 27, section 27.019.

(iv) Texas Administrative Code (TAC), Title 30, Environmental Quality, 1994, as amended, effective through January 1, 1994: Chapter 305, sections 305.98 and 305.99.

(v) Texas Administrative Code (TAC), Title 30, Environmental Quality, 1997, as amended, effective through January 1, 1997: Chapter 281, sections 281.1 (except the clause "except as provided by * * * Prioritization Process)"), 281.2 (introductory paragraph), 281.2(4), 281.3(a)&(b), 281.5, 281.17(d)-(f), 281.18(a), 281.19, 281.20, 281.21 (except 281.21(e)), 281.22(a)&(b), 268.23 281.24; Chapter 305, sections 305.29(b)&(c), 305.64(d)&(f), 305.66(c), 305.66(e)-(l), 305.91 through 305.95, 305.97, 305.100, 305.101 (except 305.101(c)), 305.102, 305.103, 305.105, 305.123, 305.125(1)&(3), 305.125(20), 305.127(1)(B)(i), 305.127(4)(A)&(C), 305.127(6), 305.401 (except 305.401(c)); Chapter 324, sections, 324.17 through 324.20; and Chapter 335, sections 335.2(b), 335.206, 335.391 through 335.393.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Texas Health and Safety Code (THSC) Annotated, (Vernon 1992), effective September 1, 1991: Chapter 361, The Texas Solid Waste Disposal Act, sections 361.131 through 361.140; Chapter 371, Texas Oil Collection, Management, and Recycling Act, sections 371.021, 371.022, 371.024(e), 371.025, and 371.026(c).

(ii) Texas Health and Safety Code (THSC) Annotated, (Vernon 1997 Supplement), effective September 1, 1996: Chapter 361, The Texas Solid Waste Disposal Act, sections 361.131 through 361.140; Chapter 371, Texas Oil Collection, Management, and Recycling Act, sections 371.021, 371.022, 371.024(e), 371.0245, 371.0246, 371.025, and 371.026(c).

(iii) Texas Administrative Code (TAC), Title 30, Environmental Quality, 1997, as amended, effective through January 1, 1997: Chapter 305, sections 305.27 (as it pertains to solid waste), 305.53, 305.64(b)(4); and Chapter 335, sections 335.321 through 335.332 and Appendices I and II.

(4) Unauthorized State Amendments. The following authorized provisions of the Texas regulations include amendments published in the Texas Register that are not approved by EPA. Such unauthorized amendments are not part of the State's authorized program and are, therefore, not Federally enforceable. Thus, notwithstanding the language in the Texas hazardous waste regulations incorporated by reference at § 272.2201(b)(1), EPA will only enforce the authorized State provisions with the effective dates indicated in the following table. The actual State regulatory text authorized by EPA for the listed provisions is available as a separate document, Addendum to the EPA-Approved Texas Regulatory and Statutory Requirements Applicable to the Hazardous Waste Management Program, December, 1997. Copies of the document can be obtained from U.S. EPA Region 6, Grants and Authorization Section, RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202.

State provision	Effective date of authorized provision	Unauthorized state amendments	
		Texas Register reference	Effective date
335.2(c)	11/7/91	18 TexReg 2799	5/12/93
		18 TexReg 8218	11/23/93
335.6(a)	7/29/92	18 TexReg 2799	5/12/93
335.6(c) introductory paragraph	7/29/92	17 TexReg 8010	11/27/92
		20 TexReg 2709	4/24/95
		20 TexReg 3722	5/30/95
		21 TexReg 1425	3/1/96
		21 TexReg 2400	3/6/96
335.6(g)	7/29/92	18 TexReg 3814	6/28/93
335.10(b)(22)	7/27/88	17 TexReg 8010	11/27/92
335.24(b) introductory paragraph	3/1/96	21 TexReg 10983	11/20/96
335.24(c) introductory paragraph	3/1/96	21 TexReg 10983	11/20/96
335.41(c)	9/1/86	18 TexReg 8218	11/23/93
335.45(b)	9/1/86	17 TexReg 5017	7/29/92
335.204(a)(1)	5/28/86	16 TexReg 6065	11/7/91
335.204(b)(1)	5/28/86	16 TexReg 6065	11/7/91
335.204(b)(6)	5/28/86	16 TexReg 6065	11/7/91
335.204(c)(1)	5/28/86	16 TexReg 6065	11/7/91
335.204(d)(1)	5/28/86	16 TexReg 6065	11/7/91
335.204(e)(6)	5/28/86	16 TexReg 6065	11/7/91

(5) Memorandum of Agreement. The Memorandum of Agreement between EPA Region VI and the Texas Natural Resource Conservation Commission (TNRCC), signed by the EPA Regional Administrator on July 24, 1997, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) Statement of Legal Authority. "Attorney General's Statement for Final Authorization", signed by the Attorney General of Texas on May 22, 1984 and revisions, supplements and addenda to that Statement dated November 21, 1986, July 21, 1988, December 4, 1989, April 11, 1990, July 31, 1991, February 25, 1992, November 30, 1992, March 8, 1993, January 7, 1994, August 9, 1996, October 16, 1996, as amended February 7, 1997, and March 11, 1997, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) Program Description. The Program Description and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272, State Requirements, is amended by revising the listing for "Texas" to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Texas

The statutory provisions include:

Texas Health and Safety Code (THSC) Annotated, (Vernon 1992), effective September 1, 1991: Chapter 361, The Texas Solid Waste Disposal Act, sections 361.003 (introductory paragraph), 361.003(1), 361.082(a), 361.082(f), 361.086, 361.087, 361.093, 361.095(a), 361.099(b), and 361.110; Chapter 371, The Texas Oil Collection, Management, and Recycling Act, section 371.041(a).

Texas Health and Safety Code (THSC) Annotated, (Vernon 1997 Supplement), effective September 1, 1996: Chapter 361, The Texas Solid Waste Disposal Act, sections 361.003 except (3), (4), (19), (27), (35) and (39)), 361.066(a), and 361.094; Chapter 371, The Texas Oil Collection, Management, and Recycling Act, sections 371.003, 371.024(b), and 371.026(d).

Copies of the Texas statutes that are incorporated by reference are available from West Publishing Company, 610 Opperman Drive, P. O. Box 64526, St. Paul, Minnesota 55164–0526.

The regulatory provisions include:

Texas Administrative Code (TAC), Title 30, Environmental Quality, 1994, as amended, effective through January 1, 1994: Chapter 305, section 305.50(4); Chapter 335, sections 335.6(d) (except last sentence), 335.6(e), 335.9(b), 335.10(a) (introductory paragraph), 335.10(a)(1), 335.10(b)(5)&(8), 335.13(c)&(d), 335.13(g), 335.15 (introductory paragraph), 335.23(2), 335.24(e), 335.71, 335.214(a).

Texas Administrative Code (TAC), Title 30, Environmental Quality, 1997, as amended, effective through January 1, 1997: Chapter 20, section 20.15; Chapter 281, section 281.3(c); Chapter 305, 305.1(a), 305.2 (except the definitions for "by-pass," "Class I sludge management facility," "component," "continuous discharge," "CWA," "daily average concentration," "daily average flow," "direct discharge," "discharge monitoring report," "effluent limitation," "Environmental Protection Agency," "facility mailing list," "functionally equivalent component," "indirect discharger," "injection well permit," "National Pollution Discharge Elimination System," "new discharger," "new source," "outfall," "primary industry category," "process wastewater," "publicly owned treatment works," "recommencing discharger," "regional administrator," "schedule of compliance," "severe property damage," "sewage sludge," "Texas pollution discharge elimination system," "toxic pollutant," "treatment works treating domestic sewage," "variance," and "wetlands"), 305.29(a)&(d), 305.41, 305.42, 305.43(b), 305.44, 305.45, 305.47, 305.50 (introductory paragraph), 305.50(1), 305.50(2) (except the paragraph beginning "Also to be submitted are listings * * *" to the end of the subsection), 305.50(3), 305.50(5)–(8), 305.50(13)&(14), 305.51, 305.61, 305.62(a) (except the phrase "§ 305.70 of this title * * * Solid Waste Class I Modifications" in the first sentence and the fifth sentence "If the permittee requests a modification of a municipal solid waste permit * * * Solid Waste Class I Modifications."), 305.62(b)–(h), 305.63 (introductory paragraph), 305.63(1)&(2), 305.63(3) (except the last sentence), 305.63(4)–(6), 305.64(a), 305.64(b) (except 305.64(b)(4)&(5)), 305.64(c), 305.64(e), 305.64(g), 305.66(a) (except 305.66(a)(7)&(8)), 305.67, 305.69 (except 305.69(i) A.8–A.10), 305.121, 305.122(a)–(c), 305.124, 305.125 (except 305.125(1), (3), and (20)), 305.127 (introductory paragraph), 305.127(1)(B)(iii), 305.127(1)(E)&(F), 305.127(2)&(3), 305.127(4)(B), 305.127(5)(C), 305.128, 305.141 through 305.145, 305.146 (introductory paragraph), 305.146(1), 305.150, 305.171 through 305.174, 305.181 through 305.184, 305.191 through 305.194, 305.401(c), 305.571, 305.572 (except the date "September 5, 1991" in the (introductory paragraph)), 305.573; Chapter 324, sections, 324.1 through 324.4, 324.6, 324.7, 324.11 through 324.16, 324.21; Chapter 335, sections 335.1 (introductory paragraph), 335.1 (except the definitions for "activities associated with the exploration, development, and protection of oil or gas, or geothermal resources," "class 1 wastes," "class 2 wastes," "class 3 wastes," "commercial hazardous waste facility," "contaminant," "contaminated medium/media," "control," "decontaminate," "essentially insoluable," "hazardous industrial waste," "hazardous substance," "industrial solid waste," "Petroleum substance," "remediation," "remove," shipment," "spill," and "treatment"), 335.2(a), 335.2(c)–(g), 335.2(i)&(j), 335.4, 335.5, 335.6(a)–(c), 335.6(f)–(j), 335.7, 335.8(a)(3)&(4), 335.9 (except 335.9(b)), 335.10(a)(3) (except the phrase ", unless the generator is identified in paragraph (2) of this section"), 335.10(a)(4), 335.10(a)(6), 335.10(b) (except 335.10(b)(5)&(8)), 335.10(c) (except the phrase "the United States customs official,"), 335.10(d)–(f), 335.11 (except 335.11(d)), 335.12 (except 335.12(a)(5)), 335.13(a), 335.13(e)&(f), 335.14, 335.15(1), 335.17, 335.18, 335.19, 335.20 through 335.22, 335.23 (except 335.23(2)), 335.24(a)–(d), 335.24(f), 335.29, 335.30, 335.31, 335.41(a)–(h), 335.43 through 335.45, 335.47 (except the second sentence in 335.47(c)(3)), 335.61(a)–(e), 335.63 through 335.68, 335.69(a)–(h), 335.70, 335.73, 335.74, 335.76, 335.77, 335.78 (except 335.78(d)(2)), 335.91 through 335.94, 335.111, 335.112 (except 335.112(a)(17)), 335.113, 335.114(a), 335.115 through 335.123, 335.124 (except second sentence in 335.124(e)), 335.125 through 335.127, 335.151 through 335.153, 335.154(a), 335.155 through 335.178, 335.201(a) (except 335.201(a)(3)), 335.201(c), 335.202 (except the definitions for "active geologic processes," "area subject to active shoreline erosion," "areas of direct drainage," "commercial hazardous waste management facility," "critical habitat of an endangered species," "erosion," "public water system," and "residence"), 335.203, 335.204(a) (introductory paragraph), 335.204(a)(1)–(5), 335.204(b)(1)–(6), 335.204(c)(1)–(5), 335.204(d)(1)–(5), 335.204(e) (introductory paragraph), 335.204(e)(1) (introductory paragraph) (except the phrase "Except as * * * (B) of this paragraph," and the word "event" at the end of the paragraph), 335.204(e)(2)–(7), 335.204(f), 335.205(a)&(b), 335.205(i), 335.211 through 335.213, 335.214(b), 335.221 through 335.226, 335.241, 335.251, 335.361 through 335.367, 335.431, and 335.504.

Copies of the Texas regulations that are incorporated by reference are available from West Publishing Company, 610 Opperman Drive, P. O. Box 64526, St. Paul, Minnesota 55164–0526.

* * * * *

[FR Doc. 99–22181 Filed 9–13–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1706; MM Docket No. 99–98; RM–9483]

Radio Broadcasting Services; Judsonia, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 237A to Judsonia, Arkansas, as that

community's first local aural transmission service in response to a petition for rule making filed on behalf of White County Broadcasters. *See* 64 FR 17138, April 8, 1999. Coordinates used for Channel 237A at Judsonia are 35–17–06 NL and 91–37–45 WL. With this action, the proceeding is terminated.

DATES: Effective October 12, 1999. A filing window for Channel 237A at Judsonia, Arkansas, will not be opened at this time. instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–98, adopted August 18, 1999, and released August 27, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, WS., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Judsonia, Channel 237A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–23816 Filed 9–13–99: 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Part 225

[DFARS Case 99–D020]

Defense Federal Acquisition Regulation Supplement; Acquisitions for Foreign Military Sales

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify that the contracting officer must not require the submission of cost or pricing data for a foreign military sales acquisition if the foreign government has conducted a competition resulting in adequate price competition. The rule also clarifies that all costs incurred for offset agreements with a foreign government or international organization are allowable if financed wholly with customer cash or repayable foreign military finance credits.

EFFECTIVE DATE: September 14, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0288; telefax (703) 602–0350. Please cite DFARS Case 99–D020.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS 225.7303 to clarify that the contracting officer must not require the submission of cost or pricing data for a foreign military sales acquisition if the foreign government has conducted a competition resulting in adequate price competition. Such competition meets the requirement of FAR 15.403–1(b)(1), which states that the contracting officer must not require the submission of cost or pricing data when prices are based on adequate price competition.

This rule also amends DFARS 225.7303–2 and 225.7303–5 to clarify that all costs incurred for offset agreements with a foreign government or international organization are allowable if financed wholly with customer cash or repayable foreign military finance credits. In 1996, DoD amended the language at DFARS 225.7303–2 to clarify that U.S. contractors may recover the full cost necessary to implement such agreements (61 FR 7739, February 29, 1996; 60 FR 49358, September 25, 1995). Since there appear to be differences in the way the language is being interpreted and implemented, this rule makes further clarifications.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments form small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 99–D020.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 225 is amended as follows:

1. The authority citation for 48 CFR Part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7303 is revised to read as follows:

225.7303 Pricing acquisitions for FMS.

(a) Price FMS contracts using the same principles as are used in pricing other defense contracts. Application of the pricing principles in FAR parts 15 and 31 to an FMS contract may result in prices that differ from other defense contract prices for the same item due to the considerations in this section.

(b) If the foreign government has conducted a competition resulting in adequate price competition (see FAR 15.403–1(b)(1)), the contracting officer must not require the submission of cost or pricing data. The contracting officer should consult with the foreign government through security assistance personnel to determine if adequate price competition has occurred.

3. Section 225.7303–2 is amended by revising paragraph (a)(3) introductory text and paragraph (a)(3)(i) to read as follows:

225.7303–2 Cost of doing business with a foreign government or an international organization.

(a) * * *

(3) Offset costs.

(i) A U.S. defense contractor may recover all costs incurred for offset agreements with a foreign government or international organization if the LOA is financed wholly with customer cash or repayable foreign military finance credits.

* * * * *

4. Section 225.7303–5 is amended by revising paragraph (c) to read as follows:

225.7303–5 Acquisitions wholly paid for from nonrepayable funds.

* * * * *

(c) A U.S. defense contractor may not recover costs incurred for offset agreements with a foreign government or international organization if the LOA is financed with funds made available on a nonrepayable basis.

[FR Doc. 99–23730 Filed 9–13–99; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 237 and 252

[DFARS Case 99–D018]

Defense Federal Acquisition Regulation Supplement; Officials Not To Benefit Clause

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update the formats used for educational service agreements and patent license contracts to reflect the removal of the Officials Not to Benefit clause from the Federal Acquisition Regulation (FAR).

EFFECTIVE DATE: September 14, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Fenk, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0296; telefax (703) 602–0350. Please cite DFARS Case 99–D018.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the format for educational service agreements at DFARS 237.7204, and the Patent License and Release Contract clause at DFARS 252.227–7012, to remove references to the clause at FAR 52.203–1, Officials Not to Benefit. The clause at FAR 52.203–1 was removed from the FAR on September 19, 1995 (60 FR 37773, July 21, 1995). This rule also makes other minor editorial changes to update the DFARS text at 237.7204 and 252.227–7012.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 99–D018.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 237 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 237 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 237 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 237—SERVICE CONTRACTING

2. Section 237.7204 is amended by revising the text under the heading "General Provisions" to read as follows:

237.7204 Format and clauses for educational service agreements.

* * * * *

General Provisions

Use the following clauses in educational service agreements:

1. FAR 52.202–1, Definitions, and add the following paragraphs (h) through (m).

(h) "Term" means the period of time into which the Contractor divides the academic year for purposes of instruction. This includes "semester," "trimester," "quarter," or any similar word the Contractor may use.

(i) "Cause" means a series of lectures or instructions, and laboratory periods, relating to one specific representation of subject matter, such as Elementary College Algebra, German 401, or Surveying. Normally, a student completes a course in one term and receives a certain number of semester hours credit (or equivalent) upon successful completion.

(j) "Curriculum" means a series of courses having a unified purpose and belonging primarily to one major academic field. It will usually include certain required courses and elective courses within established criteria. Examples include Business Administration, Civil Engineering, Fine and Applied Arts, and Physics. A curriculum normally covers more than one term and leads to a degree or diploma upon successful completion.

(k) "Catalog" means any medium by which the Contractor publicly announces terms and conditions for enrollment in the Contractor's institution, including tuition and fees to be charged. This includes "bulletin," "announcement," or any other similar word the Contractor may use.

(l) "Tuition" means the amount of money charged by an educational institution for instruction, not including fees.

(m) "Fees" means those applicable charge directly related to enrollment in the Contractor's institution. Unless specifically allowed in the request for services, fees shall not include—

(1) Any permit charge, such as parking and vehicle registration; or

(2) Charges for services of a personal nature, such as food, housing, and laundry.

2. FAR 52.203–3, Gratuities.

3. FAR 52.203–5, Covenant Against Contingent Fees.

4. FAR 52.204–1, Approval of Contract, if required by department/agency procedures.

5. FAR 52.215–2, Audit and Records—Negotiation.

6. FAR 52.215–8, Order of Precedence—Uniform Contract Format.

7. Conflicts Between Agreement and Catalog. Insert the following clause:

Conflicts Between Agreement and Catalog

If there is any inconsistency between this agreement and any catalog or other document incorporated in this agreement by reference or any of the Contractor's rules and regulations, the provisions of this agreement shall govern.

8. FAR 52.222–3, Convict Labor.

9. Under FAR 22.802, FAR 22.807, and FAR 22.810, use the appropriate clause from FAR 52.222–26, Equal Opportunity.

10. FAR 52.233–1, Disputes.

11. Assignment of Claims. Insert the following clause:

Assignment of Claims

No claim under this agreement shall be assigned.

12. FAR 52.252–4, Alterations in Contract, if required by department/agency procedures.

Signature Page

Agreement No. _____

Date _____

The United States of America

By: _____

(Contracting Officer)

Activity _____

Location _____

(Name of Contractor)

By: _____
(Title) _____

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.227–7012 is revised to read as follows:

252.227–7012 Patent license and release contract.

As prescribed at 227.7012, insert the following clause in patent releases, license agreements, and assignments:

_____
(Contract No.)

Patent License and Release Contract (Sep 1999)

This CONTRACT is effective as of the ____ day of [month, year], between the UNITED STATES OF AMERICA (hereinafter called the Government), and _____ (hereinafter called the Contractor), (a corporation organized and existing under the laws of the State of _____), (a partnership consisting of _____), (an individual trading as _____), of the City of _____, in the State of _____.

Whereas, the Contractor warrants that it has the right to grant the within license and release, and the Government desires to procure the same, and

Whereas, this contract is authorized by law, including 10 U.S.C. 2386.

Now Therefore, in consideration of the grant, release and agreements hereinafter recited, the parties have agreed as follows:

Article 1. License Grant.*

(Insert the clause at 252.227–7004 for a paid up license, or the clause at 252.227–7006 for a license on a running royalty basis.)

Article 2. License Term.*

(Insert the appropriate alternative clause at 252.227–7005 for a paid up license, or the clause at 252.227–7007 for a license on a running royalty basis.)

Article 3. Release of Past Infringement.

(Insert the clause at 252.227–7001.)

Article 4. Non-Estoppel.

(Insert the clause at 252.227–7000.)

Article 5. Payment.

The Contractor shall be paid the sum of _____ Dollars ($_____) in full compensation for the rights herein granted and agreed to be granted. (For a license on a running royalty basis, insert the clause at 252.227–7006 in accordance with the instructions therein, and also the clause as specified at 252.227–7002 and 252.227–7009 and 252.227–7010.)

Article 6. Covenant Against Contingent Fees.

(Insert the clause at FAR 52.203–5.)

Article 7. Assignment of Claims.

(Insert the clause at FAR 52.232–23.)

Article 8. Gratuities.

(Insert the clause at FAR 52.203–3.)

Article 9. Disputes.

(Insert the clause at FAR 52.233–1.)

Article 10. Successors and Assignees.

This Agreement shall be binding upon the Contractor, its successors** and assignees, but nothing contained in this Article shall authorize an assignment of any claim against the Government otherwise than as permitted by law.

In Witness Whereof, the parties hereto have executed this contract.

THE UNITED STATES OF AMERICA
By _____
Date _____
(Signature and Title of Contractor Representative) _____
By _____
Date _____

*If only a release is procured, delete this article; if an assignment is procured, use the clause at 252.227–7011.

**When the Contractor is an individual, change "successors" to "heirs"; if a partnership, modify appropriately.

(End of clause)

[FR Doc. 99–23731 Filed 9–13–99; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 090899B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of Pacific ocean perch in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the amount of the 1999 total allowable catch (TAC) of Pacific ocean perch in this area has been achieved.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 8, 1999, until 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson 907–481–1780 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 Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) established the amount of the 1999 TAC of Pacific ocean perch in the Western Regulatory Area of the GOA as 1,850 metric tons. See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the amount of the 1999 TAC for Pacific ocean perch in the Western Regulatory Area of the GOA has been achieved. Therefore, NMFS is requiring that further catches of Pacific ocean perch in the Western Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the amount of the 1999 TAC for Pacific ocean perch in the Western Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to public interest. The fleet has taken the amount of the 1999 TAC for Pacific ocean perch in the Western Regulatory Area of the GOA. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action cannot 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 § 679.20 and is exempt from review under E.O. 12866.

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

Dated: September 8, 1999.

Richard W. Surdi,

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

[FR Doc. 99–23806 Filed 9–8–99; 4:59 pm]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 090899C]

Fisheries of the Exclusive Economic Zone Off Alaska; Shortraker and Rougheye Rockfish in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National

Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of shortraker and rougheye rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of shortraker and rougheye rockfish in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the amount of the 1999 total allowable catch (TAC) of shortraker and rougheye rockfish in this area has been achieved.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 8, 1999, until 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson 907–481–1780 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 Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) established the amount of the 1999 TAC of shortraker and rougheye rockfish in the Western Regulatory Area of the GOA as 160 metric tons. See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the amount of the 1999 TAC for shortraker and rougheye rockfish in the Western Regulatory Area of the GOA has been achieved. Therefore, NMFS is requiring that further catches of shortraker and rougheye rockfish in the Western Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the amount of the 1999 TAC for shortraker and rougheye rockfish in the Western Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. The fleet has taken the amount of the 1999 TAC for shortraker and rougheye rockfish in the Western Regulatory Area of the GOA. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action cannot 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 § 679.20 and is exempt from review under E.O. 12866.

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

Dated: September 8, 1999.

Richard W. Surdi,

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

[FR Doc. 99–23805 Filed 9–8–99; 4:59 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 090999A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

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

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment closing the C fishing season for pollock in Statistical Area 610 effective 1200 hrs, Alaska local time (A.l.t.), September 9, 1999, and opening the D fishing season for pollock in Statistical Area 610 effective 1200 hrs, A.l.t., September 14, 1999. This adjustment is necessary to manage the C seasonal allowance of the pollock total allowable catch (TAC) and allow the D fishing season to begin in Statistical Area 610 of the Gulf of Alaska (GOA).

DATES: The C fishing season for pollock in Statistical Area 610 will close 1200 hrs, A.l.t., September 9, 1999, and directed fishing for pollock in Statistical Area 610 will be opened at 1200 hrs, A.l.t., September 14, 1999. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 24, 1999.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

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 emergency interim rule (EIR) establishing Steller sea lion protection measures for pollock off Alaska (64 FR 3437, January 22, 1999 and 64 FR 39087, July 21, 1999) defines the C fishing season for pollock in Statistical Area 610 of the GOA as starting from 1200 hrs, A.l.t., September 1, 1999, until the directed fishery is closed or 1200 hrs, A.l.t., October 1, 1999, whichever comes first. The D fishing season is to begin 5 days after the closure of the C fishing season in Statistical Area 610.

NMFS issued an inseason adjustment effective September 1, 1999 for Statistical Area 610, limiting the initial opening of the C season fishery to 6 hours in accordance with § 679.25(a)(1)(i)(64 FR 48331, September 3, 1999).

NMFS also extended the C fishing season by inseason adjustment to delay the start of the D fishing season until the agency had determined whether sufficient amounts of the C season allowance remained unharvested to allow another opening within the C fishing season prior to the harvest of the pollock authorized for the D season. NMFS has determined that the C seasonal allowance of pollock has been taken and is closing the C fishing season in Statistical Area 610. Under § 679.23 (d)(3)(iv) the D season fishery for Statistical Area 610 will open 5 days after the closure of the C fishing season.

In accordance with § 679.25(a)(2)(iii), NMFS has determined that closing the C fishing season is the least restrictive management adjustment that will allow the D fishing season to begin given that the C seasonal allowance of the pollock TAC has been achieved. Pursuant to § 679.25(b)(2), NMFS has considered data regarding catch per unit effort and rate of harvest in making this adjustment.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for

good cause that providing prior notice and public comment or

delaying the effective date of this action is impracticable and contrary to the public interest. Without this inseason adjustment, NMFS could not allow the D seasonal allowance of the pollock TAC in Statistical Area 610 of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the preceding address until September 24, 1999.

This action is required by §§ 679.20 and 679.25 and is exempt from review under E.O. 12866.

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

Dated: September 9, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–23920 Filed 9–9–99; 4:28 pm]

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Proposed Rules

Federal Register
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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.

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–1040]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is requesting comment on proposed revisions to Regulation B, which implements the Equal Credit Opportunity Act. The Board previously published a proposed rule that permits creditors to use electronic communication (for example, communication via personal computer and modem) to provide disclosures required by the act and regulation, if the applicant agrees to such delivery. (A similar rule was also proposed under various other consumer financial services regulations administered by the Board.) In response to comments received on the proposals, the Board is publishing for comment an alternative proposal on the electronic delivery of disclosures, together with proposed commentary that would provide further guidance on electronic communication issues. The Board is also publishing for comment proposed revisions to allow disclosures in other languages.

DATES: Comments must be received by October 29, 1999.

ADDRESSES: Comments, which should refer to Docket No. R–1040, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 between 9:00 a.m. and 5:00 p.m., pursuant to § 261.12, except as provided in § 261.14 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Jane E. Ahrens, Senior Counsel, or Natalie E. Taylor, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452–3667 or (202) 452–2412. Users of Telecommunications Device for the Deaf (TDD) *only*, contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691 *et seq.*, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, race, color, religion, national origin, marital status, age (provided the applicant has the capacity to contract), because all or part of an applicant's income derives from public assistance, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Board's Regulation B (12 CFR part 202) implements the act.

The ECOA and Regulation B require a number of disclosures to be provided in writing, presuming that creditors provide paper documents. Under many laws that call for information to be in writing, information in electronic form is considered to be "written." Information produced, stored, or communicated by computer is also generally considered to be a writing, where visual text is involved.

In May 1996, the Board revised Regulation E (Electronic Fund Transfers) following a comprehensive review. During that process, the Board determined that electronic communication for delivery of information required by federal laws governing financial services could effectively reduce compliance costs without adversely affecting consumer protections. Consequently, the Board simultaneously issued a proposed rule to permit financial institutions to use electronic communication to deliver disclosures that Regulation E requires to be given in writing. (61 FR 19696, May 2, 1996.) The 1996 proposal required that disclosures be provided in a form the consumer may retain, a requirement that institutions could satisfy by providing information in a format that may be printed or downloaded. The proposed rule also allowed consumers to request a paper copy of a disclosure for up to one year after its original delivery.

Following a review of the comments, on March 25, 1998, the Board issued an interim rule under Regulation E (the "interim rule"), 63 FR 14528. The Board also published proposals under Regulations DD (Truth in Savings), 63 FR 14533, M (Consumer Leasing), 63 FR 14538, Z (Truth in Lending), 63 FR 14548, and B (Equal Credit Opportunity), 63 FR 14552, (collectively, the "March 1998 proposed rules"). The rules would apply to financial institutions, creditors, lessors, and other entities that are required to give disclosures to consumers and others. (For ease of reference, this background section uses the terms "financial institutions," "institutions," and "consumers.") The interim rule and the March 1998 proposed rules were similar to the May 1996 proposed rule; however, they did not require financial institutions to provide paper copies of disclosures to a consumer upon request if the consumer previously agreed to receive disclosures electronically. The Board believed that most institutions would accommodate consumer requests for paper copies when feasible or redeliver disclosures electronically; and the Board encouraged financial institutions to do so.

The March 1998 proposed rules and the interim rule permitted financial institutions to provide disclosures electronically if the consumer agreed, with few other requirements. The rule was intended to provide flexibility and did not specify any particular method for obtaining a consumer's agreement. Whether the parties had an agreement would be determined by state law. The proposals and the interim rule did not preclude a financial institution and a consumer from entering into an agreement electronically, nor did they prescribe a formal mechanism for doing so.

The Board received approximately 200 written comments on the interim rule and the March 1998 proposed rules. The majority of comments were submitted by financial institutions and their trade associations. Industry commenters generally supported the use of electronic communication to deliver

information required by the ECOA and Regulation B. Nevertheless, many sought specific revisions and additional guidance on how to comply with the disclosure requirements in particular transactions and circumstances.

Industry commenters were especially concerned about the condition that a consumer had to "agree" to receive information by electronic communication, because the rule did not specify a method for establishing that an "agreement" was reached. These commenters believed that relying on state law created uncertainty about what constitutes an agreement and, therefore, potential liability for noncompliance. To avoid uncertainty over which state's laws apply, some commenters urged the Board to adopt a federal minimum standard for agreements or for informed consent to receive disclosures by electronic communication. These commenters believed that such a standard would avoid the compliance burden associated with tailoring legally binding "agreements" to the contract laws of all jurisdictions where electronic communication may be sent.

Consumer advocates generally opposed the March 1998 interim rule and proposed rules. Without additional safeguards, they believed, consumers may not be provided with adequate information about electronic communication before an "agreement" is reached. They also believed that promises of lower costs could induce consumers to agree to receive disclosures electronically without a full understanding of the implications. To avoid such problems, they urged the Board, for example, either to require institutions to disclose to consumers that their account with the institution will not be adversely affected if they do not agree to receive electronic disclosures, or to permit institutions to offer electronic disclosures only to consumers who initiate contact with the institution through electronic communication. They also noted that some consumers will likely consent to electronic disclosures believing that they have the technical capability to retrieve information electronically, but might later discover that they are unable to do so. They questioned consumers' willingness and ability to access and retain disclosures posted on Internet websites, and expressed their apprehension that the goals of federally mandated disclosure laws will be lost.

Consumer advocates and others were particularly concerned about the use of electronic disclosures in connection with home-secured loans and certain other transactions that consumers typically consummate in person (citing as examples automobile loans and leases, short-term "payday" loans, or home improvement financing contracts resulting from door-to-door sales). They asserted that there is little benefit to eliminating paper disclosures in such transactions and that allowing electronic disclosures in those cases could lead to abusive practices. Accordingly, consumer advocates and others believed that paper disclosures should always accompany electronic disclosures in mortgage loans and certain other transactions, and that consumers should have the right to obtain paper copies of disclosures upon request for all types of transactions (deposit account, credit card, loan or lease, and other transactions).

A final issue raised by consumer advocates was the integrity of disclosures sent electronically. They stated that there may be instances when the consumer and the institution disagree on the terms or conditions of an agreement and consumers may need to offer electronic disclosures as proof of the agreed-upon terms and to enforce rights under consumer protection laws. Thus, to assure that electronic documents have not been altered and that they accurately reflect the disclosures originally sent, consumer advocates recommended that the Board require that electronic disclosures be authenticated by an independent third party.

The Board's Consumer Advisory Council considered the electronic delivery of disclosures in 1998 and again in 1999. Many Council members shared views similar to those expressed in written comment letters on the 1998 proposals. For example, some Council members expressed concern that the Board was moving too quickly in allowing electronic disclosures for certain transactions, and suggested that the Board might go forward with electronic disclosures for deposit accounts while proceeding more slowly on credit and lease transactions. Others expressed concern about consumer access and consumers' ability to retain electronic disclosures. They believed that, without specific guidance from the Board, institutions would provide electronic disclosures without knowing whether consumers could retain or access the disclosures, and without establishing procedures to address technical malfunctions or nondelivery. The Council also discussed the integrity and security of electronic documents.

II. Overview of Proposed Revisions

Based on a review of the comments and further analysis, the Board is requesting comment on a modified proposed rule that is more detailed than the interim rule and March 1998 proposed rules. It is intended to provide specific guidance for creditors that choose to use electronic communication to comply with Regulation B's requirements to provide written disclosures, and to ensure effective delivery of disclosures to applicants through this medium. Though detailed, the proposal provides flexibility for compliance with the electronic communication rules. The modified proposal recognizes that some disclosures may warrant different treatment under the rule. Where written disclosures are made to consumers who are transacting business in person, these disclosures generally would have to be made in paper form. The modified proposal for Regulation B would not contain this in-person exception as the Board does not believe the exception is necessary given the timing and delivery provision for providing information, as discussed below under 4(e)(2).

The Board is soliciting comment on a modified approach that addresses both industry and consumer group concerns. Under the proposal, creditors would have to provide specific information about how the applicant can receive and retain electronic disclosures—through a standardized disclosure statement—before obtaining applicants' acceptance of such delivery, with some exceptions. If they satisfy these requirements and obtain applicants' affirmative consent, creditors would be permitted to use electronic communication. As a general rule a creditor would be permitted to offer the option of receiving electronic disclosures to all applicants, whether they initially contact the creditor by electronic communication or otherwise.

Creditors would have the option of delivering disclosures to an e-mail address designated by the applicant or making disclosures available at another location such as the creditor's website, for printing or downloading. If the disclosures are posted at a website location, creditors generally must notify applicants at an e-mail address about the availability of the information. (Creditors may offer consumers the option of receiving alert notices at a postal address.) The disclosures must remain available at that site for 90 days.

Disclosures provided electronically would be subject to a "clear and conspicuous" standard, must be in a form that the applicant can retain, and would be subject to the format and timing rules in Regulation B. For example, a creditor that provides electronic disclosures and denies an applicant's credit request must provide an electronic adverse action notice

within 30 days after receiving a completed application.

Creditors generally must provide a means for applicants to confirm the availability of equipment to receive and retain electronic disclosure documents. A creditor would not otherwise have a duty to verify applicants' actual ability to receive, print, or download the disclosures. Some commenters suggested that creditors should be required to verify delivery by return receipt. The Board solicits comment on the need for such a requirement and the feasibility of that approach.

As previously mentioned, consumer advocates and others have expressed concerns that electronic documents can be altered more easily than paper documents. The issue of the integrity and security of electronic documents affects electronic commerce in general and is not unique to the written disclosures required under the consumer protection laws administered by the Board. Applicants' ability to enforce rights under the consumer protection laws could be impaired in some cases, however, if the authenticity of disclosures that they retain cannot be demonstrated. Signatures, notary seals, and other established verification procedures are used to detect alterations for transactions memorialized in paper form. The development of similar devices for electronic communication should reduce uncertainty over time about the ability to use electronic documents for resolving disputes.

The Board's rules require creditors to retain evidence of compliance with Regulation B. Specific comment is solicited on the feasibility of complying with a requirement that creditors provide disclosures in a format that cannot be altered without detection, or have systems in place capable of detecting whether or not information has been altered, as well as the feasibility of requiring use of independent certification authorities to verify disclosure documents.

Elsewhere in today's **Federal Register**, the Board is publishing similar proposals for comment under Regulations E, M, Z, and DD. In a separate notice the Board is publishing an interim rule under Regulation DD, which implements the Truth in Savings Act, to permit depository institutions to use electronic communication to deliver disclosures on periodic statements. For ease of reference, the Board has assigned new docket numbers to the modified proposals published today.

III. Section-by-Section Analysis

Pursuant to its authority under section 703 of the ECOA, the Board proposes to amend Regulation B to permit creditors to use electronic communication to provide disclosures and other information required by the act and regulation to be in writing. Below is a section-by-section analysis of the rules for providing disclosures by electronic communication, including references to proposed commentary provisions.

Section 202.4 General Rules

4(e) Electronic Communication

4(e)(1) Definition. The definition of the term "electronic communication" in the March 1998 proposed rule remains unchanged. Section 202.4(e)(1) limits the term to a message transmitted electronically that can be displayed on equipment as visual text, such as a message that is displayed on a computer monitor screen. Most commenters supported the term as defined in the March 1998 proposed rule. Some commenters favored a more expansive definition that would encompass communications such as audio and voice response telephone systems. Because the proposal is intended to permit electronic communication to satisfy the statutory requirement for written disclosures, the Board believes visual text is an essential element of the definition.

Commenters asked the Board to clarify the coverage of certain types of communications. A few commenters asked about communication by facsimile. Facsimiles are initially transmitted electronically; the information may be received either in paper form or electronically through software that allows a consumer to capture the facsimile, display it on a monitor, and store it on a computer diskette or drive. Thus, information sent by facsimile may be subject to the provisions governing electronic communication. When disclosures are sent by facsimile, a creditor should comply with the requirements for electronic communication unless it knows that the disclosures will be received in paper form. Proposed comment 4(e)(1)-1 contains this guidance.

4(e)(2) Electronic Communication between Creditor and Applicant. Section 202.4(e)(2) would permit creditors to provide disclosures using electronic communication, if the creditor complies with provisions in new § 202.4(e)(3), discussed below.

1. Presenting Disclosures in a Clear and Conspicuous Format

Currently, Regulation B does not expressly require creditors to present required information in a clear and conspicuous format. In contrast, Regulations DD (Truth in Savings), E (Electronic Fund Transfers), M (Consumer Leasing), and Z (Truth in Lending) all require that information be provided in a clear and conspicuous (or conspicuous or clear and readily understandable) format. Because clarity requirements for written disclosures (whether electronic or not) exist for those regulations, the Board requested comment in the March 1998 proposed rule on whether these requirements should be extended to electronic communication under Regulation B. Also, the Board recently issued a proposed rule for Regulation B as part of its periodic review of regulations. As part of the review, the Board requested comment on whether the "clear and conspicuous" requirement should apply to all—paper or electronic—disclosures and information required by Regulation B. (64 FR 44581, August 16, 1999).

Most commenters to the March 1998 proposed rule suggested that the Board adopt the clear and conspicuous requirement for electronic communication under Regulation B. These commenters noted that the requirements for electronic communication should be consistent among the regulations, and that extension of this requirement to Regulation B would not be burdensome. A few commenters, however, suggested that either the Board adopt the clear and conspicuous requirement for all disclosures under the regulation—paper or electronic—or that it leave the requirement as it is. They argued that imposing a different standard for paper and electronic disclosures might result in applicants receiving disclosures in different formats based on how they apply for credit and for what product they apply.

The proposal would extend a "clear and conspicuous" requirement to electronic communication under Regulation B, consistent with the proposed changes to Regulation B discussed above. See § 202.4(d) of the August 16, 1999 proposed rule for Regulation B (64 FR 44581). The Board does not intend to discourage or encourage specific types of technologies. Regardless of the technology, however, disclosures provided electronically must be presented in a clear and conspicuous format.

When applicants consent to receive disclosures electronically and they confirm that they have the equipment to do so, creditors generally would have no further duty to determine that applicants are able to receive the

disclosures. Creditors do have the responsibility of ensuring the proper equipment is in place in instances where the creditor controls the equipment. Proposed comment 4(e)(2)–1 contains this guidance.

2. Providing Disclosures in a Form the Applicant May Keep

Currently under Regulation B, only one notice (§ 202.9(a)(3)(i)(B), regarding business credit) must be provided in a form the applicant may retain. On the other hand, Regulations DD, E, M, and Z all require that information be provided in a retainable form. In the March 1998 proposed rule, the Board requested comment on whether a retainability requirement should be extended to electronic communication under Regulation B generally.

Most commenters supported a retainability requirement for electronic communication under Regulation B. These commenters noted that the requirements for electronic communication should be as consistent as practicable for all of the regulations, and that extension of this requirement would not be burdensome. Some commenters, however, supported leaving the requirement as it is. They believe a retainability requirement for disclosures sent by electronic communication would discourage the use of electronic communication by creating different rules for disclosures sent by mail and those sent by electronic communication. As part of its August 1999 proposed rule for Regulation B, discussed above, the Board requested comment on whether a "retainability" requirement should apply to all—paper or electronic—disclosures and information required by Regulation B. See § 202.4(d) of the August 16, 1999 Regulation B proposed rule (64 FR 44581).

Under the 1998 proposals and interim rule, a creditor would satisfy the retainability requirement by providing information that can be printed or downloaded. The modified proposal adopts the same approach but also provides that the information must be sent to a specified location to ensure that applicants have an adequate opportunity to retain the information.

Applicants communicate electronically with creditors through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), an applicant may not have the ability at a given time to preserve ECOA disclosures presented on-screen. Therefore, when a creditor provides disclosures by electronic communication, to satisfy the retention requirements, the creditor must send the disclosures to an applicant's e-mail address or other location where information may be retrieved at a later date. Proposed comment 4(e)(2)–2 contains this guidance; see also the discussion under § 202.4(e)(4), below. In instances where a creditor controls an electronic terminal used to provide electronic disclosures, a creditor may provide equipment for the applicant to print a paper copy in lieu of sending the information to the applicant's e-mail address or posting the information at another location such as the creditor's website. See proposed comment 4(e)(2)–1.

3. Timing

Creditors must ensure that electronic disclosures comply with all relevant timing requirements of the regulation. For example, under §§ 202.9(a)(1) and (2), a creditor must send a written notice within 30 days after receiving a completed application, if the creditor takes adverse action.

To illustrate the timing requirements for electronic communication, assume that a consumer is interested in obtaining a loan and uses a personal computer at home to access the creditor's website on the Internet. The creditor provides disclosures to the consumer about the use of electronic communication (the § 202.4(e)(3) disclosures discussed below) and the consumer responds affirmatively. If the creditor's procedures permit the consumer to apply for a loan at that time, and the creditor denies the credit request, the written notice required by § 202.9 must be provided. Under the proposal, the creditor would satisfy the regulation's timing requirements if, within 30 days of receiving the completed application, an adverse action notice is sent to the applicant's e-mail address, or is posted on the creditor's website and the applicant is informed that the notice is available.

If an applicant is transacting business at a creditor's website and is at a point in the transaction where in order to go forward the applicant must receive disclosures, the disclosures must appear on the screen. By displaying the disclosures on the screen, creditors meet the timing and delivery requirements of the regulation. For example, if an applicant applies over the Internet for a loan to purchase a principal dwelling, the request for monitoring information required by § 202.13(a) and the disclosure required by § 202.13(c) concerning the collection of the information must appear on the screen before the application can be sent to the creditor for processing. The timing requirements for requesting the information and providing the disclosure would not be met if, in this example, the creditor permitted the applicant to complete the application and apply for credit and sent the request for monitoring information and the applicable disclosure to an e-mail address thereafter. Proposed comment 4(e)(2)–3 contains this guidance.

4(e)(3) Disclosure Notice. Section 202.4(e)(3) would identify the specific steps required before a creditor could use electronic communication to satisfy the regulation's disclosure requirements. Proposed Sample Forms C–11, C–12, C–14, and C–15 are published to aid compliance with these requirements.

4(e)(3)(i) Notice by Creditor. Section 202.4(e)(3)(i) outlines the information that creditors must provide before electronic disclosures can be given. The creditor must: (1) Describe the information to be provided electronically and specify whether the information is also available in paper form or whether the credit product is offered only with electronic disclosures; (2) identify the address or location where the information will be provided electronically, and if it will be available at a location other than the applicant's electronic address, specify for how long and where it can be obtained once that period ends; (3) specify any technical requirements for receiving and retaining information sent electronically, and provide a means for the applicant to confirm the availability of equipment meeting those requirements; and (4) provide a toll-free telephone number and, at the creditor's option, an electronic or a postal address for questions about receiving electronic disclosures or for updating applicants' electronic addresses, and for seeking assistance with technical or other difficulties (see proposed comments to 4(e)(3)(i)). The Board requests comment on whether other information should be disclosed regarding the use of electronic communication and on any format changes that might improve the usefulness of the notice for applicants.

Under the proposal, the § 202.4(e)(3)(i) disclosures must be provided, as applicable, before the creditor uses electronic communication to deliver any information required by the regulation. The approach of requiring a standardized disclosure statement addresses, in several ways, the concern that applicants may be steered into using electronic communication without fully understanding the implications. Under this approach, the specific disclosures that would be delivered electronically

must be identified, and applicants must be informed whether there is also an option to receive the information in paper form. Applicants must provide an e-mail address where one is required. Technical requirements must also be stated, and applicants must affirm that their equipment meets the requirements, and that they have the capability of retaining electronic disclosures by downloading or printing them (see proposed comment 4(e)(3)–1). Thus, the § 202.4(e)(3)(i) disclosures should allow applicants to make informed judgments about receiving electronic disclosures.

Some commenters requested clarification of whether a creditor may use electronic communication to provide some required disclosures while using paper for others. The proposed rule would permit creditors to do so; the disclosure given under § 202.4(e)(3)(i) must specify which ECOA disclosures will be provided electronically.

Commenters requested further guidance on a creditor's obligation under the regulation if the applicant chooses not to receive information by electronic communication. A creditor could offer an applicant the option of receiving disclosures in paper form, but it would not be required to do so. A creditor could establish credit products for which disclosures are given only by electronic communication. Section 202.4(e)(3)(i)(A) would require creditors to tell applicants whether or not they have the option to receive disclosures in paper form. Section 202.4(e)(3)(i)(D) would require creditors to provide a toll-free number that applicants could use to inform creditors if they wish to discontinue receiving electronic disclosures. In such cases the creditor must inform the applicant whether the credit product is also available with disclosures in paper form. Proposed sample notices in which the applicant has an option to receive electronic or paper disclosures (Form C–14) or electronic disclosures only (Form C–15) are contained in appendix C.

4(e)(3)(ii) Response by Applicant. Proposed § 202.4(e)(3)(ii) would require creditors to provide a means for the applicant to affirmatively indicate that information may be provided electronically. Examples include a "check box" on a computer screen or a signature line (for requests made in paper form). The requirement is intended to ensure that applicants' consent is established knowingly and voluntarily, and that consent to receive electronic disclosures is not inferred from the submission of an application for credit. See proposed comment 4(e)(3)(ii)–1.

4(e)(3)(iii) Changes. Creditors would be required to notify applicants about changes to the information that is provided in the notice required by § 202.4(e)(3)(i)—for example, if upgrades to computer software are required. Proposed comment 4(e)(3)(iii)–1 contains this guidance.

The notice must include the effective date of the change and be provided before that date. Proposed comment 4(e)(3)(iii)–2 would provide that the notice must be sent a reasonable period of time before the effective date of the change. Although the number of days that constitutes reasonable notice may vary, depending on the type of change involved, the comment would provide creditors with a safe harbor: fifteen days' advance notice would be considered a reasonable time in all cases. The same time period is stated in similar proposals under Regulations E, Z, and DD published in today's **Federal Register**. Comment is requested on whether a safe harbor of 15 days is an appropriate time period, and whether a uniform period for changes involving electronic communication is desirable. Proposed comment 4(e)(3)(iii)–3 contains guidance on delivery requirements for the notice of change.

The notice of a change must also include a toll-free telephone number or, at the creditor's option, an address for questions about receiving electronic disclosures. For example, a consumer may call regarding problems related to a change, such as an upgrade to computer software that is not provided by the creditor. Applicants may also use the toll-free number if they wish to discontinue receiving electronic disclosures. In such cases, the creditor must inform applicants whether the credit product is also available with disclosures in paper form. (See proposed comments 4(e)(3)(iii)–4 through –6).

If the change involves providing additional disclosures by electronic communication, creditors generally would be required to provide the notice in § 202.4(e)(3)(i) and obtain the applicant's consent. That notice would not be required if the creditor previously obtained the applicant's consent to the additional disclosures in its initial notice by disclosing the possibility and specifying which disclosures might be provided electronically in the future. Comment is specifically requested on this approach. A list of additional disclosures may be necessary to ensure that applicants' consent is informed and knowing (provided it does not cause confusion).

4(e)(4) Address or Location to Receive Electronic Communication. Proposed § 202.4(e)(4) identifies addresses and locations where creditors using electronic communication may send information to the applicant. Creditors may send information to an applicant's electronic address, which is defined in proposed comment 4(e)(4)(i)–1 as an e-mail address that the applicant also may use for receiving communications from parties other than the creditor. For notices of action taken, for example, a creditor's responsibility to provide notice under § 202.9 will be satisfied when the notice of action taken is sent to the applicant's electronic address in accordance with the applicable proposed rules concerning delivery of disclosures by electronic communication.

Guidance accompanying the March 1998 proposed rule provided that a creditor would not meet delivery requirements by simply posting information to an Internet site such as a creditor's "home page" without appropriate notice on how applicants can access the information. Industry commenters wanted to retain the flexibility of posting disclosures on an Internet website. They did not object to providing a separate notice alerting applicants about the disclosures' availability but requested more guidance on the issue. Consumer advocates and others expressed concern that the mere posting of information inappropriately places the responsibility to obtain disclosures on applicants, and undermines the purpose of the delivery requirements of the regulation.

The Board recognizes that currently, because of security and privacy concerns associated with data transmissions, a number of creditors may choose to provide disclosures at their websites, where the applicant may retrieve them under secure conditions. Under § 202.4(e)(4), a creditor may make disclosures available to an applicant at a location other than the applicant's electronic address. The creditor must notify the applicant when the information becomes available and identify the credit transaction involved. The notice must be sent to the electronic mail address designated by the applicant; the creditor may, at its option, permit the applicant to designate a postal address. A proposed sample notice (Form C–13) is published below; see also proposed comment 4(e)(4)(ii)–1.

The Board believes it would be inconsistent with the ECOA to require an applicant to initiate a search—for example, to search the website of each creditor with whom the applicant applied for credit—to determine whether a disclosure has been provided.

The proposed approach ensures that an applicant would not be required to check a creditor's website repeatedly, for example, to learn whether the creditor posted a notice of adverse action.

The requirements of the regulation would be met only if the required information is posted on the website and the applicant is notified of its availability in a timely fashion. For example, creditors must provide adverse action notices to applicants within 30 days after receiving a completed application. For an adverse action notice posted on the Internet, a creditor must both post the notice and notify the applicant of its availability within 30 days of receiving a completed application.

Commenters sought guidance on how long disclosures posted at a particular location must be available to applicants. There is a variety of circumstances when an applicant may not be able immediately to access the information due to illness, travel, or computer malfunction, for example. Under § 202.4(e)(4), creditors must post information that is sent to a location other than the applicant's electronic mail address for 90 days. Proposed comment 4(e)(4)(ii)–2 contains this guidance.

Under the modified proposal, creditors that post information at a location other than the applicant's electronic mail address are required—after the 90 day period—to make disclosures available to applicants upon request for a period of not less than 25 months, except as otherwise provided, from the date disclosures are required to be made, consistent with the record retention requirements under § 202.12(b). (See § 202.12(b) of the August 16, 1999 proposed rule for Regulation B (64 FR 44581). The Board requests comment on this approach, including suggestions for alternative means for providing consumers continuing access to disclosures.

4(e)(5) Applicant Use of Electronic Communication. Proposed § 202.4(e)(5) would clarify applicants' ability to provide certain information to creditors by electronic communication. Regulation B provides that an applicant, upon written request, is entitled to receive a copy of an appraisal report under § 202.5a and a statement of specific reasons for adverse action under § 202.9(a)(3)(ii). Under the proposal, applicants generally would have the option to use electronic communication for these written notices if the applicant has chosen to receive information by electronic communication. Because the applicant's electronic communication serves as written notice, the creditor could not also require paper notice. Creditors could, however, specify a particular electronic address for receiving the notices.

The issue of the applicant's ability to provide certain information to creditors by electronic communication was not raised in the March 1998 proposed rule for Regulation B. In issuing the March 1998 Regulation E interim rule, the Board stated that financial institutions could require paper confirmation of electronic notices in the two instances where the regulation allows written confirmation—stop-payment notices and notices of error. This approach was consistent with guidance provided in the May 1996 proposed rule, where the Board stated that (as in the case of an oral communication) if the consumer sends an electronic communication to the financial institution, the institution could require paper confirmation from the consumer (particularly since the consumer was entitled to a paper copy of a disclosure upon request under the May 1996 proposal).

Views were mixed on whether financial institutions should be permitted to require paper confirmations of electronic notices. Many industry commenters requested that the Board allow financial institutions to request paper confirmations; some stated that paper confirmations protect both the consumer and the financial institution. Consumer advocates and other commenters believed it would be unfair to require paper confirmation of an electronic communication from consumers who receive electronic communication from a financial institution.

Based upon the comments received and further analysis, and subject to certain limitations discussed below, the Board is proposing that applicants be permitted to provide electronically any information that an applicant is required to provide a creditor to exercise the applicant's rights under the regulation, such as the request for a written statement of reasons. If a creditor uses electronic communication to provide disclosures about appraisal rights under § 202.5a and notices under § 202.9, it is appropriate to allow applicants to use electronic communication to provide notices to the creditor. If, however, a creditor limits its use of electronic communication to the delivery of information required at the time the application is taken—the disclosure concerning the collection of monitoring information for home-secured loans—creditors would not be required to accept electronic communication from applicants.

4(e)(5)(ii) Creditor's Designation of Address. Section 202.4(e)(5)(ii) would provide that a creditor may designate the electronic address that must be used by an applicant for sending electronic communication as permitted by § 202.4(e)(5)(i).

4(f) Foreign Language Disclosures. To provide consistency among the regulations, the Board would add guidance permitting disclosures to be made in languages other than English (provided they are available in English upon request). This guidance would be set forth in proposed § 202.4(f).

Appendix C to Part 202—Sample Notification Forms

The Board solicits comment on two proposed sample disclosure forms and three sample notice forms for use by creditors to aid compliance with the disclosure requirements of §§ 202.4(e)(3) and (e)(4). Forms C–11 and C–12 would implement § 202.4(e)(3), regarding the notice that creditors must give prior to using electronic communication to provide required disclosures. Form C–13 would implement § 202.4(e)(4), regarding notices to applicants about the availability of electronic information at locations such as the creditor's website. Use of any modified version of these forms would be in compliance as long as the creditor does not delete information required by the regulation or rearrange the format in a way that affects the substance, clarity, or meaningful sequence of the disclosure. For example, where a creditor combines Regulation B and Regulation Z disclosures for a credit card account, the creditor may provide a single disclosure statement about electronic delivery.

Sample Form C–14 illustrates the disclosures under § 202.4(e)(3). The sample assumes the creditor also offers paper disclosures for applicants who choose not to receive electronic disclosures. Sample Form C–15 assumes that applicants must accept electronic disclosures if they want to apply for the particular credit product.

Other issues

Preemption

A few commenters suggested that any final rule issued by the Board permitting electronic disclosures should explicitly preempt any state law requiring paper disclosures. Under § 202.11(a) of the regulation, state laws are preempted if they are inconsistent with the act and regulation and only to the extent of the inconsistency. The proposed rule would provide creditors with the option of

giving required disclosures by electronic communication as an alternative to paper. There is no apparent inconsistency with the act and regulation if state laws require paper disclosures. The Board will, however, review preemption issues that are brought to the Board's attention. Section 202.11(b)(2) outlines the Board's procedures for determining whether a specific law is preempted, which will guide the Board in any determination requested by a creditor, state, or other interested party following publication of a final rule regarding electronic communication.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R–1040, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation B. Although the proposal would add disclosure requirements with respect to electronic communication, overall, the proposed amendments are not expected to have any significant impact on small entities. A creditor's use of electronic communication to provide disclosures required by the regulation is optional. The proposed rule would give creditors flexibility in providing disclosures. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB number. The OMB control number is 7100–0201.

The collection of information requirements that are relevant to this proposed rulemaking are in 12 CFR part 202. This information is mandatory (15 U.S.C. 1691b(a)(1) and Public Law 104–208, § 2302(a)) to evidence compliance with the requirements of Regulation B and the Equal Credit Opportunity Act. The purpose of the act is to ensure that credit is made available to all creditworthy customers without discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), receipt of public assistance, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1600 *et. seq.*). The respondents/recordkeepers are for-profit financial institutions, including small businesses. Creditors are also required to retain records for 12 to 25 months. This regulation applies to all types of creditors, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would allow creditors the option of using electronic communication (for example, via personal computer and modem) to provide disclosures and other information required by the regulation. Although the proposal would add disclosure requirements with respect to electronic communication, the optional use of electronic communication would likely reduce the paperwork burden of creditors. With respect to state member banks, it is estimated that there are 988 respondents/recordkeepers and an average frequency of 4,765 responses per respondent each year. Therefore, the current amount of annual burden is estimated to be 123,892 hours. There is estimated to be no additional annual cost burden and no capital or start-up cost.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises; however, any information obtained by the Federal Reserve may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522(b)(4), (6) and (8)). The adverse action disclosure is confidential between creditors and the applicants involved.

The Federal Reserve requests comments from creditors, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this proposed regulation would be effective. Comments are invited on: (a) The cost of compliance; (b) ways to enhance the quality, utility, and clarity of the information to be disclosed; and (c) ways to minimize the burden of disclosure on respondents, including through the use of automated disclosure techniques or other forms of information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0201), Washington, DC 20503, with copies of such comments sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 202

Aged, Banks, banking, Civil rights, Credit, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

Text of Proposed Revisions

Certain conventions have been used to highlight proposed changes to Regulation B. New language is shown inside bold-faced arrows.

For the reasons set forth in the preamble, the Board proposes to amend Regulation B, 12 CFR part 202, as set forth below:

PART 202—EQUAL CREDIT OPPORTUNITY (REGULATION B)

1. The authority citation for part 202 would continue to read as follows:

Authority: 15 U.S.C. 1691–1691f.

2. Section 202.4 as proposed to be revised at 64 FR 44595, August 16, 1999, is further amended by adding new paragraphs (e) and (f) to read as follows:

§ 202.4 General rules.

* * * * *

(e) *Electronic communication*—(1) *Definition. Electronic communication* means a message transmitted electronically between an applicant and a creditor in a format that allows visual text to be displayed on equipment such as a personal computer monitor.

(2) *Electronic communication between creditor and applicant.* A creditor that has complied with paragraph (e)(3) of this section may provide by electronic communication any information required by this regulation to be in writing.

(3) *Disclosure notice.* The disclosure notice required by paragraph (e)(3) of this section shall be clear and conspicuous and in a form the consumer may keep, and shall be provided in a manner substantially similar to the applicable sample notice set forth in Appendix C of this part (Sample Forms C–11 and C–12).

(i) *Notice by creditor.* A creditor shall:

(A) Describe the information to be provided electronically and specify whether the information is also available in paper form or whether the credit product is offered only with electronic disclosures;

(B) Identify the address or location where the information will be provided electronically; and if it is made available at a location other than the applicant's electronic address, how long the information will be available, and how it can be obtained once that period ends;

(C) Specify any technical requirements for receiving and retaining information sent electronically, and provide a means for the applicant to confirm the availability of equipment meeting those requirements; and

(D) Provide a toll-free telephone number and, at the creditor's option, an address for questions about receiving electronic disclosures, for updating applicants' electronic addresses, and for seeking technical or other assistance related to electronic communication.

(ii) *Response by applicant.* A creditor shall provide a means for the applicant to accept or reject electronic disclosures.

(iii) *Changes.* (A) A creditor shall notify affected applicants of any change to the information provided in the notice required by paragraph (e)(3)(i) of this section. The notice shall include the effective date of the change and must be provided before that date. The notice shall also include a toll-free telephone number, and, at the creditor's option, an address for questions about receiving electronic disclosures.

(B) In addition to the notice under paragraph (e)(3)(iii)(A) of this section, if the change involves providing additional disclosures by electronic communication, a creditor shall provide the notice in paragraph (e)(3)(i) of this section and obtain the applicant's consent. A notice is not required under paragraph (e)(3)(i) if the creditor's initial notice states that additional disclosures may be provided electronically in the future and specifies which disclosures could be provided.

(4) *Address or location to receive electronic communication.* A creditor that uses electronic communication to provide information required by this regulation shall:

(i) Send the information to the applicant's electronic address; or

(ii) Post the information for at least 90 days at a location such as a website, and send a notice to the applicant when the information becomes available. Thereafter the information shall be available upon request for a period of not less than 25 months, except as otherwise provided, from the date disclosures are required to be made. The notice required by this paragraph (e)(4)(ii) shall identify the credit product or application involved, shall be sent to an electronic address designated by the applicant (or to a postal address, at the creditor's option), and shall be substantially similar to the sample notice set forth in Appendix C of this part (Sample Form C–13).

(5) *Applicant use of electronic communication.* (i) *General.* An applicant may use electronic communication to exercise any right under § 202.5a and § 202.9(a)(3) if the applicant has consented to receive information required by these sections by electronic communication.

(ii) *Creditor's designation of address.* A creditor may designate the electronic address or location that applicants must use if they send electronic communication under this paragraph.

(f) *Foreign language disclosures.* Disclosures may be made in languages other than English, provided they are available in English upon request.◄

3. Appendix C to Part 202 as proposed to be revised at 64 FR 44616, August 16, 1999, is further amended by adding new Forms C–11, C–12, C–13, C–14, and C–15 to read as follows:

Appendix C to Part 202—Sample Notification Forms

* * * * *

Form C–11—Sample Disclosures for Electronic Communication (Disclosures Available in Paper or Electronically)

You can choose to receive important information required by the Equal Credit Opportunity Act in paper or electronically.

Read this notice carefully and keep a copy for your records.

- You can choose to receive the following information in paper form or electronically: (description of specific disclosures to be provided electronically).
- How would you like to receive this information
  - ☐ I want paper disclosures.
  - ☐ I want electronic disclosures.
- [We may provide the following additional disclosures electronically in the future: (description of specific disclosures).]
- [If you choose electronic disclosures, this information will be available at: (specify location) for _____ days. After that, the information will be available upon request (state how to obtain the information). When the information is posted, we will send you a message at the electronic mail address you designate here: (applicant's electronic mail address).]

[If you choose electronic disclosures this information will be sent to the electronic mail address that you designate here: (applicant's electronic mail address).]

- To receive this information you will need: (list hardware and software requirements).

Do you have access to a computer that satisfies these requirements?

☐ Yes ☐ No

- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

☐ Yes ☐ No

- To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, contact us at (telephone number).

Form C–12—Sample Disclosures for Electronic Communication (Disclosures Available Only Electronically)

You will receive important information required by the Equal Credit Opportunity Act electronically.

Read this notice carefully and keep a copy for your records.

- The following information will be provided electronically: (description of specific disclosures to be provided electronically).
- This credit product is not available unless you accept electronic disclosures.
- [We may provide the following additional disclosures electronically in the future: (description of specific disclosures).]
- [If you choose electronic disclosures, this information will be available at: (specify location) for _____ days. After that, the information will be available upon request (state how to obtain the information). When the information is posted, we will send you a message at the electronic mail address you designate here: (applicant's electronic mail address).]

[If you choose electronic disclosures this information will be sent to the electronic mail address that you designate here: (applicant's electronic mail address).]

- To receive this information you will need: (list hardware and software requirements).

Do you have access to a computer that satisfies these requirements?

☐ Yes ☐ No

- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

☐ Yes ☐ No

Do you want this credit product with electronic disclosures?

☐ Yes ☐ No

- To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, contact us at (telephone number).

Form C–13—Sample Notice for Delivery of Information Posted at Certain Locations

Information about your (identify loan application or credit transaction) is now

available at [website address or other location]. The information discusses (describe the disclosure). It will be available for _____ days.

BILLING CODE 6210–01–P

FORM C-14--SAMPLE NOTICE FOR ELECTRONIC COMMUNICATION
(Disclosures Available in Paper or Electronically)

You can choose to receive important information required by the Equal Credit Opportunity Act in paper form or electronically.

Read this notice carefully and keep a copy for your records.

- You can choose to receive the following information in paper form or electronically: Notice of action taken, notice of the right to a written statement of reasons, statement of reasons, notice of the right to receive a copy of an appraisal report, or appraisal report.
- Please indicate how you would like to receive this information:

  ☐ I want paper disclosures ☐ I want electronic disclosures
- If you choose electronic disclosures, this information will be available at our Internet website: *http://www._____.com* for 90 days. After that, the information will be available upon request by contacting us at *1-800-xxx-xxxx*. When the information is posted on our website, we will send you a message at your e-mail address:

  insert address
- To receive this information electronically, you will need: a minimum web browser version of (Browser name). Do you have access to a computer that satisfies these requirements?

  ☐ Yes ☐ No
- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

  ☐ Yes ☐ No
- To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, you may contact us by telephone at *1-800-xxx-xxxx* or by electronic mail at _____*.help@isp.com.*

FORM C-15–SAMPLE NOTICE FOR ELECTRONIC COMMUNICATION
(Disclosures Available Only Electronically)

You will receive important information required by the Equal Credit Opportunity Act electronically.

Read this notice carefully and keep a copy for your records.

- The following information will be provided electronically: Notice of action taken, notice of the right to a written statement of reasons, statement of reasons, notice of the right to receive a copy of an appraisal report, or an appraisal report.
- This credit product is available only if you accept these disclosures electronically.
- Information about your loan application or credit transaction will be available at our Internet website: *http://www._____.com* for 90 days. After that, the information will be available upon request by contacting us at *1-800-xxxx-xxxx*. When the information is posted on our website, we will send you a message at your e-mail address:

  insert address

- To receive this information electronically, you will need: a minimum web browser version of (Browser name). Do you have access to a computer that satisfies these requirements?

  ☐ Yes ☐ No

- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

  ☐ Yes ☐ No

- Do you want this credit product with electronic disclosures?

  ☐ Yes ☐ No

- To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, you may contact us by telephone at *1-800-xxx-xxxx* or by electronic mail at _____*.help@isp.com.*◂

BILLING CODE 6210–01–C

4. Supplement I to Part 202, as proposed to be revised at 64 FR 44618, August 16, 1999, is further amended under *Section 202.4—General Rules* by adding a new paragraph 4(e) *Electronic Communication* to read as follows:

Supplement I to Part 202—Official Staff Interpretations

* * * * *

Section 202.4—General Rules

* * * * *

► 4(e) Electronic Communication

4(e)(1) *Definition.*

1. *Coverage.* Information transmitted by facsimile may be received in paper form or electronically, although the party initiating the transmission may not know at the time the disclosures are sent which form will be used. A creditor that provides disclosures by facsimile should comply with the requirements for electronic communication unless the creditor knows that the disclosures will be received in paper form.

4(e)(2) *Electronic communication between creditor and applicant.*

1. *Disclosures provided on creditor's equipment.* Creditors that control equipment providing electronic disclosures to applicants (for example, computer terminals in a creditor's lobby or kiosks located in public places) must ensure that the equipment satisfies the regulation's requirements to provide disclosures in a clear and conspicuous format and in a form the consumer may keep. A creditor that controls the equipment may provide a printer for applicants' use in lieu of sending the information to the applicant's electronic mail address or posting the information at another location such as the creditor's website.

2. *Retainability.* Creditors must provide electronic disclosures in a retainable format (for example, they can be printed or downloaded). Applicants may communicate electronically with creditors through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), an applicant may not have the ability at a given time to preserve ECOA disclosures presented on-screen. To ensure that applicants have an adequate opportunity to retain the disclosures, the creditor also must send them to the applicant's designated electronic mail address or to another location, for example, on the creditor's website, where the information may be retrieved at a later date.

3. *Timing and delivery.* When an applicant applies for credit on the Internet, for example, in order to meet the timing and delivery requirements, creditors must ensure that disclosures applicable at that time appear on the screen and are in a retainable format. The delivery requirements would not be met if disclosures do not either appear on the screen or if the applicant is allowed to apply for credit before receiving the disclosures. For example, a creditor can provide a link to electronic disclosures appearing on a separate page as long as applicants cannot bypass the link and they are required to access the disclosures before completing the application.

4(e)(3) *Disclosure notice.*

1. *Applicant's affirmative responses.* Even though an applicant accepts electronic disclosures in accordance with § 202.4(e)(3)(ii), a creditor may deliver disclosures by electronic communication only if the applicant provides an electronic address where one is required, and responds affirmatively to questions about technical requirements and the ability to print or download information (see sample forms C–14 and C–15 in appendix C to this part).

Paragraph 4(e)(3)(i)

1. *Toll-free telephone number.* The number must be toll-free for nonlocal calls made from an area code other than the one used in the creditor's dialing area. Alternatively, a creditor may provide any telephone number that allows an applicant to call for information and reverse the telephone charges.

2. *Creditor's address.* Creditors have the option of providing either an electronic or postal address for applicants' use in addition to the toll-free telephone number.

3. *Discontinuing electronic disclosures.* Applicants may use the toll-free number (or optional address) if they wish to discontinue receiving electronic disclosures. In such cases, the creditor must inform applicants whether the credit product is also available with disclosures in paper form.

Paragraph 4(e)(3)(ii)

1. *Nature of consent.* Applicants must agree to receive disclosures by electronic communication knowingly and voluntarily. An agreement to receive electronic disclosures is not implied from an applicant's submission of an application for credit.

Paragraph 4(e)(3)(iii)

1. *Examples.* Examples of changes include a change in technical requirements, such as upgrades to software affecting the creditor's disclosures provided on the Internet.

2. *Timing for notices.* A notice of a change must be sent a reasonable period of time before the effective date of the change. The length of a reasonable notice period may vary, depending on the type of change involved; however, fifteen days is a reasonable time for providing notice in all cases.

3. *Delivery of notices.* A creditor meets the delivery requirements if the notice of a change is sent to the address provided by the applicant for receiving other disclosures. For example, if the applicant provides an electronic address to receive a notice of action taken, the same electronic address may be used for the change notice. The applicant's postal address must be used, however, if the applicant consented to additional disclosures by electronic communication when receiving the initial notice under § 202.4(e)(3)(i), but provided a postal address to receive the notice of action taken.

4. *Toll-free number.* See comment 4(e)(3)(i)–1.

5. *Creditor's address.* See comment 4(e)(3)(i)–2.

6. *Applicant inquiries.* Applicants may use the toll-free number (or optional address) for questions or assistance with problems related to a change, such as an upgrade to computer software, that is not provided by the creditor. Applicants may also use the toll-free number if they wish to discontinue receiving electronic disclosures; in such cases, the creditor must inform applicants whether the credit product is also available with disclosures in paper form.

4(e)(4) *Address or location to receive electronic communication.*

Paragraph 4(e)(4)(i)

1. *Electronic address.* An applicant's electronic address is an electronic mail address that may be used by the applicant for receiving communications transmitted by parties other than the creditor.

Paragraph 4(e)(4)(ii)

1. *Identifying application or transaction involved.* A creditor is not required to identify a loan application or credit transaction by reference to a number. For example, where the applicant has not applied for credit with the creditor before, and no confusion would result, the creditor may refer to "your credit card application," or "your home equity line application."

2. *Availability.* Information that is not sent to an applicant's electronic mail address must be available for at least 90 days from the date the information becomes available or from the date the notice required by § 202.4(e)(4)(ii) is sent to the applicant, whichever occurs later.◄

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 31, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–23137 Filed 9–13–99; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–1041]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is requesting comment on proposed revisions to Regulation E, which implements the Electronic Fund Transfer Act. The Board previously published an interim rule that permits financial institutions to use electronic communication (for example, communication via personal computer and modem) to provide disclosures required by the act and regulation, if the consumer agrees to such delivery. (A similar rule was also proposed under various other consumer financial services and fair lending regulations administered by the Board.) In response to comments received on the interim rule (and the proposals), the

Board is publishing for comment an alternative proposal on the electronic delivery of disclosures, together with proposed commentary that would provide further guidance on electronic communication issues. The interim rule remains in effect. The Board is also publishing for comment technical amendments involving error resolution notices.

DATES: Comments must be received by October 29, 1999.

ADDRESSES: Comments, which should refer to Docket No. R–1041, may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 between 9:00 a.m. and 5:00 p.m., pursuant to § 261.12, except as provided in § 261.14 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Michael L. Hentrel, Staff Attorney, or John C. Wood, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667. Users of Telecommunications Device for the Deaf (TDD) *only,* contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Electronic Fund Transfer Act (EFTA), 15 U.S.C. 1693 *et seq.*, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The Board's Regulation E (12 CFR part 205) implements the act. Types of transfers covered by the act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale terminal, automated clearinghouse, telephone bill-payment plan, or home-banking program. The act and regulation prescribe restrictions on the unsolicited issuance of ATM cards and other access devices; disclosure of terms and conditions of an EFT service; documentation of EFTs by means of terminal receipts and periodic account statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFTs.

The EFTA and Regulation E require a number of disclosures to be provided in writing, presuming that institutions provide paper documents. Under many laws that call for information to be in writing, information in electronic form is considered to be "written." Information produced, stored, or communicated by computer is also generally considered to be a writing, where visual text is involved.

In May 1996, the Board revised Regulation E (Electronic Fund Transfers) following a comprehensive review. During that process, the Board determined that electronic communication for delivery of information required by federal laws governing financial services could effectively reduce compliance costs without adversely affecting consumer protections. Consequently, the Board simultaneously issued a proposed rule to permit financial institutions to use electronic communication to deliver disclosures that Regulation E requires to be given in writing. (61 FR 19696, May 2, 1996.) The 1996 proposal required that disclosures be provided in a form the consumer may retain, a requirement that institutions could satisfy by providing information in a format that may be printed or downloaded. The proposed rule also allowed consumers to request a paper copy of a disclosure for up to one year after its original delivery.

Following a review of the comments, on March 25, 1998, the Board issued an interim rule under Regulation E (the "interim rule"), 63 FR 14528. The Board also published proposals under Regulations DD (Truth in Savings), 63 FR 14533, M (Consumer Leasing), 63 FR 14538, Z (Truth in Lending), 63 FR 14548, and B (Equal Credit Opportunity), 63 FR 14552, (collectively, the "March 1998 proposed rules"). The rules would apply to financial institutions, creditors, lessors, and other entities that are required to give disclosures to consumers and others. (For ease of reference this background section uses the terms "financial institutions," "institutions," and "consumers.") The interim rule and the March 1998 proposed rules were similar to the May 1996 proposed rule; however, they did not require financial institutions to provide paper copies of disclosures to a consumer upon request if the consumer previously agreed to receive disclosures electronically. The Board believed that most institutions would accommodate consumer requests for paper copies when feasible or redeliver disclosures electronically; and the Board encouraged financial institutions to do so.

The March 1998 proposed rules and the interim rule permitted financial institutions to provide disclosures electronically if the consumer agreed, with few other requirements. The rule was intended to provide flexibility and did not specify any particular method for obtaining a consumer's agreement. Whether the parties had an agreement would be determined by state law. The proposals and the interim rule did not preclude a financial institution and a consumer from entering into an agreement electronically, nor did they prescribe a formal mechanism for doing so.

The Board received approximately 200 written comments on the interim rule and the March 1998 proposed rules. The majority of comments were submitted by financial institutions and their trade associations. Industry commenters generally supported the use of electronic communication to deliver information required by the EFTA and Regulation E. Nevertheless, many sought specific revisions and additional guidance on how to comply with the disclosure requirements in particular transactions and circumstances.

Industry commenters were especially concerned about the condition that a consumer had to "agree" to receive information by electronic communication, because the rule did not specify a method for establishing that an "agreement" was reached. These commenters believed that relying on state law created uncertainty about what constitutes an agreement and, therefore, potential liability for noncompliance. To avoid uncertainty over which state's laws apply, some commenters urged the Board to adopt a federal minimum standard for agreements or for informed consent to receive disclosures by electronic communication. These commenters believed that such a standard would avoid the compliance burden associated with tailoring legally binding "agreements" to the contract laws of all jurisdictions where electronic communication may be sent.

Consumer advocates generally opposed the March 1998 interim rule and proposed rules. Without additional safeguards, they believed, consumers may not be provided with adequate information about electronic communication before an "agreement" is reached. They also believed that promises of lower costs could induce consumers to agree to receive disclosures electronically without a full understanding of the implications. To avoid such problems, they urged the

Board, for example, either to require institutions to disclose to consumers that their account with the institution will not be adversely affected if they do not agree to receive electronic disclosures, or to permit institutions to offer electronic disclosures only to consumers who initiate contact with the institution through electronic communication. They also noted that some consumers will likely consent to electronic disclosures believing that they have the technical capability to retrieve information electronically, but might later discover that they are unable to do so. They questioned consumers' willingness and ability to access and retain disclosures posted on Internet websites, and expressed their apprehension that the goals of federally mandated disclosure laws will be lost.

Consumer advocates and others were particularly concerned about the use of electronic disclosures in connection with home-secured loans and certain other transactions that consumers typically consummate in person (citing as examples automobile loans and leases, short-term "payday" loans, or home improvement financing contracts resulting from door-to-door sales). They asserted that there is little benefit to eliminating paper disclosures in such transactions and that allowing electronic disclosures in those cases could lead to abusive practices. Accordingly, consumer advocates and others believed that paper disclosures should always accompany electronic disclosures in mortgage loans and certain other transactions, and that consumers should have the right to obtain paper copies of disclosures upon request for all types of transactions (deposit account, credit card, loan or lease, and other transactions).

A final issue raised by consumer advocates was the integrity of disclosures sent electronically. They stated that there may be instances when the consumer and the institution disagree on the terms or conditions of an agreement and consumers may need to offer electronic disclosures as proof of the agreed-upon terms and to enforce rights under consumer protection laws. Thus, to assure that electronic documents have not been altered and that they accurately reflect the disclosures originally sent, consumer advocates recommended that the Board require that electronic disclosures be authenticated by an independent third party.

The Board's Consumer Advisory Council considered the electronic delivery of disclosures in 1998 and again in 1999. Many Council members shared views similar to those expressed in written comment letters on the 1998 proposals. For example, some Council members expressed concern that the Board was moving too quickly in allowing electronic disclosures for certain transactions, and suggested that the Board might go forward with electronic disclosures for deposit accounts while proceeding more slowly on credit and lease transactions. Others expressed concern about consumer access and consumers' ability to retain electronic disclosures. They believed that, without specific guidance from the Board, institutions would provide electronic disclosures without knowing whether consumers could retain or access the disclosures, and without establishing procedures to address technical malfunctions or nondelivery. The Council also discussed the integrity and security of electronic documents.

II. Overview of Proposed Revisions

Based on a review of the comments and further analysis, the Board is requesting comment on a modified proposed rule that is more detailed than the interim rule and March 1998 proposed rules. It is intended to provide specific guidance for institutions that choose to use electronic communication to comply with Regulation E's requirements to provide written disclosures, and to ensure effective delivery of disclosures to consumers through this medium. Though detailed, the proposal provides flexibility for compliance with the electronic communication rules. The modified proposal recognizes that some disclosures may warrant different treatment under the rule. Where written disclosures are made to consumers who are transacting business in person, these disclosures generally would have to be made in paper form.

The Board is soliciting comment on a modified approach that addresses both industry and consumer group concerns. Under the proposal, financial institutions would have to provide specific information about how the consumer can receive and retain electronic disclosures—through a standardized disclosure statement—before obtaining consumers' acceptance of such delivery, with some exceptions. If they satisfy these requirements and obtain consumers' affirmative consent, financial institutions would be permitted to use electronic communication. As a general rule an institution would be permitted to offer the option of receiving electronic disclosures to all consumers, whether they initially contact the institution by electronic communication or otherwise. To address concerns about potential abuses, however, the proposal provides that if a consumer contracts for an EFT service in person, initial disclosures must be given in paper form.

Financial institutions would have the option of delivering disclosures to an e-mail address designated by the consumer or making disclosures available at another location such as the institution's website, for printing or downloading. If the disclosures are posted at a website location, financial institutions generally must notify consumers at an e-mail address about the availability of the information. (Financial institutions may offer consumers the option of receiving alert notices at a postal address.) The disclosures must remain available at that site for 90 days.

Disclosures provided electronically would be subject to the "clear and readily understandable" standard, and the existing format, timing, and retainability rules in Regulation E. For example, to satisfy the timing requirement, if disclosures are due at the time a consumer contracts for an EFT service, the disclosures would have to appear on the screen before the consumer could complete the transaction.

Financial institutions generally must provide a means for consumers to confirm the availability of equipment to receive and retain electronic disclosure documents. A financial institution would not otherwise have a duty to verify consumers' actual ability to receive, print, or download the disclosures. Some commenters suggested that institutions should be required to verify delivery by return receipt. The Board solicits comment on the need for such a requirement and the feasibility of that approach.

As previously mentioned, consumer advocates and others have expressed concerns that electronic documents can be altered more easily than paper documents. The issue of the integrity and security of electronic documents affects electronic commerce in general and is not unique to the written disclosures required under the consumer protection laws administered by the Board. Consumers' ability to enforce rights under the consumer protection laws could be impaired in some cases, however, if the authenticity of disclosures that they retain cannot be demonstrated. Signatures, notary seals, and other established verification procedures are used to detect alterations for transactions memorialized in paper form. The development of similar devices for electronic communication should reduce uncertainty over time

about the ability to use electronic documents for resolving disputes.

The Board's rules require financial institutions to retain evidence of compliance with Regulation E. Specific comment is solicited on the feasibility of complying with a requirement that financial institutions provide disclosures in a format that cannot be altered without detection, or have systems in place capable of detecting whether or not information has been altered, as well as the feasibility of requiring use of independent certification authorities to verify disclosure documents.

The interim rule for Regulation E adopted by the Board in 1998 remains in effect. To the extent the interim rule is modified when final action is taken on the current proposal, the Board will provide a reasonable time period before the mandatory compliance date for any new requirements.

Elsewhere in today's **Federal Register**, the Board is publishing similar proposals for comment under Regulations B, M, Z, and DD. In a separate notice the Board is publishing an interim rule under Regulation DD, which implements the Truth in Savings Act, to permit depository institutions to use electronic communication to deliver disclosures on periodic statements. For ease of reference, the Board has assigned new docket numbers to the modified proposals published today.

III. Section-by-Section Analysis

Pursuant to its authority under section 904 of the EFTA, the Board proposes to amend Regulation E to permit institutions to use electronic communication to provide the information required by this regulation in writing. Below is a section-by-section analysis of the rules for providing disclosures by electronic communication, including references to proposed commentary provisions.

Section 205.4 General Disclosure Requirements; Jointly Offered Services

4(a) Form of Disclosures

4(a)(2) Foreign Language Disclosures

To provide consistency among the regulations, the guidance currently contained in comment 4(a)–2 permitting disclosures to be made in languages other than English (provided they are available in English upon request) would be set forth in a new § 205.4(a)(2).

4(c) Electronic Communication

4(c)(1) Definition

The definition of the term "electronic communication" in the interim rule remains unchanged. Section 205.4(c)(1) limits the term to a message transmitted electronically that can be displayed on equipment as visual text, such as a message that is displayed on a computer monitor screen. Most commenters supported the term as defined in the interim rule. Some commenters favored a more expansive definition that would encompass communications such as audio and voice response telephone systems. Because the proposal is intended to permit electronic communication to satisfy the statutory requirement for written disclosures, the Board believes visual text is an essential element of the definition.

Commenters asked the Board to clarify the coverage of certain types of communications. A few commenters asked about communication by facsimile. Facsimiles are initially transmitted electronically; the information may be received either in paper form or electronically through software that allows a consumer to capture the facsimile, display it on a monitor, and store it on a computer diskette or drive. Thus, information sent by facsimile may be subject to the provisions governing electronic communication. When disclosures are sent by facsimile, a financial institution should comply with the requirements for electronic communication unless it knows that the disclosures will be received in paper form. Proposed comment 4(c)(1)–1 contains this guidance.

4(c)(2) Electronic Communication between Financial Institution and Consumer

Section 205.4(c)(2)(i) would permit financial institutions to provide disclosures using electronic communication, if the institution complies with provisions in new § 205.4(c)(3), discussed below.

1. Presenting Disclosures in a Clear and Readily Understandable Format

The Board does not intend to discourage or encourage specific types of technologies. Regardless of the technology, however, disclosures provided electronically must be presented in a clear and readily understandable format as is the case for all written disclosures under the act and regulation. See § 205.4(a).

When consumers consent to receive disclosures electronically and they confirm that they have the equipment to do so, financial institutions generally would have no further duty to determine that consumers are able to receive the disclosures. Institutions do have the responsibility of ensuring the proper equipment is in place in instances where the institution controls the equipment. Proposed comment 4(c)(2)-1 contains this guidance.

2. Providing Disclosures in a Form the Consumer May Keep

As with other written disclosures, information provided by electronic communication must be in a form the consumer can retain. Under the 1998 proposals and interim rule, a financial institution would satisfy this requirement by providing information that can be printed or downloaded. The modified proposal adopts the same approach but also provides that the information must be sent to a specified location to ensure that consumers have an adequate opportunity to retain the information.

Consumers communicate electronically with financial institutions through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), a consumer may not have the ability at a given time to preserve EFTA disclosures presented on-screen. Therefore, when a financial institution provides disclosures by electronic communication, to satisfy the retention requirements, the institution must send the disclosures to a consumer's e-mail address or other location where information may be retrieved at a later date. Proposed comment 4(c)(2)–2 contains this guidance; see also the discussion under § 205.4(c)(4), below. In instances where an institution controls an electronic terminal used to provide electronic disclosures, an institution may provide equipment for the consumer to print a paper copy in lieu of sending the information to the consumer's e-mail address or posting the information at another location such as the institution's website. See proposed comment 4(c)(2)–1.

3. Timing

Institutions must ensure that electronic disclosures comply with all relevant timing requirements of the regulation. For example, initial disclosures must be provided at the time a consumer contracts for an EFT service or before the first transaction. The rule ensures that consumers have an opportunity to read important information about costs and other terms before contracting for or using the service.

To illustrate the timing requirements for electronic communication, assume that an existing customer of a bank is interested in signing up for an on-line bill-payment service and uses a personal

computer at home to access the bank's website on the Internet. The bank provides disclosures to the consumer about the use of electronic communication (the § 205.4(c)(3) disclosures discussed below) and the consumer responds affirmatively. If the bank's procedures permit the consumer to sign up for and use the EFT service at that time, disclosures required under § 205.7 would have to be provided. Thus, the disclosures must automatically appear on the screen or the consumer must be required to access the information before contracting for the service (or before the first transaction). The timing requirements for providing initial disclosures would not be met if, in this example, the bank permitted the consumer to sign up for and immediately use an EFT service and sent initial disclosures to an e-mail address thereafter. Proposed comment 4(c)(2)–3 contains this guidance.

On the other hand, assume that a consumer requests an EFT service and the institution delays processing the consumer's request until the required disclosures have been delivered by e-mail. In that case the information would not have to also appear on the screen; delivery to the consumer's e-mail address would be sufficient. In either case, the consumer must receive the disclosures before contracting for the service or before the first transaction.

4(c)(2)(ii) In-Person Exception

The proposal contains an exception to the general rule allowing information required by Regulation E to be provided by electronic communication; where the exception applies, paper disclosures would be required. The exception, contained in § 205.4(c)(2)(ii), seeks to address concerns about potential abuses where consumers are transacting business in person but are offered disclosures in electronic form. In such transactions, there is a general expectation that consumers would be given paper copies of disclosures along with paper copies of other documents evidencing the transaction.

Under § 205.4(c)(2)(ii), if a consumer contracts for an EFT service in person, the financial institution must provide initial disclosures in paper form. For example, if a consumer signs up for an ATM card while opening an account at a financial institution, initial disclosures are required before contracting for the card (or the first transaction) and they must be provided in paper form; directing the consumer to disclosures posted on the institution's website would not be sufficient. An institution also complies if a consumer signs up for an EFT service on the Internet and is sent disclosures electronically at or around that time, even though the institution's procedures requires the consumer to visit the institution at a later time to complete the transaction (for example, to complete a signature card). Proposed comment 4(c)(2)(ii)–1 contains this guidance.

4(c)(3) Disclosure Notice

Section 205.4(c)(3) would identify the specific steps required before an institution could use electronic communication to satisfy the regulation's disclosure requirements. Proposed Model Forms A–6 and A–7, and Sample Forms A–9 and A–10 are published to aid compliance with these requirements.

4(c)(3)(i) Notice by Financial Institution

Section 205.4(c)(3)(i) outlines the information that financial institutions must provide before electronic disclosures can be given. The financial institution must: (1) describe the information to be provided electronically and specify whether the information is also available in paper form or whether the EFT service is offered only with electronic disclosures; (2) identify the address or location where the information will be provided electronically, and if it will be available at a location other than the consumer's electronic address, specify for how long and where it can be obtained once that period ends; (3) specify any technical requirements for receiving and retaining information sent electronically, and provide a means for the consumer to confirm the availability of equipment meeting those requirements; and (4) provide a toll-free telephone number and, at the institution's option, an electronic or postal address for questions about receiving electronic disclosures or for updating consumers' electronic addresses, and for seeking assistance with technical or other difficulties (see proposed comments to 4(c)(3)(i)). The Board requests comment on whether other information should be disclosed regarding the use of electronic communication and on any format changes that might improve the usefulness of the notice for consumers.

The Board also solicits comment on the benefits of requiring an annual notice in paper form to consumers who receive disclosures by electronic communication. The notice would contain general information about receiving electronic disclosures including, for example, a reminder of the toll-free number where consumers may contact the institution if they have questions regarding their electronic disclosures.

Under the proposal, the § 205.4(c)(3)(i) disclosures must be provided, as applicable, before the financial institution uses electronic communication to deliver any information required by the regulation. The approach of requiring a standardized disclosure statement addresses, in several ways, the concern that consumers may be steered into using electronic communication without fully understanding the implications. Under this approach, the specific disclosures that would be delivered electronically must be identified, and consumers must be informed whether there is also an option to receive the information in paper form. Consumers must provide an e-mail address where one is required. Technical requirements must also be stated, and consumers must affirm that their equipment meets the requirements, and that they have the capability of retaining electronic disclosures by downloading or printing them (see proposed comment 4(c)(3)–1). Thus, the § 205.4(c)(3)(i) disclosures should allow consumers to make informed judgments about receiving electronic disclosures.

Some commenters requested clarification of whether a financial institution may use electronic communication to provide some required disclosures while using paper for others. The proposed rule would permit institutions to do so; the disclosure given under § 205.4(c)(3)(i) must specify which EFTA disclosures will be provided electronically.

Commenters requested further guidance on a financial institution's obligation under the regulation if the consumer chooses not to receive information by electronic communication. A financial institution could offer a consumer the option of receiving disclosures in paper form, but it would not be required to do so. A financial institution could establish accounts or services for which disclosures are given only by electronic communication. Section 205.4(c)(3)(i)(A) would require financial institutions to tell consumers whether or not they have the option to receive disclosures in paper form. Section 205.4(c)(3)(i)(D) would require financial institutions to provide a toll-free number that consumers could use to inform institutions if they wish to discontinue receiving electronic disclosures. In such cases the institution must inform the consumer whether the EFT service is also available with disclosures in paper form. Proposed sample disclosure statements in which

the consumer has an option to receive electronic or paper disclosures (Form A–9) or electronic disclosures only (Form A–10) are contained in appendix A.

4(c)(3)(ii) Response by Consumer

Proposed § 205.4(c)(3)(ii) would require financial institutions to provide a means for the consumer to affirmatively indicate that disclosures may be provided electronically. Examples include a "check box" on a computer screen or a signature line (for requests made in paper form). The requirement is intended to ensure that consumers' consent is established knowingly and voluntarily, and that consent to receive electronic disclosures is not inferred from consumers' use of the account or acceptance of general account terms. See proposed comment 4(c)(3)(ii)–1.

4(c)(3)(iii) Changes

Financial institutions would be required to notify consumers about changes to the information that is provided in the notice required by § 205.4(c)(3)(i)—for example, if upgrades to computer software are required. Proposed comment 4(c)(3)(iii)–1 contains this guidance.

The notice must include the effective date of the change and be provided before that date. Proposed comment 4(c)(3)(iii)–2 would provide that the notice must be sent a reasonable period of time before the effective date of the change. Although the number of days that constitutes reasonable notice may vary, depending on the type of change involved, the comment would provide institutions with a safe harbor: fifteen days' advance notice would be considered a reasonable time in all cases. The same time period is stated in similar proposals under Regulations B, Z, and DD published in today's **Federal Register**. Comment is requested on whether a safe harbor of 15 days is an appropriate time period, and whether a uniform period for changes involving electronic communication is desirable. An alternative approach would adopt notice requirements that are consistent with change-in-terms requirements under the respective regulations. Under this approach, for example, the safe harbor would be 21 days under § 205.8 for Regulation E, 15 days under § 226.9 for Regulation Z, and 30 days under § 230.5 for Regulation DD. Proposed comment 4(c)(3)(iii)–3 contains guidance on delivery requirements for the notice of change.

The notice of a change must also include a toll-free telephone number or, at the institution's option, an address for questions about receiving electronic disclosures. For example, a consumer may call regarding problems related to a change, such as an upgrade to computer software that is not provided by the institution. Consumers may also use the toll-free number if they wish to discontinue receiving electronic disclosures. In such cases, the institution must inform consumers whether the EFT service is also available with disclosures in paper form. (See proposed comments 4(c)(3)(iii)–4 through –6.)

If the change involves providing additional disclosures by electronic communication, institutions generally would be required to provide the notice in § 205.4(c)(3)(i) and obtain the consumer's consent. That notice would not be required if the institution previously obtained the consumer's consent to the additional disclosures in its initial notice by disclosing the possibility and specifying which disclosures might be provided electronically in the future. Comment is specifically requested on this approach. A list of additional disclosures may be necessary to ensure that consumers' consent is informed and knowing (provided it does not cause confusion).

4(c)(4) Address or Location to Receive Electronic Communication

Proposed § 205.4(c)(4) identifies addresses and locations where institutions using electronic communication may send information to the consumer. Institutions may send information to a consumer's electronic address, which is defined in proposed comment 4(c)(4)(i)–1 as an e-mail address that the consumer also may use for receiving communications from parties other than the financial institution. For notices of preauthorized transfers, for example, a financial institution's responsibility to provide notice under § 205.10(d) will be satisfied when the information is sent to the consumer's electronic address in accordance with the applicable proposed rules concerning delivery of disclosures by electronic communication.

Guidance accompanying the interim rule provided that an institution would not meet delivery requirements by simply posting information to an Internet site such as a financial institution's "home page" without appropriate notice on how consumers can access the information. Industry commenters wanted to retain the flexibility of posting disclosures on an Internet website. They did not object to providing a separate notice alerting consumers about the disclosures' availability but requested more guidance on the issue. Consumer advocates and others expressed concern that the mere posting of information inappropriately places the responsibility to obtain disclosures on consumers, and undermines the purpose of the delivery requirements of the regulation.

The Board recognizes that currently, because of security and privacy concerns associated with data transmissions, a number of institutions may choose to provide disclosures at their websites, where the consumer may retrieve them under secure conditions. Under § 205.4(c)(4), a financial institution may make disclosures available to a consumer at a location other than the consumer's electronic address. The institution must notify the consumer when the information becomes available and identify the account involved. The notice must be sent to the electronic mail address designated by the consumer; the financial institution may, at its option, permit the consumer to designate a postal address. A proposed model form (Model Form A–8) is published below; see also proposed comment 4(c)(4)(ii)–1.

The Board believes it would be inconsistent with the EFTA to require a consumer to initiate a search—for example, to search the website of each financial institution with which an account is held—to determine whether a disclosure has been provided. The proposed approach ensures that a consumer would not be required to check an institution's website repeatedly, for example, to learn whether the institution posted a change in a term that affects an EFT service used by the consumer.

The requirements of the regulation would be met only if the required disclosure is posted on the website and the consumer is notified of its availability in a timely fashion. For example, financial institutions must provide a change-in-terms notice to consumers at least 21 days in advance of the change. (12 CFR 205.8(a).) For a change-in-terms notice posted on the Internet, an institution must both post the notice and notify consumers of its availability at least 21 days in advance of the change.

Commenters sought guidance on how long disclosures posted at a particular location must be available to consumers. There is a variety of circumstances when a consumer may not be able immediately to access the information due to illness, travel, or computer malfunction, for example. Under § 205.4(c)(4), institutions must post information that is sent to a location other than the consumer's electronic

mail address for 90 days. Proposed comment 4(c)(4)(ii)–2 contains this guidance.

Under the modified proposal, institutions that post information at a location other than the consumer's electronic mail address are required—after the 90 day period—to make disclosures available to consumers upon request for a period of not less than two years from the date disclosures are required to be made, consistent with the record retention requirements under § 205.13(b). The Board requests comment on this approach, including suggestions for alternative means for providing consumers continuing access to disclosures.

4(c)(5) Consumer Use of Electronic Communication

Proposed § 205.4(c)(5) would clarify consumers' ability to provide certain information to financial institutions by electronic communication. Regulation E provides that a consumer may allege an error or stop payment of a preauthorized EFT by notifying the institution orally or in writing; the institution may require written confirmation of an oral notice of error or stop-payment order. The revised proposal differs from guidance accompanying the interim rule; under the proposal, consumers generally would have the option to use electronic communication for these written notices (including written confirmations) if the consumer has chosen to receive information by electronic communication. Because the consumer's electronic communication serves as written confirmation, the financial institution could not also require paper confirmation. Institutions could, however, specify a particular electronic address for receiving the notices.

In issuing the March 1998 interim rule, the Board stated that financial institutions could require paper confirmation of electronic notices in the two instances where the regulation allows written confirmation—stop-payment notices and notices of error. This approach was consistent with guidance provided in the May 1996 proposed rule, where the Board stated that (as in the case of an oral communication) if the consumer sends an electronic communication to the financial institution, the institution could require paper confirmation from the consumer (particularly since the consumer was entitled to a paper copy of a disclosure upon request under the May 1996 proposal).

Views were mixed on whether financial institutions should be permitted to require paper confirmations of electronic notices. Many industry commenters requested that the Board allow financial institutions to request paper confirmations; some stated that paper confirmations protect both the consumer and the financial institution. Consumer advocates and other commenters believed it would be unfair to require paper confirmation of an electronic communication from consumers who receive electronic communication from a financial institution.

Based upon the comments received and further analysis, and subject to certain limitations discussed below, the Board is proposing that consumers be permitted to provide electronically any information that a consumer is required to provide a financial institution to preserve the consumer's rights under the regulation, such as the stop-payment notice and the notice of error. If an institution uses electronic communication to provide disclosures to consumers on a continuing basis, such as change-in-terms notices or periodic statements, it is appropriate to allow consumers to use electronic communication to provide notices to the institution. If, however, an institution limits its use of electronic communication to the delivery of initial disclosures (that is, if all subsequent disclosures regarding the EFT service are provided in paper form), institutions would not be required to accept electronic communication from consumers.

4(c)(5)(ii) Institution's Designation of Address

Section 205.4(c)(5)(ii) would provide that an institution may designate the electronic address that must be used by a consumer for sending electronic communication as permitted by § 205.4(c)(5)(i).

Appendix A to Part 205—Model Disclosure Clauses and Forms

The Board solicits comment on three proposed model forms and two sample forms for use by financial institutions to aid compliance with the disclosure requirements of §§ 205.4(c)(3) and (c)(4). Model Forms A–6 and A–7 would implement § 205.4(c)(3), regarding the notice that financial institutions must give prior to using electronic communication to provide required disclosures. Model Form A–8 would implement § 205.4(c)(4), regarding notices to consumers about the availability of electronic disclosures at locations such as the financial institution's website. Use of any modified version of these forms would be in compliance as long as the institution does not delete information required by the regulation or rearrange the format in a way that affects the substance, clarity, or meaningful sequence of the disclosure. For example, institutions that combine Regulation E and Regulation DD disclosures on a deposit account can modify the model form to provide a single disclosure statement about electronic delivery of those disclosures.

Sample Form A–9 illustrates the disclosures under § 205.4(c)(3) for an electronic banking service. The sample assumes that the institution also offers paper disclosures for consumers who choose not to receive electronic disclosures. Sample Form A–10 assumes that consumers must accept electronic disclosures if they want to contract for the EFT service.

Additional Issues

1. Signature Requirements

Section 205.10(b) requires that preauthorized EFTs be authorized only by a writing signed or similarly authenticated by the consumer. The phrase "or similarly authenticated" was added in the 1996 review of Regulation E. The Official Staff Commentary to Regulation E states that an example of a consumer's authorization that is not in the form of a signed writing but is instead "similarly authenticated" is a consumer's authorization under § 205.10(b) for using a home-banking system. The Board indicated in the supplementary information to the 1996 final rule that the authentication method should provide the same assurance as a signature in a paper-based system. Since the publication of the amended regulation and accompanying commentary, the Board has been asked to give further guidance on this issue. In the supplementary information to the March 1998 interim rule, the Board expressed interest in learning about other ways in which authentication in an electronic environment might occur in lieu of a consumer's signature.

Some commenters provided alternatives for verifying a consumer's identity, including alphanumeric codes (combinations of letters and numbers) or combinations of unique identifiers (such as account numbers combined with a number representing algorithms of the account numbers). In the supplementary information to the March 1998 interim rule, the Board cited security codes and digital signatures as examples of authentication devices that might meet the requirements of authentication and signatures. Many commenters stated

their concern that the Board approved only these or similar methods. These commenters urged the Board to take a flexible approach to this requirement. They suggested that the Board's implied or explicit endorsement of any particular method could hinder the development of new technologies. Further, these commenters requested that the Board take a "wait and see" approach to this issue, to allow the industry to develop alternatives that will result in more security for consumers.

To avoid unduly influencing the development of electronic authentication methods and to encourage innovation and flexibility, the Board will limit its guidance to the general principle that a home-banking or other electronic communication system must use an authentication device that provides the same assurance as a signature in a paper-based system.

2. Preemption

A few commenters suggested that any final rule issued by the Board permitting electronic disclosures should explicitly preempt any state law requiring paper disclosures. Under § 205.12(b) of the regulation, state laws are preempted if they are inconsistent with the act and regulation and only to the extent of the inconsistency. The proposed rule would provide financial institutions with the option of giving required disclosures by electronic communication as an alternative to paper. There is no apparent inconsistency with the act and regulation if state laws require paper disclosures. The Board will, however, review preemption issues that are brought to the Board's attention. Section 205.12(b)(1) outlines the Board's procedures for determining whether a specific law is preempted, which will guide the Board in any determination requested by a state, financial institution, or other interested party following publication of a final rule regarding electronic communication.

3. Technical Amendment to Error Resolution Notice

In September 1998, the Board revised the time periods for investigating alleged errors involving point-of-sale and foreign-initiated transactions. (63 FR 52115, September 29, 1998.) The amendments to § 205.11 require financial institutions to provisionally credit an account within 10 business days (rather than 20). At the same time, the Board extended the time periods to provisionally credit funds and investigate claims involving new accounts. The amended rule permits institutions to take up to 20 business days to provisionally credit funds and up to 90 calendar days to complete the investigation. The Board proposes to revise the model error resolution notices contained in Appendix A (Forms A–3 and A–5) to conform with § 205.11 as amended.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R–1041, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS-or Windows-based format.

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act and section 904(a)(2) of the EFTA, the Board has reviewed the proposed amendments to Regulation E. Although the proposal would add disclosure requirements with respect to electronic communication, overall, the proposed amendments are not expected to have any significant impact on small entities. A financial institution's use of electronic communication to provide disclosures required by the regulation is optional. The proposed rule would give financial institutions flexibility in providing disclosures. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB number. The OMB control number is 7100–0200.

The collection of information requirements that are relevant to this proposed rulemaking are in 12 CFR Part 205 and in Appendix A. This information is mandatory (15 U.S.C. 1693 *et seq.*) to evidence compliance with the requirements of the Regulation E and the Electronic Fund Transfer Act (EFTA). The revised requirements would be used to ensure adequate disclosure of basic terms, costs, and rights relating to services affecting consumers using certain home-banking services and consumers receiving certain disclosures by electronic communication. The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are also required to retain records for 24 months. This regulation applies to all types of depository institutions, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would allow institutions the option of using electronic communication (for example, via personal computer and modem) to provide disclosures required by the regulation. Although the proposal would add disclosure requirements with respect to electronic communication, the optional use of electronic communication would likely reduce the paperwork burden of financial institutions. With respect to state member banks, it is estimated that there are 851 respondents/recordkeepers and an average frequency of 85,808 responses per respondent each year. Therefore the current amount of annual burden is estimated to be 462,839 hours. There is estimated to be no additional annual cost burden and no capital or start-up cost.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises; however, any information obtained by the Federal Reserve may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522 (b)(4), (6) and (8)). The disclosures and information about error allegations are confidential between institutions and the customer.

The Federal Reserve requests comments from institutions, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this proposed regulation would be effective. Comments are invited on: (a) the cost of compliance; (b) ways to enhance the quality, utility, and clarity of the information to be disclosed; and (c) ways to minimize the burden of disclosure on respondents, including through the use of automated disclosure techniques or other forms of

information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0200), Washington, DC 20503, with copies of such comments sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 205

Banks, banking, Consumer protection, Electronic fund transfers, Reporting and record keeping requirements.

Text of Proposed Revisions

Certain conventions have been used to highlight proposed changes to Regulation E. New language is shown inside bold-faced arrows, deletions inside bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend Regulation E, 12 CFR part 205, as set forth below:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 would continue to read as follows:

Authority: 15 U.S.C. 1693–1693r.

2. Section 205.4 is amended by redesignating paragraph (a) as paragraph (a)(1), adding a new paragraph (a)(2), and revising paragraph (c) to read as follows:

§ 205.4 General disclosure requirements; jointly offered services.

(a) ►(1)◄ Form of disclosures. * * *

►(2) *Foreign language disclosures.* Disclosures may be made in languages other than English, provided they are available in English upon request.◄

* * * * *

►(c) *Electronic communication.* (1) *Definition. Electronic communication* means a message transmitted electronically between a financial institution and a consumer in a format that allows visual text to be displayed on equipment such as a personal computer monitor.

(2) *Electronic communication between financial institution and consumer.* (i) *General.* Except as provided in paragraph(c)(2)(ii) of this section, a financial institution that has complied with paragraph (c)(3) of this section may provide by electronic communication any information required by this regulation to be in writing.

(ii) *In-person exception.* When a consumer contracts for an electronic fund transfer service in person, the disclosures required under § 205.7 shall be provided in paper form, unless the consumer requested the service by electronic communication and disclosures were provided in compliance with paragraph (c)(3)(i) and (c)(3)(ii) of this section at or around that time.

(3) *Disclosure notice.* The disclosure notice required by this paragraph shall be provided in a manner substantially similar to the applicable model form set forth in Appendix A of this part (Model Forms A–6 and A–7).

(i) *Notice by financial institution.* A financial institution shall:

(A) Describe the information to be provided electronically and specify whether the information is also available in paper form or whether the electronic fund transfer service is offered only with electronic disclosures;

(B) Identify the address or location where the information will be provided electronically; and if it is made available at a location other than the consumer's electronic address, how long the information will be available, and how it can be obtained once that period ends;

(C) Specify any technical requirements for receiving and retaining information sent electronically, and provide a means for the consumer to confirm the availability of equipment meeting those requirements; and

(D) Provide a toll-free telephone number and, at the institution's option, an address for questions about receiving electronic disclosures, for updating consumers' electronic addresses, and for seeking technical or other assistance related to electronic communication.

(ii) *Response by consumer.* A financial institution shall provide a means for the consumer to accept or reject electronic disclosures.

(iii) *Changes.* (A) A financial institution shall notify affected consumers of any change to the information provided in the notice required by paragraph (c)(3)(i) of this section. The notice shall include the effective date of the change and must be provided before that date. The notice shall also include a toll-free telephone number, and, at the institution's option, an address for questions about receiving electronic disclosures.

(B) In addition to the notice under paragraph (c)(3)(iii)(A) of this section, if the change involves providing additional disclosures by electronic communication, a financial institution shall provide the notice in paragraph (c)(3)(i) of this section and obtain the consumer's consent. A notice is not required under paragraph (c)(3)(i) of this section if the institution's initial notice states that additional disclosures may be provided electronically in the future and specifies which disclosures could be provided.

(4) *Address or location to receive electronic communication.* A financial institution that uses electronic communication to provide information required by this Regulation E (12 CFR Part 205) shall:

(i) Send the information to the consumer's electronic address; or

(ii) Post the information for at least 90 days at a location such as a website, and send a notice to the consumer when the information becomes available. Thereafter the information shall be available upon request for a period of not less than two years from the date disclosures are required to be made. The notice required by this paragraph (c)(4) shall identify the account involved, shall be sent to an electronic address designated by the consumer (or to a postal address, at the financial institution's option), and shall be substantially similar to the model form set forth in Appendix A of this part (Model Form A–8).

(5) *Consumer use of electronic communication.* (i) *General.* A consumer may use electronic communication to assert any right under § 205.10(c) and § 205.11 if the consumer has consented to receive information required by this regulation by electronic communication, except when the consumer consented to receive only the disclosures required under § 205.7 by electronic communication.

(ii) *Institution's designation of address.* A financial institution may designate the electronic address or location that consumers must use if they send electronic communication under this paragraph.◄

3. Appendix A to Part 205 is amended by:

a. Revising the table of contents at the beginning of the appendix;

b. Revising Appendices A–3 and A–5; and

c. Adding new Appendices A–6, A–7, A–8, A–9, and A–10.

The revisions and additions read as follows:

Appendix A to Part 205—Model Disclosure Clauses and Forms

* * * * *

A–3—MODEL FORMS FOR ERROR RESOLUTION NOTICE (§§ 205.7(b)(10) and 205.8(b))

(a) *Initial and annual error resolution notice §§ 205.7(b)(10) and 205.8(b)).* In case of errors or questions about your electronic transfers telephone us at [insert telephone number] or write us at [insert address] as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

►For errors involving new accounts, point-of-sale, and foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.◄

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

* * * * *

A–5—MODEL FORMS FOR GOVERNMENT AGENCIES (§ 205.15(d)(1) AND (2))

(1) *Disclosure by government agencies of information about obtaining account balances and account histories § 205.15(d)(1)(i) and (ii).* You may obtain information about the amount of benefits you have remaining by calling [telephone number]. That information is also available [on the receipt you get when you make a transfer with your card at (an ATM)(a POS terminal)][when you make a balance inquiry at an ATM][when you make a balance inquiry at specified locations].

You also have the right to receive a written summary of transactions for the 60 days preceding your request by calling [telephone number]. [Optional: Or you may request the summary by contacting your caseworker.]

(2) *Disclosure of error resolution procedures for government agencies that do not provide periodic statements § 205.15(d)(1)(iii) and (d)(2)).* In case of errors or questions about your electronic transfers telephone us at [telephone number] or write us at [address] as soon as you can, if you think an error has occurred in your [EBT][agency's name for program] account. We must hear from you no later than 60 days after you learn of the error. You will need to tell us:

- Your name and [case] [file] number.
- Why you believe there is an error, and the dollar amount involved.
- Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing.

[We will generally complete our investigation within 10 business days and correct any error promptly.]

►We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, and foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.◄ [In some cases, an investigation may take longer, but you will have the use of the funds in question after the 10 business days.] If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account during the investigation.

[For errors involving transactions at point-of-sale terminals in food stores, the periods referred to above are 20 business days instead of 10 business days.]

If we decide that there was no error, we will send you a written explanation within three business days after we finish our investigation. You may ask for copies of the documents that we used in our investigation.

If you need more information about our error resolution procedures, call us at [telephone number][the telephone number shown above].

►A–6—MODEL DISCLOSURES FOR ELECTRONIC COMMUNICATION (§ 205.4(c)(3)) (Disclosures Available in Paper or Electronically)

You can choose to receive important information required by the Electronic Fund Transfer Act in paper or electronically.

Read this notice carefully and keep a copy for your records.

- You can choose to receive the following information in paper form or electronically: (description of specific disclosures to be provided electronically).
- How would you like to receive this information
  - ☐ I want paper disclosures.
  - ☐ I want electronic disclosures.
- [We may provide the following additional disclosures electronically in the future: (description of specific disclosures).]
- [If you choose electronic disclosures, this information will be available at: (specify location) for ____ days. After that, the information will be available upon request (state how to obtain the information). When the information is posted, we will send you a message at the electronic mail address you designate here: (consumer's electronic mail address).]

[If you choose electronic disclosures this information will be sent to the electronic mail address that you designate here: (consumer's electronic mail address).]

- To receive this information you will need: (list hardware and software requirements). Do you have access to a computer that satisfies these requirements?
  - ☐ Yes ☐ No
- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?
  - ☐ Yes ☐ No
- To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, contact us at (telephone number).

A–7—MODEL DISCLOSURES FOR ELECTRONIC COMMUNICATION (§ 205.4(c)(3)) (Disclosures Available Only Electronically)

You will receive important information required by the Electronic Fund Transfer Act electronically.

Read this notice carefully and keep a copy for your records.

- The following information will be provided electronically: (description of specific disclosures to be provided electronically).
- This electronic fund transfer service is not available unless you accept electronic disclosures.
- [We may provide the following additional disclosures electronically in the future: (description of specific disclosures).]
- [If you choose electronic disclosures, this information will be available at: (specify

location) for ____ days. After that, the information will be available upon request (state how to obtain the information). When the information is posted, we will send you a message at the electronic mail address you designate here: (consumer's electronic mail address).]

[If you choose electronic disclosures this information will be sent to the electronic mail address that you designate here: (consumer's electronic mail address).]

• To receive this information you will need: (list hardware and software requirements). Do you have access to a computer that satisfies these requirements?

☐ Yes ☐ No

• Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

☐ Yes ☐ No

• Do you want this electronic fund transfer service with electronic disclosures?

☐ Yes ☐ No

• To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, contact us at (telephone number).

A–8—MODEL NOTICE FOR DELIVERY OF INFORMATION POSTED AT CERTAIN LOCATIONS (§ 205.4(c)(4))

Information about your (identify account) is now available at [website address or other location]. The information discusses (describe the disclosure). It will be available for ____ days.

BILLING CODE 6210–01–P

A-9 SAMPLE FORM ELECTRONIC COMMUNICATION (§ 205.4(c)(3))
(Disclosures Available in Paper or Electronically)

You can choose to receive important information required by the Electronic Fund Transfer Act in paper form or electronically.

Read this notice carefully and keep a copy for your records.

- You can choose to receive the following information in paper form or electronically: Terms and Conditions of our Electronic Banking Service, monthly statements, and change-in-terms notices.
- Please indicate how you would like to receive this information:

  ☐ I want paper disclosures ☐ I want electronic disclosures
- If you choose electronic disclosures, this information will be available at our Internet website: *http://www._____.com* for 90 days. After that, the information will be available upon request by contacting us at *1-800-xxx-xxxx*. When the information is posted on our website, we will send you a message at your e-mail address:

  insert address
- To receive this information electronically, you will need: a minimum web browser version of (Browser name). Do you have access to a computer that satisfies these requirements?

  ☐ Yes ☐ No
- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

  ☐ Yes ☐ No
- To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, you may contact us by telephone at 1-800-xxx-xxxx or by electronic mail at _____*.help@isp.com.*

A-10 SAMPLE FORM ELECTRONIC COMMUNICATION (§ 205.4(c)(3))
(Disclosures Available Only Electronically)

You will receive important information required by the Electronic Fund Transfer Act electronically.

Read this notice carefully and keep a copy for your records.

- The following information will be provided electronically: Terms and Conditions of our Electronic Banking Service, monthly statements, and change-in-terms notices.
- This electronic fund transfer service is available only if you accept these disclosures electronically.
- Information about your account will be available at our Internet website: *http://www._____.com* for 90 days. After that, the information will be available upon request by contacting us at *1-800-xxxx-xxxx*. When the information is posted on our website, we will send you a message at your e-mail address:

  insert address

- To receive this information electronically, you will need: a minimum web browser version of (Browser name). Do you have access to a computer that satisfies these requirements?

  ☐ Yes ☐ No

- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

  ☐ Yes ☐ No

- Do you want this electronic fund transfer service with electronic disclosures?

  ☐ Yes ☐ No

- To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, you may contact us by telephone at *1-800-xxx-xxxx* or by electronic mail at_____*.help@isp.com.*◂

BILLING CODE 6210–01–C

4. In Supplement I to Part 205, under *Section 205.4—General Disclosure Requirements; Jointly Offered Services*, the following amendments are made:

a. Under paragraph *4(a) Form of Disclosures*, paragraph 2. is removed; and

b. A new paragraph *4(c) Electronic Communication* is added.

The additions read as follows:

Supplement I To Part 205—Official Staff Interpretations

* * * * *

SECTION 205.4—GENERAL DISCLOSURE REQUIREMENTS; JOINTLY OFFERED SERVICES

* * * * *

►*4(c) Electronic Communication*

Paragraph 4(c)(1)—Definition

1. *Coverage.* Information transmitted by facsimile may be received in paper form or electronically, although the party initiating the transmission may not know at the time the disclosures are sent which form will be used. A financial institution that provides disclosures by facsimile should comply with the requirements for electronic communication unless the institution knows that the disclosures will be received in paper form.

Paragraph 4(c)(2)—Electronic Communication between Financial Institution and Consumer

1. *Disclosures provided on institution's equipment.* Institutions that control equipment providing electronic disclosures to consumers (for example, computer terminals in an institution's lobby or kiosks located in public places) must ensure that the equipment satisfies the regulation's requirements to provide disclosures in a clear and readily understandable format and in a form the consumer may keep. A financial institution that controls the equipment may provide a printer for consumers' use in lieu of sending the information to the consumer's electronic mail address or posting the information at another location such as the institution's website.

2. *Retainability.* Institutions must provide electronic disclosures in a retainable format (for example, they can be printed or downloaded). Consumers may communicate electronically with financial institutions through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), a consumer may not have the ability at a given time to preserve EFTA disclosures presented on-screen. To ensure that consumers have an adequate opportunity to retain the disclosures, the institution also must send them to the consumer's designated electronic mail address or to another location, for example, on the institution's website, where the information may be retrieved at a later date.

3. *Timing and delivery.* When a consumer signs up for and is able to use an EFT service on the Internet, for example, in order to meet the timing and delivery requirements, institutions must ensure that disclosures applicable at that time appear on the screen and are in a retainable format. The delivery requirements would not be met if disclosures do not either appear on the screen or if the consumer is allowed to sign up for and use an EFT service before receiving the disclosures. For example, an institution can provide a link to electronic disclosures appearing on a separate page as long as consumers cannot bypass the link and they are required to access the disclosures before completing the sign-up process or using the EFT service.

Paragraph 4(c)(2)(ii)—In-person Exception

1. *Initial disclosures in paper form.* If a consumer contracts for an EFT service in person the financial institution generally must provide initial disclosures in paper form. For example, if a consumer visits a financial institution's branch office to sign up for an ATM card while opening an account, initial disclosures are required before the consumer contracts for the service or before the first transaction and they must be provided in paper form; directing the consumer to disclosures posted on the institution's website would not be sufficient. If, however, a consumer makes a request on the Internet to open an account and obtain an ATM card, a financial institution may send disclosures electronically at or around that time even though the financial institution's procedures require the consumer to visit a branch office at a later time to complete the agreement (for example, to execute a signature card).

Paragraph 4(c)(3)—Disclosure Notice

1. *Consumer's affirmative responses.* Even though a consumer accepts electronic disclosures in accordance with § 205.4(c)(3)(ii), a financial institution may deliver disclosures by electronic communication only if the consumer provides an electronic address where one is required, and responds affirmatively to questions about technical requirements and the ability to print or download information (see Sample Forms A–9 and A–10) in appendix A to this part.

Paragraph 4(c)(3)(i)—Notice by Financial Institution

1. *Toll-free telephone number.* The number must be toll-free for nonlocal calls made from an area code other than the one used in the institution's dialing area. Alternatively, a financial institution may provide any telephone number that allows a consumer to call for information and reverse the telephone charges.

2. *Institution's address.* Financial institutions have the option of providing either an electronic or postal address for consumers' use in addition to a toll-free telephone number.

3. *Discontinuing electronic disclosures.* Consumers may use the toll-free number (or optional address) if they wish to discontinue receiving electronic disclosures. In such cases, the institution must inform consumers whether the EFT service is also available with disclosures in paper form.

Paragraph 4(c)(3)(ii)—Response by Consumer

1. *Nature of consent.* Consumers must agree to receive disclosures by electronic communication knowingly and voluntarily. An agreement to receive electronic disclosures is not implied from consumers' use of an account or acceptance of general account terms. Paragraph 4(c)(3)(iii)—Changes

1. *Examples.* Examples of changes include a change in technical requirements, such as upgrades to computer software affecting the institution's disclosures provided on the Internet.

2. *Timing for notices.* A notice of a change must be sent a reasonable period of time before the effective date of the change. The length of a reasonable notice period may vary, depending on the type of change involved; however, fifteen days is a reasonable time for providing notice in all cases.

3. *Delivery of notices.* An institution meets the delivery requirements if the notice of a change is sent to the address provided by the consumer for receiving other disclosures. For example, if the consumer provides an electronic address to receive notices about periodic statements posted at the institution's website, the same electronic address may be used for the change notice. The consumer's postal address must be used, however, if the consumer consented to additional disclosures by electronic communication when receiving the initial notice under § 205.4(c)(3)(i), but provided a postal address to receive periodic statements in paper form.

4. *Toll-free number.* See comment 4(c)(3)(i)–1.

5. *Institution's address.* See comment 4(c)(3)(i)–2.

6. *Consumer inquiries.* Consumers may use the toll-free number (or optional address) for questions or assistance with problems related to a change, such as an upgrade to computer software that is not provided by the institution. Consumers may also use the toll-free number if they wish to discontinue receiving electronic disclosures; in such cases, the institution must inform consumers whether the EFT service is also available with disclosures in paper form.

Paragraph 4(c)(4)—Address or Location to Receive Electronic Communication
Paragraph 4(c)(4)(i)

1. *Electronic address.* A consumer's electronic address is an electronic mail address that may be used by the consumer for receiving communications transmitted by parties other than the financial institution.

Paragraph 4(c)(4)(ii)

1. *Identifying account involved.* A financial institution is not required to identify an account by reference to the account number. For example, where the consumer does not have multiple accounts, and no confusion would result, the financial institution may refer to "your checking account," or when the consumer has multiple accounts the institution may use a truncated account number.

2. *Availability.* Information that is not sent to a consumer's electronic mail address must be available for at least 90 days from the date the information becomes available or from

the date the notice required by § 205.4(c)(4)(ii) is sent to the consumer, whichever occurs later.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 31, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–23139 Filed 9–13–99; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R–1042]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is requesting comment on proposed revisions to Regulation M, which implements the Consumer Leasing Act. The Board previously published a proposed rule that permits lessors to use electronic communication (for example, communication via personal computer and modem) to provide disclosures required by the act and regulation, if the consumer agrees to such delivery. (A similar rule was also proposed under various other consumer financial services and fair lending regulations administered by the Board.) In response to comments received on the proposals, the Board is publishing for comment an alternative proposal on the electronic delivery of disclosures, together with proposed commentary that would provide further guidance on electronic communication issues.

DATES: Comments must be received by October 29, 1999.

ADDRESSES: Comments, which should refer to Docket No. R–1042, may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room MP–500 between 9:00 a.m. and 5:00 p.m., pursuant to § 261.12, except as provided in § 261.14 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Kyung H. Cho-Miller, Staff Attorney, or Jane Ahrens, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. Users of Telecommunications Device for the Deaf (TDD) *only*, contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Leasing Act (CLA), 15 U.S.C. 1667–1667e, was enacted into law in 1976 as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* The CLA requires lessors to provide consumers with uniform cost and other disclosures about consumer lease transactions. The act generally applies to consumer leases of personal property in which the contractual obligation does not exceed $25,000 and has a term of more than four months. An automobile lease is the most common type of consumer lease covered by the act. The Board's Regulation M (12 CFR part 213) implements the act.

The CLA and Regulation M require disclosures to be provided to consumers in writing, presuming that lessors provide paper documents. Under many laws that call for information to be in writing, information in electronic form is considered to be "written." Information produced, stored, or communicated by computer is also generally considered to be a writing, where visual text is involved.

In May 1996, the Board revised Regulation E (Electronic Fund Transfers) following a comprehensive review. During that process, the Board determined that electronic communications for delivery of information required by federal laws governing financial services could effectively reduce compliance costs without adversely affecting consumer protections. Consequently, the Board simultaneously issued a proposed rule to permit financial institutions to use electronic communication to deliver disclosures that Regulation E requires to be given in writing. (61 FR 19696, May 2, 1996.) The 1996 proposal required that disclosures be provided in a form the consumer may retain, a requirement that institutions could satisfy by providing information in a format that may be printed or downloaded. The proposed rule also allowed consumers to request a paper copy of a disclosure for up to one year after its original delivery.

Following a review of the comments, on March 25, 1998, the Board issued an interim rule under Regulation E (the "interim rule"), 63 FR 14528. The Board also published proposals under Regulations DD (Truth in Savings), 63 FR 14533, M (Consumer Leasing), 63 FR 14538, Z (Truth in Lending), 63 FR 14548, and B (Equal Credit Opportunity), 63 FR 14552, (collectively, the "March 1998 proposed rules"). The rules would apply to financial institutions, creditors, lessors, and other entities that are required to give disclosures to consumers and others. (For ease of reference this background section uses the terms "financial institutions," "institutions," and "consumers.") The interim rule and the March 1998 proposed rules were similar to the May 1996 proposed rule; however, they did not require financial institutions to provide paper copies of disclosures to a consumer upon request if the consumer previously agreed to receive disclosures electronically. The Board believed that most institutions would accommodate consumer requests for paper copies when feasible or redeliver disclosures electronically; and the Board encouraged financial institutions to do so.

The March 1998 proposed rules and the interim rule permitted financial institutions to provide disclosures electronically if the consumer agreed, with few other requirements. The rule was intended to provide flexibility and did not specify any particular method for obtaining a consumer's agreement. Whether the parties had an agreement would be determined by state law. The proposals and the interim rule did not preclude a financial institution and a consumer from entering into an agreement electronically, nor did they prescribe a formal mechanism for doing so.

The Board received approximately 200 written comments on the interim rule and the March 1998 proposed rules. The majority of comments were submitted by financial institutions and their trade associations. Industry commenters generally supported the use of electronic communication to deliver information required by the CLA and Regulation M. Nevertheless, many sought specific revisions and additional guidance on how to comply with the disclosure requirements in particular transactions and circumstances.

Industry commenters were especially concerned about the condition that a consumer had to "agree" to receive information by electronic communication, because the rule did not specify a method for establishing that an "agreement" was reached. These commenters believed that relying on state law created uncertainty about what

constitutes an agreement and, therefore, potential liability for noncompliance. To avoid uncertainty over which state's laws apply, some commenters urged the Board to adopt a federal minimum standard for agreements or for informed consent to receive disclosures by electronic communication. These commenters believed that such a standard would avoid the compliance burden associated with tailoring legally binding "agreements" to the contract laws of all jurisdictions where electronic communications may be sent.

Consumer advocates generally opposed the March 1998 interim rule and proposed rules. Without additional safeguards, they believed, consumers may not be provided with adequate information about electronic communications before an "agreement" is reached. They also believed that promises of lower costs could induce consumers to agree to receive disclosures electronically without a full understanding of the implications. To avoid such problems, they urged the Board, for example, either to require institutions to disclose to consumers that their account with the institution will not be adversely affected if they do not agree to receive electronic disclosures, or to permit financial institutions to offer electronic disclosures only to consumers who initiate contact with the institution through electronic communication. They also noted that some consumers will likely consent to electronic disclosures believing that they have the technical capability to retrieve information electronically, but might later discover that they are unable to do so. They questioned consumers' willingness and ability to access and retain disclosures posted on Internet websites, and express their apprehension that the goals of federally mandated disclosure laws will be lost.

Consumer advocates and others were particularly concerned about the use of electronic disclosures in connection with home-secured loans and certain other transactions that consumers typically consummate in person (citing as examples automobile loans and leases, short-term "payday" loans, or home improvement financing contracts resulting from door-to-door sales). They asserted that there is little benefit to eliminating paper disclosures in such transactions and that allowing electronic disclosures in those cases could lead to abusive practices. Accordingly, consumer advocates and others believed that paper disclosures should always accompany electronic disclosures in mortgage loans and certain other transactions, and that consumers should have the right to obtain paper copies of disclosures upon request for all types of transactions (deposit account, credit card, loan or lease, and other transactions).

A final issue raised by consumer advocates was the integrity of disclosures sent electronically. They stated that there may be instances when the consumer and the institution disagree on the terms or conditions of an agreement and consumers may need to offer electronic disclosures as proof of the agreed-upon terms and to enforce rights under consumer protection laws. Thus, to assure that electronic documents have not been altered and that they accurately reflect the disclosures originally sent, consumer advocates recommended that the Board require that electronic disclosures be authenticated by an independent third party.

The Board's Consumer Advisory Council considered the electronic delivery of disclosures in 1998 and again in 1999. Many Council members shared views similar to those expressed in written comment letters on the 1998 proposals. For example, some Council members expressed concern that the Board was moving too quickly in allowing electronic disclosures for certain transactions, and suggested that the Board might go forward with electronic disclosures for deposit accounts while proceeding more slowly on credit and lease transactions. Others expressed concern about consumer access and consumers' ability to retain electronic disclosures. They believed that, without specific guidance from the Board, institutions would provide electronic disclosures without knowing whether consumers could retain or access the disclosures, and without establishing procedures to address technical malfunctions or nondelivery. The Council also discussed the integrity and security of electronic documents.

II. Overview of Proposed Revisions

Based on a review of the comments and further analysis, the Board is requesting comment on a modified proposed rule that is more detailed than the interim rule and March 1998 proposed rules. It is intended to provide specific guidance for lessors that choose to use electronic communication to comply with Regulation M's requirements to provide written disclosures, and to ensure effective delivery of disclosures to consumers through this medium. Though detailed, the proposal provides flexibility for compliance with electronic communication rules.

The modified proposal does not permit the electronic delivery of Regulation M disclosures where a consumer enters into a lease agreement in person, and the required Regulation M disclosures are provided at that time (either as part of the lease agreement or separately), those disclosures have to be in paper form. .

The Regulation M leasing disclosures must be given to consumers before they become obligated for a lease, and must reflect the legal obligation. The disclosures can be made in a separate statement or in the lease contract or other document evidencing the lease. Lessors typically include the disclosures in the lease agreement. Few lessors currently consummate lease agreements electronically; however, as standards are developed for establishing legal agreements by electronic communication, more lease contracts may be entered into by that means.

While leases are typically not consummated on-line, consumers are able to shop on-line and apply for leases. The purpose of the Regulation M disclosures is to ensure that consumers have meaningful information about lease terms and to promote comparison shopping. Therefore, the use of electronic communication may allow lessors to provide Regulation M disclosures to consumers earlier in the leasing process.

The Board is soliciting comment on a modified approach that addresses both industry and consumer group concerns. Under the proposal, lessors would have to provide specific information about how the consumer can receive and retain electronic disclosures—through a standardized disclosure statement—before obtaining consumers' acceptance of such delivery, with some exceptions. If they satisfy these requirements and obtain consumers' affirmative consent, lessors would be permitted to use electronic communications. As a general rule a lessor would be permitted to offer the option of receiving electronic disclosures to all consumers, whether they initially contact the lessor by electronic communications, or otherwise. To address concerns about potential abuses, however, the proposal provides that if a consumer consummates a lease in person, disclosures required to be given at that time must be in paper form.

Lessors would have the option of delivering disclosures to an e-mail address designated by the consumer or making disclosures available at another location such as the lessor's website, for printing or downloading. If the disclosures are posted at a website location, lessors generally must notify

consumers at an e-mail address about the availability of the information. (Lessors may offer consumers the option of receiving alert notices at a postal address.) The disclosures must remain available at that site for 90 days.

Disclosures provided electronically would be subject to the "clear and conspicuous" standard, and the existing format, timing, and retainability rules in Regulation M. For example, to satisfy the timing requirement, if disclosures are due at the time an electronic transaction is being conducted, they would have to appear on the screen before the consumer could consummate the transaction.

Lessors generally must provide a means for consumers to confirm the availability of equipment to receive and retain electronic disclosure documents. A lessor would not otherwise have a duty to verify consumers' actual ability to receive, print, or download the disclosures. Some commenters suggested that lessors should be required to verify delivery by return receipt. The Board solicits comment on the need for such a requirement and the feasibility of that approach.

As previously mentioned, consumer advocates and others have expressed concerns that electronic documents can be altered more easily than paper documents. The issue of the integrity and security of electronic documents affects electronic commerce in general and is not unique to the written disclosures required under the consumer protection laws administered by the Board. Consumers' ability to enforce rights under the consumer protection laws could be impaired in some cases, however, if the authenticity of disclosures that they retain cannot be demonstrated. Signatures, notary seals, and other established verification procedures are used to detect alterations for transactions memorialized in paper form. The development of similar devices for electronic communications should reduce uncertainty over time about the ability to use electronic documents for resolving disputes.

The Board's rules require lessors to retain evidence of compliance with Regulation M. Specific comment is solicited on the feasibility of complying with a requirement that lessors provide disclosures in a format that cannot be altered without detection, or have systems in place capable of detecting whether or not information has been altered, as well as the feasibility of requiring use of independent certification authorities to verify disclosure documents.

Elsewhere in today's **Federal Register**, the Board is publishing similar proposals for comment under Regulations B, E, Z, and DD. In a separate notice the Board is publishing an interim rule under Regulation DD, which implements the Truth in Savings Act, to permit depository institutions to use electronic communication to deliver disclosures on periodic statements. For ease of reference, the Board has assigned new docket numbers to the modified proposals published today.

III. Section-by-Section Analysis

Pursuant to its authority under section 187 of the CLA, the Board proposes to amend Regulation M to permit lessors to use electronic communication to provide the disclosures required by § 213.4. Below is a section-by-section analysis of the rules for providing disclosures by electronic communication, including references to proposed commentary provisions.

The March 1998 proposed rule addressed electronic communication in § 213.3 of the regulation, which contains the general disclosure requirements. In the revised proposal, the rules on electronic communications are contained in § 213.6 for easier reference and to avoid complicating the general Regulation M disclosure requirements.

Section 213.6 Requirements for Electronic Communication

6(a) Definition

The definition of the term "electronic communication" in the March 1998 proposed rule remains unchanged. Section 213.6(a) limits the term to a message transmitted electronically that can be displayed on equipment as visual text, such as a message that is displayed on a computer monitor screen. Most commenters supported the term as defined in the proposed rule. Some commenters favored a more expansive definition that would encompass communications such as audio and voice response telephone systems. Because the proposal is intended to permit electronic communication to satisfy the statutory requirement for written disclosures, the Board believes visual text is an essential element of the definition.

Commenters asked the Board to clarify the coverage of certain types of communications. A few commenters asked about communication by facsimile. Facsimiles are initially transmitted electronically; the information may be received either in paper form or electronically through software that allows a consumer to capture the facsimile, display it on a monitor, and store it on a computer diskette or drive. Thus, information sent by facsimile may be subject to the provisions governing electronic communication. When disclosures are sent by facsimile, a lessor should comply with the requirements for electronic communication unless it knows that the disclosures will be received in paper form. Proposed comment 6(a)–1 contains this guidance.

6(b) Electronic Communication Between Lessor and Consumer

Section 213.6(b)(1) would permit lessors to provide disclosures using electronic communication, if the lessor complies with provisions in new § 213.6(c), discussed below.

1. *Presenting disclosures in a clear and conspicuous format.* The Board does not intend to discourage or encourage specific types of technologies. Regardless of the technology, however, disclosures provided electronically must be presented in a clear and conspicuous format as is the case for all written disclosures under the act and regulation. See § 213.3(a).

When consumers consent to receive disclosures electronically and they confirm that they have the equipment to do so, lessors generally would have no further duty to determine that consumers are able to receive the disclosures. Lessors do have the responsibility of ensuring the proper equipment is in place in instances where the lessor controls the equipment.

2. *Providing disclosures in a form the consumer may keep.* As with other written disclosures, information provided by electronic communication must be in a form the consumer can retain. Under the 1998 proposals and interim rule, a lessor would satisfy this requirement by providing information that can be printed or downloaded. The modified proposal adopts the same approach but also provides that the information must be sent to a specified location to ensure that consumers have an adequate opportunity to retain the information.

Consumers communicate electronically with lessors through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), a consumer may not have the ability at a given time to preserve CLA disclosures presented on-screen. Therefore, when a lessor provides disclosures by electronic communication, to satisfy the retention requirements, the lessor must send the disclosures to a consumer's e-mail address or other location where

information may be retrieved at a later date. Proposed comment 6(b)–1 contains this guidance; see also the discussion under § 213.6(d), below. If a lessor controlled an electronic terminal used to provide electronic disclosures, a lessor could provide equipment for the consumer to print a paper copy in lieu of sending the information to the consumer's electronic mail address or posting the information at another location such as the lessor's website.

3. *Timing.* Lessors must ensure that electronic disclosures comply with all relevant timing requirements of the regulation. For example, disclosures must be provided prior to consummation of a lease. The rule ensures that consumers have an opportunity to read important information about costs and other terms before becoming obligated.

To illustrate the timing requirements for electronic communication, assume that a consumer is interested in leasing a vehicle on-line and uses a personal computer at home to access the lessor's website on the Internet. The lessor provides disclosures to the consumer about the delivery of Regulation M disclosures by electronic communication (the § 213.6(c) disclosures discussed below) and the consumer responds affirmatively. If the lessor's procedures permit the consumer to lease a vehicle at that time, disclosures required under § 213.4 would have to be provided before the consumer becomes obligated on-line. Thus, the disclosures must automatically appear on the screen or the consumer must be required to access the information before consummating the lease on-line. The timing requirements for providing disclosures would not be met if, in this example, the lessor permitted the consumer to consummate the lease on-line and sent disclosures to an e-mail address thereafter. Proposed comment 6(b)–2 contains this guidance.

On the other hand, assume that a consumer applies for a lease on-line and the lessor delays processing the consumer's request until the required disclosures have been delivered by e-mail. In that case the information would not have to also appear on the screen; delivery to the consumer's e-mail address would be sufficient. In either case, the consumer must be given the opportunity to receive the disclosures before consummation.

6(b)(2) In-Person Exception

The proposal contains an exception to the general rule allowing information required by Regulation M to be provided by electronic communication; in these cases, paper disclosures would be required. The exception, contained in § 213.6(b)(2), seeks to address concerns about potential abuses where consumers are transacting business in person but are offered disclosures in electronic form. In such transactions, there is an expectation that consumers would have to be given paper copies of disclosures along with paper copies of other documents evidencing the transaction.

Under § 213.6(b)(2), if a consumer consummates a lease in person, the lessor must generally provide disclosures in paper form. For example, if a consumer goes to a lessor's place of business to consummate a lease, disclosures are required before consummation and they must be provided in paper form; directing the consumer to disclosures posted on the lessor's website would not be sufficient. If, however, a consumer applies for a lease on the Internet, a lessor may send disclosures electronically at or around that time, even though the lessor's procedures require the consumer to visit the lessor at a later time to complete the transaction (for example, to sign a lease agreement). Proposed comment 6(b)(2)–1 contains this guidance.

6(c) Disclosure Notice

Section 213.6(c) would identify the specific steps required before a lessor could use electronic communication to satisfy the regulation's disclosure requirements. Proposed Model Forms A–4 and A–5, and Sample Forms A–7 and A–8 are published to aid compliance with these requirements.

6(c)(1) Notice by Lessor

Section 213.6(c)(1) outlines the information that lessors must provide before electronic disclosures can be given. The lessor must: (1) Describe the information to be provided electronically and specify whether the information is also available in paper form or whether the lease is offered only with electronic disclosures; (2) identify the address or location where the information will be provided electronically; and if it will be available at a location other than the consumer's electronic address, specify for how long and where it can be obtained once that period ends; (3) specify any technical requirements for receiving and retaining information sent electronically, and provide a means for the consumer to confirm the availability of equipment meeting those requirements; and (4) provide a toll-free telephone number and, at the lessor's option, an electronic or a postal address for questions about receiving electronic disclosures and for seeking assistance with technical or other difficulties (see proposed comments to 6(c)(1)). The Board requests comment on whether other information should be disclosed regarding the use of electronic communication and on any format changes that might improve the usefulness of the notice for consumers.

Under the proposal, the § 213.6(c)(1) disclosures must be provided, as applicable, before the lessor uses electronic communication to deliver the disclosures required by § 213.4 of the regulation. The approach of requiring a standardized disclosure statement addresses, in several ways, the concern that consumers may be steered into using electronic communication without fully understanding the implications. Under this approach, the specific disclosures that would be delivered electronically must be identified, and consumers must be informed whether there is also an option to receive the information in paper form. Consumers must provide an e-mail address where one is required. Technical requirements must also be stated, and consumers must affirm that their equipment meets the requirements, and that they have the capability of retaining electronic disclosures by downloading or printing them (see proposed comment 6(c)–1). Thus, § 213.6(c)(1) disclosures should allow consumers to make informed judgments about receiving electronic disclosures.

Commenters generally requested guidance on when the consumer chooses not to receive information by electronic communication. A lessor could offer a consumer the option of receiving disclosures in paper form, but it would not be required to do so. For example, a lessor could offer particular leases for which disclosures are given only by electronic communication. Section 213.6(c)(1)(i) would require lessors to tell consumers whether or not they have the option to receive disclosures in paper form. Proposed sample disclosure statements in which the consumer has an option to receive electronic or paper disclosures (Form A–7) or electronic disclosures only (Form A–8) are contained in appendix A.

6(c)(2) Response by Consumer

Proposed § 213.6(c)(2) would require lessors to provide a means for the consumer to affirmatively indicate that disclosures may be provided electronically, for example, a "check box" on a computer screen. The requirement is intended to ensure that consumers' consent is established knowingly and voluntarily.

6(d) Address or Location To Receive Electronic Communication

Proposed § 213.6(d) identifies addresses and locations where lessors using electronic communication may send information. Lessors may send information to a consumer's electronic address, which is defined in proposed comment 6(d)(1)–1 as an e-mail address that the consumer also may use for receiving communications from parties other than the lessor. For example, a lessor's responsibility to provide disclosures by electronic communication will be satisfied when the information is sent to the consumer's electronic address in accordance with the applicable proposed rules concerning delivery of disclosures by electronic communication.

The Board recognizes that currently, because of security and privacy concerns associated with data transmissions, a number of lessors may choose to provide disclosures at their websites, where the consumer may retrieve them under secure conditions. Under § 213.6(d), a lessor may make disclosures available to a consumer at a location other than the consumer's electronic address. The lessor must notify the consumer when the information becomes available and identify the lease involved. The notice must be sent to the electronic mail address designated by the consumer; the lessor may, at its option, permit the consumer to designate a postal address. A proposed model form (Model Form A–6) is published below.

The requirements of the regulation would be met only if the required disclosure is posted on the website and the consumer is notified of its availability in a timely fashion. For example, lessors must provide disclosures to consumers prior to consummation of a lease. (12 CFR 213.3(a)(3).)

There is a variety of circumstances when a consumer may not be able immediately to access the information due to illness, travel, or computer malfunction, for example. Under § 213.6(d), lessors must post information sent to a location other than the consumer's electronic address for 90 days. Proposed comment 6(d)(2)–1 contains this guidance.

Under the modified proposal, lessors that post information at a location other than the consumer's electronic mail address are required—after the 90 day period—to make disclosures available to consumers upon request for a period of not less than two years from the date disclosures are required to be made, consistent with the record retention requirements under § 213.8. The Board requests comments on this approach, including suggestions for alternative means for providing consumers continuing access to disclosures.

Section 213.7 Advertising

7(b) Clear and Conspicuous Standard

7(b)(1) Amount Due at Lease Signing

Under § 213.7(b)(1), in an advertisement, lessors cannot refer to a component of the total amount due prior to or at consummation or by delivery (except for the periodic payment amount) more prominently than the total amount due. Also, lessors that advertise a percentage rate must include a statement about the limitations of the rate, which must be as prominent as the rate. Proposed comment 7(b)(1)–3 contains guidance on how this rule applies in an electronic advertisement.

7(b)(2) Advertisement of a Lease Rate

Under § 213.7(b)(2), if a lessor includes a rate in an advertisement, the rate cannot be more prominent than any of the disclosures in § 213.4. Comment 7(b)(2)–1 would be revised to provide guidance on how this rule applies in an electronic advertisement.

7(c) Catalogs and Multi-Page Advertisement

Stating certain credit terms in an advertisement for a lease triggers the disclosure of additional terms. Section 213.7(c) permits lessors using a multiple-page advertisement to state the additional disclosures in a table or schedule as long as the triggering lease terms appearing anywhere else in the advertisement refer to the page where the table or schedule is printed. Several commenters asked the Board to clarify the rules for electronic advertisements.

Section 213.7(c) would be amended to cover electronic advertisements. Lessors that advertise using electronic communication generally would comply with § 213.7(c) if the table or schedule with the additional information is set forth clearly and conspicuously and the triggering lease terms appearing anywhere else in the advertisement clearly refer to the page or location where the table or schedule begins. Proposed comment 7(c)–2 contains this guidance.

Appendix A to Part 213—Model Forms

The Board solicits comment on three proposed model forms and two sample forms for use by lessors to aid compliance with the disclosure requirements of §§ 213.6(c) and 6(c). Model Forms A–4 and A–5 would implement § 213.6(c), regarding the notice that lessors must give prior to using electronic communication to provide required disclosures. Model Form A–6 would implement § 213.6(d), regarding notices to consumers about the availability of electronic disclosures at locations such as the lessor's website. Use of any modified version of these forms would be in compliance as long as the lessor does not delete information required by the regulation or rearrange the format in a way that affects the substance, clarity, or meaningful sequence of the disclosure.

Sample Form A–7 illustrates the disclosures under § 213.6(a)(3) for a vehicle lease transaction. The sample assumes that the lessor also offers paper disclosures for consumers who choose not to receive electronic disclosures. Sample Form A–8 assumes that consumers must accept electronic disclosures if they want to contract for the lease.

Additional Issues Raised by Electronic Communication

Preemption

A few commenters suggested that any final rule issued by the Board permitting electronic disclosures should explicitly preempt any state law requiring paper disclosures. Under § 213.9 of the regulation, state laws are preempted if they are inconsistent with the act and regulation and only to the extent of the inconsistency. The proposed rule would provide lessors with the option of giving required disclosures by electronic communication as an alternative to paper. There is no apparent inconsistency with the act and regulation if state laws require paper disclosures. The Board will, however, review preemption issues that are brought to the Board's attention. Section 213.9(b) outlines the Board's procedures for determining whether a specific law is preempted, which will guide the Board in any determination requested by a state, lessor, or other interested party following publication of a final rule regarding electronic communication.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R–1042 and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document

in paper form, comments may be submitted on 3½-inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation M. Although the proposal would add disclosure requirements with respect to electronic communication, overall, the proposed amendments are not expected to have any significant impact on small entities. A lessor's use of electronic communication to provide disclosures required by the regulation is optional. The proposed rule would give lessors flexibility in providing disclosures. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB number. The OMB control number is 7100–0202.

The collection of information requirements that are relevant to this proposed rulemaking are in 12 CFR 213.3, 213.4, 213.5, 213.7, 213.8 and in Appendix A. This information is mandatory (15 U.S.C. 1667 *et seq.*) to evidence compliance with the requirements of Regulation M and the Consumer Leasing Act (CLA). The revised requirements would be used to ensure adequate disclosure of basic terms, costs, and rights relating to lease transactions, at or before the time lessees enter into a consumer lease transaction and when the availability of a consumer lease on particular terms is advertised and lessees receive certain disclosures by electronic communication. The respondents/recordkeepers are for-profit lessors, including small businesses. Lessors are also required to retain records for 24 months. This regulation applies to all types of lessors, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would allow lessors the option of using electronic communication (for example, via personal computer and modem) to provide disclosures required by the regulation. Although the proposal would add disclosure requirements with respect to electronic communication, the optional use of electronic communication would likely reduce the paperwork burden of lessors. With respect to state member banks, it is estimated that there are 310 respondents/recordkeepers subject to the disclosure requirements with an average frequency of 37,200 responses per respondent each year. It is also estimated of the 310 respondent/recordkeepers, approximately 15 are subject to the advertising requirement. This subset of respondent/recordkeepers has an average frequency of 45 responses per respondent each year. Therefore the current amount of annual burden is estimated to be 11,179 hours. There is estimated to be no additional annual cost burden and no capital or start-up cost.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises; however, any information obtained by the Federal Reserve may be protected from disclosure under exemptions (b) (4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522(b) (4), (6) and (8)). The disclosures and information about error allegations are confidential between lessors and the customer.

The Federal Reserve requests comments from lessors, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this proposed regulation would be effective. Comments are invited on: (a) The cost of compliance; (b) ways to enhance the quality, utility, and clarity of the information to be disclosed; and (c) ways to minimize the burden of disclosure on respondents, including through the use of automated disclosure techniques or other forms of information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0202), Washington, DC 20503, with copies of such comments sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 213

Advertising, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight proposed changes to Regulation M. New language is shown inside bold-faced arrows and deletions are shown in bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend Regulation M, 12 CFR part 213, as set forth below:

PART 213—CONSUMER LEASING (REGULATION M)

1. The authority citation for part 213 would continue to read as follows:

Authority: 15 U.S.C. 1604, 1667f.

2. Section 213.6 is added to read as follows:

►§ 213.6 Requirements for electronic communication.

(a) *Definition. Electronic communication* means a message transmitted electronically between a consumer and a lessor in a format that allows visual text to be displayed on equipment such as a personal computer monitor.

(b) *Electronic communication between lessor and consumer.* (1) *General.* Except as provided in paragraph (b)(2) of this section, a lessor that has complied with paragraph (c) of this section may provide by electronic communication the disclosures required by § 213.4. Disclosures required under this section must be made clearly and conspicuously, in writing or by electronic communication, and in a form the consumer may keep.

(2) *In-person exception.* Prior to consummation of a lease in person, disclosures required under § 213.4 must be provided in paper form, unless the consumer requested the transaction by electronic communication and the lessor provided disclosures in compliance with paragraph (c) (1) and (2) of this section at or around that time.

(c) *Disclosure notice.* The disclosure notice required by this paragraph shall be provided in a manner substantially similar to the applicable model form in Appendix A of this part (Model Forms A–4 and A–5).

(1) *Notice by lessor.* A lessor shall:

(i) Describe the information to be provided electronically and specify whether the information is also available in paper form or whether the lease is offered only with electronic disclosures;

(ii) Identify the address or location where the information will be provided electronically; and if it is made available at a location other than the consumer's electronic address, how long the information will be available, and how it can be obtained once that period ends;

(iii) Specify any technical requirements for receiving and retaining information sent electronically, and provide a means for the consumer to confirm the availability of equipment meeting those requirements; and

(iv) Provide a toll-free telephone number and, at the lessor's option, an address for questions about receiving electronic disclosures and for seeking technical or other assistance related to electronic communication.

(2) *Response by consumer.* A lessor shall provide a means for the consumer to accept or reject electronic disclosures.

(d) *Address or location to receive electronic communication.* A lessor that uses electronic communication to provide the disclosures required by § 213.4 shall:

(1) Send the information to the consumer's electronic address; or

(2) Post the information for at least 90 days at a location such as a website, and send a notice to the consumer when the information becomes available. Thereafter the information shall be available upon request for a period of not less than two years from the date disclosures are required to be made. The notice required by paragraph (d)(2) of this section shall identify the lease property in accordance with § 213.4(a), shall be sent to an electronic address designated by the consumer (or to a postal address, at the lessor's option), and shall be substantially similar to the model form set forth in Appendix A of this part (Model Form A–6).◄

3. Section 213.7 is amended by revising paragraph (c) to read as follows:

§ 213.7 Advertising.

* * * * *

(c) *Catalogs, [and] multiple-page* ►, and electronic◄ advertisements. A catalog or other multiple-page advertisement►, or an advertisement using electronic communication◄ that provides a table or schedule of the required disclosures shall be considered a single advertisement if, for lease terms that appear without all the required disclosures, the advertisement refers to the page or [pages on which]►location where◄ the table or schedule appears.

* * * * *

4. Appendix A to Part 213 is amended by adding a new Appendix A–4, Appendix A–5, Appendix A–6, Appendix A–7, and Appendix A–8 to read as follows:

Appendix A to Part 213—Model Forms

* * * * *

►*Appendix A–4 Model Disclosures for Electronic Communication (§ 213.6(c))*

(Disclosures Available in Paper or Electronically)

You can choose to receive important information required by the Consumer Leasing Act in paper or electronically.

Read this notice carefully and keep a copy for your records.

• You can choose to receive the following information in paper form or electronically: (description of Regulation M disclosures).

• How would you like to receive this information: _____ I want paper disclosures. _____ I want electronic disclosures.

• [If you choose electronic disclosures, this information will be available at: (specify location) for _____ days. After that, the information will be available upon request (state how to obtain the information). When the information is posted, we will send you a message at the electronic mail address you designate here: (consumer's electronic mail address).]

[If you choose electronic disclosures this information will be sent to the electronic mail address that you designate here: (consumer's electronic mail address).]

• To receive this information you will need: (list hardware and software requirements). Do you have access to a computer that satisfies these requirements? _____Yes _____No

• Do you have access to a printer, or the ability to download information, in order to keep copies for your records? _____Yes _____No

• If you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, contact us at (telephone number).

A–5 Model Disclosures for Electronic Communication (§ 213.6(c))

(Disclosures Available Only Electronically)

You will receive important information required by the Consumer Leasing Act electronically.

Read this notice carefully and keep a copy for your records.

• The following information will be provided electronically: (description of Regulation M disclosures).

• This lease is not available unless you accept electronic disclosures.

• [If you choose electronic disclosures, this information will be available at: (specify location) for _____ days. After that, the information will be available upon request (state how to obtain the information). When the information is posted, we will send you a message at the electronic mail address you designate here: (consumer's electronic mail address).]

[If you choose electronic disclosures this information will be sent to the electronic mail address that you designate here: (consumer's electronic mail address).]

• To receive this information you will need: (list hardware and software requirements). Do you have access to a computer that satisfies these requirements? _____Yes _____No

• Do you have access to a printer, or the ability to download information, in order to keep copies for your records? _____Yes _____No

• Do you want this lease with electronic disclosures? _____Yes _____No

• If you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, contact us at (telephone number).

A–6 Model Notice for Delivery of Information Posted at Certain Locations (§ 213.6(d))

Information about your (identify lease) is now available at [website address or other location]. The information discusses (describe the disclosure). It will be available for _____days.

BILLING CODE 6210–01–P

A-7 Sample Form Electronic Communication (§ 213.6(c))
(Disclosures Available in Paper or Electronically)

You can choose to receive important information required by the Consumer Leasing Act in paper form or electronically.

Read this notice carefully and keep a copy for your records.

- You can choose to receive the following information in paper form or electronically: Cost and Terms of the lease.
- Please indicate how you would like to receive this information:

  ☐ I want paper disclosures ☐ I want electronic disclosures

- If you choose electronic disclosures, this information will be available at our Internet website: *http://www._____.com* for 90 days. After that, the information will be available upon request by contacting us at *1-800-xxx-xxxx*. When the information is posted on our website, we will send you a message at your e-mail address:

insert address

- To receive this information electronically, you will need: a minimum web browser version of (Browser name). Do you have access to a computer that satisfies these requirements?

  ☐ Yes ☐ No

- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

  ☐ Yes ☐ No

- If you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, you may contact us by telephone at *1-800-xxx-xxxx* or by electronic mail at _____*.help@isp.com.*

A-8 Sample Form Electronic Communication (§ 213.6(a)(3))
(Disclosures Available Only Electronically)

You will receive important information required by the Consumer Leasing Act electronically.

Read this notice carefully and keep a copy for your records.

- The following information will be provided electronically: Cost and Terms of the lease.
- This lease is available only if you accept these disclosures electronically.
- Information about your account will be available at our Internet website: *http://www._____.com* for 90 days. After that, the information will be available upon request by contacting us at *1-800-xxxx-xxxx*. When the information is posted on our website, we will send you a message at your e-mail address:

  insert address

- To receive this information electronically, you will need: a minimum web browser version of (Browser name). Do you have access to a computer that satisfies these requirements?

  ☐ Yes ☐ No

- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

  ☐ Yes ☐ No

- Do you want this lease with electronic disclosures?

  ☐ Yes ☐ No

- If you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, you may contact us by telephone at *1-800-xxx-xxxx* or by electronic mail at _____*.help@isp.com.*◂

BILLING CODE 6210–01–C

5. In Supplement I to Part 213, a new *Section 213.6 Requirements for Electronic Communication* is added to read as follows:

Supplement I to Part 213—Official Staff Commentary to Regulation M

* * * * *

►**Section 213.6—Requirements for Electronic Communication**

6(a) Definition

1. *Coverage.* Information transmitted by facsimile may be received in paper form or electronically, although the party initiating the transmission may not know at the time the disclosures are sent which form will be used. A lessor that provides disclosures by facsimile machine should comply with the requirements for electronic communication unless the lessor knows that the disclosures will be received in paper form.

6(b) Electronic Communication Between Lessor and Consumer

1. *Retainability.* Lessors must provide electronic disclosures in a retainable format (for example, they can be printed or downloaded). Consumers may communicate electronically with lessors through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), a consumer may not have the ability at a given time to preserve CLA disclosures presented on-screen. To ensure that consumers have an adequate opportunity to retain the disclosures, the lessor also must send them to the consumer's designated electronic mail address or to another location, for example, on the lessor's website, where the information may be retrieved at a later date.

2. *Timing and delivery.* When a consumer becomes obligated for a lease transaction on the Internet, for example, in order to meet the timing and delivery requirements, lessors must ensure that disclosures applicable at that time appear on the screen and are in a retainable format. The delivery requirements would not be met if disclosures do not either appear on the screen or if the consumer is allowed to consummate the lease before receiving the disclosures. For example, a lessor can provide a link to electronic disclosures appearing on a separate page as long as consumers cannot bypass the link and they are required to access the disclosures before becoming obligated on the lease.

6(b)(2) In-Person Exception

1. *Disclosures in paper form.* If a consumer consummates a lease in person, the lessor must generally provide disclosures in paper form. For example, if a consumer goes to a lessor's place of business to consummate a lease, disclosures are required before consummation and they must be provided in paper form; directing the consumer to disclosures posted on the lessor's website would not be sufficient. If, however, a consumer applies for a lease on the Internet, a lessor may send disclosures electronically at or around that time even though the lessor's procedures require the consumer to visit the lessor at a later time to complete the transaction (for example, to sign a lease agreement).

6(c) Disclosure Notice

1. *Consumer's affirmative responses.* Even though a consumer accepts electronic disclosures in accordance with § 213.6(c)(2), a lessor may deliver disclosures by electronic communication only if the consumer provides an electronic address where one is required, and responds affirmatively to questions about technical requirements and the ability to print or download information (see sample forms A–7 and A–8 in appendix A to this part).

6(c)(1) Notice by Lessor

1. *Toll-free telephone number.* The number must be toll-free for nonlocal calls made from an area code other than the one used in the lessor's dialing area. Alternatively, a lessor may provide any telephone number that allows a consumer to call for information and reverse the telephone charges.

2. *Lessor's address.* Lessors have the option of providing either an electronic or postal address for consumers' use in addition to the toll-free telephone number.

6(d) Address or Location To Receive Electronic Communication.

Paragraph 6(d)(1)

1. *Electronic address.* A consumer's electronic address is an electronic mail address that may be used by the consumer for receiving communications transmitted by parties other than the lessor.

Paragraph 6(d)(2)

1. *Availability.* Information that is not sent to a consumer's electronic mail address must be available for at least 90 days from the date the information becomes available or from the date the notice required by § 213.6(d)(2) is sent to the consumer, whichever occurs later.◄

* * * * *

6. In Supplement I to Part 213, in § 213.7—Advertising, the following amendments are made:

a. Under *7(b)(1) Amount due at Lease Signing or Delivery*, a new paragraph 3. is added;

b. Under *7(b)(2) Advertisement of a Lease Rate*, paragraph 1. is revised; and

c. Under *7(c) Catalogs and Multi-Page Advertisements*, paragraph 12 is redesignated as paragraph 2 and revised. The addition and revisions read as follows:

* * * * *

§ 213.7 Advertising

* * * * *

7(b)(1) Amount due at Lease Signing or Delivery

* * * * *

►3. *Electronic advertisements.* A lessor that has an electronic advertisement does not comply with the prominence rule in § 213.7(b)(1) if both the triggering terms and the required disclosures cannot be viewed simultaneously.◄

7(b)(2) Advertisement of a Lease Rate

1. *Location of statement.* The notice required to accompany a percentage rate stated in an advertisement must be placed in close proximity to the rate without any other intervening language or symbols. For example, a lessor may not place an asterisk next to the rate and place the notice elsewhere in the advertisement. In addition, with the exception of the notice required by § 213.4(s), the rate cannot be more prominent than any § 213.4 disclosure stated in the advertisement. ►A lessor does not comply with the prominence rule in § 213.7(b)(2) if a rate contained in an electronic advertisement and the required disclosures cannot be viewed simultaneously.◄

7(c) Catalogs and Multi-Page Advertisements

* * * * *

2. *Cross-references.* A ►catalog, multiple-page, or electronic◄ [multi-page] advertisement is a single advertisement (requiring only one set of lease disclosures) if it contains a table, chart, or schedule with the disclosures required under § 213.7(d)(2)(i) through (v). If one of the triggering terms listed in § 213.7(d)(1) appears in a catalog ►,◄[or other] multiple-page ►, or electronic◄ advertisement, ► it must clearly direct the consumer to the page or location where the table, chart, or schedule begins. For example, in an electronic advertisement, a term triggering additional disclosures may be accompanied by a link that directly connects the consumer to the additional information (but see comments under § 213.7(b) about the prominence rule).◄ [the page on which the triggering term is used must clearly refer to the specific page where the table, chart, or schedule begins.]

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 31, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–23141 Filed 9–13–99; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1043]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is requesting comment on proposed revisions to Regulation Z, which implements the Truth in Lending Act. The Board previously published a proposed rule that permits creditors to use electronic communication (for example, communication via personal computer and modem) to provide disclosures required by the act and regulation, if the

consumer agrees to such delivery. (A similar rule was also proposed under various other consumer financial services and fair lending regulations administered by the Board.) In response to comments received on the proposals, the Board is publishing for comment an alternative proposal on the electronic delivery of disclosures, together with proposed commentary that would provide further guidance on electronic communication issues. The Board is also publishing for comment proposed revisions to allow disclosures in other languages.

DATES: Comments must be received by October 29, 1999.

ADDRESSES: Comments, which should refer to Docket No. R–1043, may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room MP–500 between 9:00 a.m. and 5:00 p.m., pursuant to § 261.12, except as provided in § 261.14 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: For information pertaining to open-end credit, John C. Wood, Senior Attorney, or Jane E. Ahrens, Senior Counsel; for information pertaining to closed-end credit, Michael L. Hentrel or Kyung H. Cho-Miller, Staff Attorneys, Division of Consumer and Community Affairs, at (202) 452–3667 or (202) 452–2412. Users of Telecommunications Device for the Deaf (TDD) *only*, contact Diane Jenkins at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The Board's Regulation Z (12 CFR part 226) implements the act. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (the APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwellings.

TILA and Regulation Z require a number of disclosures to be provided in writing, presuming that creditors provide paper documents. Under many laws that call for information to be in writing, information in electronic form is considered to be "written." Information produced, stored, or communicated by computer is also generally considered to be a writing, where visual text is involved.

In May 1996, the Board revised Regulation E (Electronic Fund Transfers) following a comprehensive review. During that process, the Board determined that electronic communications for delivery of information required by federal laws governing financial services could effectively reduce compliance costs without adversely affecting consumer protections. Consequently, the Board simultaneously issued a proposed rule to permit financial institutions to use electronic communication to deliver disclosures that Regulation E requires to be given in writing. (61 FR 19696, May 2, 1996.) The 1996 proposal required that disclosures be provided in a form the consumer may retain, a requirement that institutions could satisfy by providing information in a format that may be printed or downloaded. The proposed rule also allowed consumers to request a paper copy of a disclosure for up to one year after its original delivery.

Following a review of the comments, on March 25, 1998, the Board issued an interim rule under Regulation E (the "interim rule"), 63 FR 14528. The Board also published proposals under Regulations DD (Truth in Savings), 63 FR 14533, M (Consumer Leasing), 63 FR 14538, Z (Truth in Lending), 63 FR 14548, and B (Equal Credit Opportunity), 63 FR 14552, (collectively, the "March 1998 proposed rules"). The rules would apply to financial institutions, creditors, lessors, and other entities that are required to give disclosures to consumers and others. (For ease of reference this background section uses the terms "financial institutions," "institutions," and "consumers.") The interim rule and the March 1998 proposed rules were similar to the May 1996 proposed rule; however, they did not require financial institutions to provide paper copies of disclosures to a consumer upon request if the consumer previously agreed to receive disclosures electronically. The Board believed that most institutions would accommodate consumer requests for paper copies when feasible or redeliver disclosures electronically; and the Board encouraged financial institutions to do so.

The March 1998 proposed rules and the interim rule permitted financial institutions to provide disclosures electronically if the consumer agreed, with few other requirements. The rule was intended to provide flexibility and did not specify any particular method for obtaining a consumer's agreement. Whether the parties had an agreement would be determined by state law. The proposals and the interim rule did not preclude a financial institution and a consumer from entering into an agreement electronically, nor did they prescribe a formal mechanism for doing so.

The Board received approximately 200 written comments on the interim rule and the March 1998 proposed rules. The majority of comments were submitted by financial institutions and their trade associations. Industry commenters generally supported the use of electronic communication to deliver information required by the TILA and Regulation Z. Nevertheless, many sought specific revisions and additional guidance on how to comply with the disclosure requirements in particular transactions and circumstances.

Industry commenters were especially concerned about the condition that a consumer had to "agree" to receive information by electronic communication, because the rule did not specify a method for establishing that an "agreement" was reached. These commenters believed that relying on state law created uncertainty about what constitutes an agreement and, therefore, potential liability for noncompliance. To avoid uncertainty over which state's laws apply, some commenters urged the Board to adopt a federal minimum standard for agreements or for informed consent to receive disclosures by electronic communication. These commenters believed that such a standard would avoid the compliance burden associated with tailoring legally binding "agreements" to the contract laws of all jurisdictions where electronic communications may be sent.

Consumer advocates generally opposed the March 1998 interim rule and proposed rules. Without additional safeguards, they believed, consumers may not be provided with adequate information about electronic communication before an "agreement" is reached. They also believed that promises of lower costs could induce consumers to agree to receive disclosures electronically without a full

understanding of the implications. To avoid such problems, they urged the Board, for example, either to require institutions to disclose to consumers that their account with the institution will not be adversely affected if they do not agree to receive electronic disclosures, or to permit institutions to offer electronic disclosures only to consumers who initiate contact with the institution through electronic communication. They also noted that some consumers will likely consent to electronic disclosures believing that they have the technical capability to retrieve information electronically, but might later discover that they are unable to do so. They questioned consumers' willingness and ability to access and retain disclosures posted on Internet websites, and expressed their apprehension that the goals of federally mandated disclosure laws will be lost.

Consumer advocates and others were particularly concerned about the use of electronic disclosures in connection with home-secured loans and certain other transactions that consumers typically consummate in person (citing as examples automobile loans and leases, short-term "payday" loans, or home improvement financing contracts resulting from door-to-door sales). They asserted that there is little benefit to eliminating paper disclosures in such transactions and that allowing electronic disclosures in those cases could lead to abusive practices. Accordingly, consumer advocates and others believed that paper disclosures should always accompany electronic disclosures in mortgage loans and certain other transactions, and that consumers should have the right to obtain paper copies of disclosures upon request for all types of transactions (deposit account, credit card, loan or lease, and other transactions).

A final issue raised by consumer advocates was the integrity of disclosures sent electronically. They stated that there may be instances when the consumer and the institution disagree on the terms or conditions of an agreement and consumers may need to offer electronic disclosures as proof of the agreed-upon terms and to enforce rights under consumer protection laws. Thus, to assure that electronic documents have not been altered and that they accurately reflect the disclosures originally sent, consumer advocates recommended that the Board require that electronic disclosures be authenticated by an independent third party.

The Board's Consumer Advisory Council considered the electronic delivery of disclosures in 1998 and again in 1999. Many Council members shared views similar to those expressed in written comment letters on the 1998 proposals. For example, some Council members expressed concern that the Board was moving too quickly in allowing electronic disclosures for certain transactions, and suggested that the Board might go forward with electronic disclosures for deposit accounts while proceeding more slowly on credit and lease transactions. Others expressed concern about consumer access and consumers' ability to retain electronic disclosures. They believed that, without specific guidance from the Board, institutions would provide electronic disclosures without knowing whether consumers could retain or access the disclosures, and without establishing procedures to address technical malfunctions or nondelivery. The Council also discussed the integrity and security of electronic documents.

II. Overview of Proposed Revisions

Based on a review of the comments and further analysis, the Board is requesting comment on a modified proposed rule that is more detailed than the interim rule and the March 1998 proposed rules. It is intended to provide specific guidance for creditors that choose to use electronic communication to comply with Regulation Z's requirements to provide written disclosures, and to ensure effective delivery of disclosures to consumers through this medium. Though detailed, the proposal provides flexibility for compliance with the electronic communication rules. The modified proposal recognizes that some disclosures may warrant different treatment under the rule. Some disclosures are generally available to the public—for example, credit card costs in solicitations. Under the modified proposal, such disclosures could be made available electronically without obtaining a consumer's consent. Where written disclosures are made to consumers who are transacting business in person, these disclosures generally would have to be made in paper form.

The Board is soliciting comment on a modified approach that addresses both industry and consumer group concerns. Under the proposal, creditors would have to provide specific information about how the consumer can receive and retain electronic disclosures—through a standardized disclosure statement—before obtaining consumers' acceptance of such delivery, with some exceptions. If they satisfy these requirements and obtain consumers' affirmative consent, creditors would be permitted to use electronic communications. As a general rule a creditor would be permitted to offer the option of receiving electronic disclosures to all consumers, whether they initially contact the creditor by electronic communication or otherwise. To address concerns about potential abuses, however, the proposal provides that if a consumer becomes obligated for an extension of credit in person, disclosures must be given in paper form.

Creditors would have the option of delivering disclosures to an e-mail address designated by the consumer or making disclosures available at another location such as the creditor's website, for printing or downloading. If the disclosures are posted at a website location, creditors generally must notify consumers at an e-mail address about the availability of the information. (Creditors may offer consumers the option of receiving alert notices at a postal address.) The disclosures must remain available at that site for 90 days.

Disclosures provided electronically would be subject to the "clear and conspicuous" standard, and the existing format, timing, and retainability rules in Regulation Z. For example, to satisfy the timing requirement, if disclosures are due at the time an electronic transaction is being conducted, the disclosures have to appear on the screen before the consumer could complete the transaction.

Creditors generally must provide a means for consumers to confirm the availability of equipment to receive and retain electronic disclosure documents. A creditor would not otherwise have a duty to verify consumers' actual ability to receive, print, or download the disclosures. Some commenters suggested that creditors should be required to verify delivery by return receipt. The Board solicits comment on the need for such a requirement and the feasibility of that approach.

As previously mentioned, consumer advocates and others have expressed concerns that electronic documents can be altered more easily than paper documents. The issue of the integrity and security of electronic documents affects electronic commerce in general and is not unique to the written disclosures required under the consumer protection laws administered by the Board. Consumers' ability to enforce rights under the consumer protection laws could be impaired in some cases, however, if the authenticity of disclosures that they retain cannot be demonstrated. Signatures, notary seals, and other established verification procedures are used to detect alterations for transactions memorialized in paper form. The development of similar

devices for electronic communications should reduce uncertainty over time about the ability to use electronic documents for resolving disputes.

The Board's rules require creditors to retain evidence of compliance with Regulation Z. Specific comment is solicited on the feasibility of complying with a requirement that creditors provide disclosures in a format that cannot be altered without detection, or have systems in place capable of detecting whether or not information has been altered, as well as the feasibility of requiring use of independent certification authorities to verify disclosure documents.

Elsewhere in today's **Federal Register**, the Board is publishing similar proposals for comment under Regulations B, E, M, and DD. In a separate notice the Board is publishing an interim rule under Regulation DD, which implements the Truth in Savings Act, to permit depository institutions to use electronic communication to deliver disclosures on periodic statements. For ease of reference, the Board has assigned new docket numbers to the modified proposals published today.

III. Section-by-Section Analysis

Pursuant to its authority under section 105 of the TILA, the Board proposes to amend Regulation Z to permit creditors to use electronic communication to provide the information required by this regulation to be in writing. Below is a section-by-section analysis of the rules for providing disclosures by electronic communication, including references to proposed commentary provisions.

The March 1998 proposed rule addressed electronic communication in Subpart B (open-end credit plans), Subpart C (closed-end transactions), and Subpart E (certain mortgage transactions). To ease compliance, the Board proposes to add a new Subpart F and Appendix M to the regulation to address in a single location all rules affecting electronic communication for consumer credit transactions. The revised proposal also amends § 226.27 to allow creditors to provide disclosures in another language so long as English disclosures are provided upon request.

Subpart B—Open-end Credit

Section 226.5a Credit and Charge Card Applications and Solicitations

5a(b) Required Disclosures

5a(b)(1) Annual Percentage Rate

Regulation Z requires credit and charge card issuers to provide credit disclosures in certain applications and solicitations to open credit and charge card accounts. Format and content requirements differ for applications or solicitations sent in direct mail campaigns and for those made available to the general public such as in "take-ones" and catalogs or magazines. Disclosures accompanying direct mail applications and solicitations must be presented in a table. Disclosures in a take-one also may be presented in a table with the same content as for direct mail, but the act and regulation permit alternatives for format and content. Where terms are disclosed, card issuers are required to disclose the periodic rate that would apply, expressed as an APR. For fixed rates, card issuers are required to disclose the APR currently available under the plan. For variable rates, the APR disclosed in a direct mail solicitation must be accurate within 60 days before mailing; in a take-one, within 30 days before printing.

The supplementary information to the March 1998 proposed rule addressed compliance with § 226.5a in the context of electronic communication. The Board indicated that card issuers should follow (1) the direct-mail rules if a card issuer sends an application or solicitation by electronic communication that alerts the consumer that the application or solicitation has arrived, such as electronic mail, and (2) the take-one rules if an issuer makes an application or solicitation publicly available, such as by posting it on an Internet site. Thus, for applications and solicitations posted on the Internet, the 1998 proposal would require that APRs generally be accurate within 30 days before the card issuer's most recent update of the Internet site; where direct mail rules apply, the APR would be accurate within 60 days before the card issuer's electronic mailing.

Most commenters concurred with the Board's guidance on when the direct mail requirements would apply to electronic disclosures, although a few commenters suggested that the Board simplify the proposal by establishing one rule for all solicitations by electronic communication. Regarding the APR, several commenters asked the Board what would constitute the "most recent" update of an Internet site. For example, commenters questioned whether the term referred to an update of any aspect of a creditor's website, or was limited to an update of the application or solicitation. Many commenters (including state and federal regulators) urged the Board to provide guidance by recommending a frequency for updating Internet sites. Other commenters stated that updates to information provided on the Internet, including the APR, should be required frequently, and within a set period of time.

To simplify the rule and to address commenters' concerns, the Board is proposing a single standard that would apply to the accuracy of APRs contained in applications or solicitations offered via electronic communication. Proposed would § 226.5a(b)(1)(iii) provides that when a variable rate is in an application or solicitation transmitted via electronic communication, the rate should be one that was in effect within the previous 30-day period. The 30-day period should allow card issuers sufficient flexibility in updating websites or in preparing electronic direct mail applications or solicitations without adversely affecting the consumer. The Board continues to believe that as to the format and content of the disclosures, applications or solicitations sent to a consumer's designated e-mail address should comply with the direct mail rules under § 226.5a(c) and that applications and solicitations available on a website should comply with the take-one rules under § 226.5a(e). Proposed comment 5a(a)(2)–7(i) contains this guidance. The Board requests comment on any compliance difficulties this approach may pose, and possible suggestions for their resolution.

Section 226.5b Requirements for Home-Equity Plans

5b(b) Time of Disclosures

Consumers interested in an open-end plan secured by the consumer's dwelling are provided with a booklet and other disclosures generically describing the creditor's product when an application is provided. Creditors may delay the delivery of the booklet and disclosures for up to three business days when, among other circumstances, applications are received by telephone. 12 CFR 226.5b(b), n. 10a.

Creditors have requested guidance on using electronic communication to provide the disclosures required by § 226.5b(b) when the consumer is transacting business at a creditor's website. Some believe the timing rules for applications by telephone should apply. The rationale underlying the deferral is that creditors cannot provide the booklet and other disclosures in written form as required by the regulation by telephone. That problem does not exist with on-line transactions. Thus, the Board believes there is no need for a delay in delivering disclosures. If the creditor's procedures permit the consumer to apply for credit on-line (and the creditor has complied with § 226.34(c)), the booklet and loan-product disclosures required by § 226.5b

would have to appear on the screen *before* the consumer starts the application process. This fulfills the rule's purpose to ensure that consumers have the opportunity to read important information about costs and other terms before the consumer completes an application or pays a nonrefundable fee. Proposed comment 5b(b)–7 contains this guidance. See also the discussion under § 226.19(b), below, for similar guidance regarding disclosures provided at application for certain mortgage loans.

Section 226.16 Advertising

16(c) Catalogs and Multiple-page Advertisements

Stating certain credit terms in an advertisement for an open-end credit plan triggers the disclosure of additional terms. Section 226.16(c) permits creditors using a multiple-page advertisement to state the additional disclosures in a table or schedule as long as the triggering credit terms appearing anywhere else in the advertisement refer to the page where the table or schedule is printed. Several commenters asked the Board to clarify the rules for electronic advertisements. Specifically, they asked whether creditors could utilize the multiple-page advertisement provisions when advertising electronically and if so, asked for guidance on the requirement to reference clearly where the table or schedule begins.

Section 226.16(c) would be amended to cover electronic advertisements. Creditors that advertise using electronic communication would comply with § 226.16(c) if the table or schedule with the additional information is set forth clearly and conspicuously and the triggering credit terms appearing anywhere else in the advertisement clearly refer to the location where the table or schedule begins. Proposed comment 16(c)(1)–2 contains this guidance.

Subpart C—Closed-end Credit

Section 226.17 General Disclosure Requirements

17(g) Mail or Telephone Orders—Delay in Disclosures

Section 226.17(g) allows creditors to defer TILA disclosures when a consumer makes a credit-purchase or requests credit by mail, telephone, or other "electronic means" without face-to-face or direct solicitation by the creditor. In such cases, creditors may delay providing disclosures until the first payment due date, provided certain information is "made available in written form" before the consumer's request. The rationale underlying the deferral is that creditors cannot provide transaction-specific disclosures in written form as required by the regulation at the time of the consumer's purchase or request.

Under the March 1998 proposal, creditors offering loan products by "electronic communication" (for example, those offered on the Internet) could not delay providing disclosures under § 226.17(g). The rationale underlying the proposal is that the deferral rule in § 226.17(g) pre-dates Internet banking; "other electronic means" typically involved non-interactive, non-visual means such as telegraph transmissions. The difficulties in providing disclosures for credit requests by mail or telephone are not present for credit requests received by electronic means of communication using visual text. Thus, the March 1998 proposed rule provided that specific disclosures must be provided before transactions are consummated using electronic communication. Most commenters agreed with the Board's position, that the same limitations that apply to requests made by telephone should not apply to electronic means of communication using visual text, such as the Internet.

Several commenters disagreed with the proposed rule and believed that deferral of TILA disclosures should apply to credit requests initiated by electronic communication, even where visual text is used, because of the transaction-specific nature of the disclosures such as the APR and payment schedule. Some commenters believed that the Board's proposal would require creditors to be available at all times to prepare these personalized disclosures. The Board does not intend such a result. As is the case of credit applications by other means, creditors are not required to respond immediately to a request for credit. Also, advances in technology permit creditors to provide transaction-specific disclosures by combining information provided by a consumer with credit programs offered by a creditor.

Other commenters were concerned that some devices using electronic communication, such as automated loan machines or automated teller machines, may not have the same capacity to store and provide disclosures as other means. Machines with the capability to process credit applications or disburse loan proceeds are generally controlled by the creditor or operated by a third party retained by the creditor. Under the March 1998 proposal, creditors have the responsibility to ensure proper equipment is in place where consumers receive electronic disclosures via equipment controlled by the creditor. This means that the equipment it operates or controls—including devices such as automated loan machines or automated teller machines—must meet clear and conspicuous standards and must provide a means for consumers to retain disclosures such as printers incorporated into terminals or a screen message offering to transmit the disclosure to the consumer's electronic mail or post office address. (See proposed comment 34(b)–1.)

Section 226.19 Certain Residential Mortgage Transactions

19(b) Certain Variable-rate Transactions

For certain loans with variable-rate features (loans where the APR may increase during the loan term) that are secured by the consumer's principal dwelling, creditors must provide consumers with a booklet and other disclosures generically describing the creditor's product when an application is provided (or a nonrefundable fee is paid, whichever occurs earliest). Creditors may delay the delivery of the booklet and disclosures for up to three business days when, among other circumstances, applications are received by telephone. 12 CFR 226.19(b), n. 45b. Consistent with proposed comment 5b(b)–7 addressing certain home-secured open-end plans, comment 19(b)–2 would be restructured and revised to address when the booklet and disclosures required by § 226.19(b) must be provided when an application is received by electronic communication.

Section 226.24 Advertising

Regulation Z prescribes certain disclosure rules for closed-end loan advertisements, including the use of multiple-page advertisements. Proposed amendments concerning electronic advertisements for open-end credit plans under § 226.16 are discussed above. Although specific requirements differ somewhat for closed-end loans and open-end credit plans, proposed amendments for closed-end loan advertisements are substantially similar to those discussed above for open-end credit plans.

24(b) Advertisement of Rate of Finance Charge

Section 226.24(b) permits creditors to state a simple annual rate or periodic rate in addition to the APR, as long as the rate is stated in conjunction with, but not more conspicuously than, the APR. Proposed comment 24(b)–6

contains guidance on how this rule applies to rates stated in an electronic advertisement.

24(d) Catalogs and Multiple-page Advertisements

Section 226.24(d) permits creditors using a multiple-page advertisement to state the additional disclosures in a table or schedule so long as the triggering credit terms appearing anywhere else in the advertisement refer to the page where the table or schedule is printed. Section 226.24(d) would be amended to cover electronic advertisements. Creditors that advertise using electronic communication generally would comply with § 226.24(d) if the table or schedule with the additional information is set forth clearly and the triggering credit terms appearing anywhere else in the advertisement clearly refers to the location where the table or schedule begins. Proposed comment 24(d)–4 contains this guidance.

Subpart D—Miscellaneous

Section 226.27 Spanish Language Disclosures

Section 226.27 provides that all disclosures required by the regulation must be provided in English, except in the Commonwealth of Puerto Rico, where disclosures may be provided in Spanish if the disclosures are available in English upon the consumer's request. The proposal would revise this provision, consistent with the language requirements in Regulation DD (Truth in Savings) and Regulation M (Consumer Leasing). Creditors would be permitted to give disclosures in another language as long as disclosures in English are given to a consumer who requests them. The Board believes that a more permissive rule could promote the delivery of more meaningful disclosures to some consumers.

Subpart F—Electronic Communications

Section 226.34 Requirements for Electronic Communications

34(a) Definition

The definition of the term "electronic communication" in the March 1998 proposed rule remains unchanged. Section 226.34(a) limits the term to a message transmitted electronically that can be displayed on equipment as visual text, such as a message that is displayed on a computer monitor screen. Most commenters supported the term as defined in the March 1998 proposed rule. Some commenters favored a more expansive definition that would encompass communications such as audio and voice response telephone systems. Because the proposal is intended to permit electronic communication to satisfy the statutory requirement for written disclosures, the Board believes visual text is an essential element of the definition.

Commenters asked the Board to clarify the coverage of certain types of communications. A few commenters asked about communication by facsimile. Facsimiles are initially transmitted electronically; the information may be received either in paper form or electronically through software that allows a consumer to capture the facsimile, display it on a monitor, and store it on a computer diskette or drive. Thus, information sent by facsimile may be subject to the provisions governing electronic communication. When disclosures are sent by facsimile, a creditor should comply with the requirements for electronic communication unless it knows that the disclosures will be received in paper form. Proposed comment 34(a)–1 contains this guidance.

34(b) Electronic Communication between Creditor and Consumer

Section 226.34(b) would permit creditors to provide disclosures using electronic communication, if the creditor complies with provisions in new § 226.34(d), discussed below.

1. Presenting Disclosures in a Clear and Conspicuous Format

The Board does not intend to discourage or encourage specific types of technologies. Regardless of the technology, however, disclosures provided electronically must be presented in a clear and conspicuous format as is the case for all written disclosures under the act and regulation. See §§ 226.5(a)(1), 226.17(a)(1), and 226.31(b).

When consumers consent to receive disclosures electronically and they confirm that they have the equipment to do so, creditors generally would have no further duty to determine that consumers are able to receive the disclosures. Creditors do have the responsibility of ensuring the proper equipment is in place in instances where the creditor controls the equipment. Proposed comment 34(b)–1 contains this guidance.

2. Providing Disclosures in a Form the Consumer May Keep

As with other written disclosures, information provided by electronic communication must be in a form the consumer can retain. Under the 1998 proposals and interim rule, a creditor would satisfy this requirement by providing information that can be printed or downloaded. The modified proposal adopts the same approach but also provides that the information must be sent to a specified location to ensure that consumers have an adequate opportunity to retain the information.

Consumers communicate electronically with creditors through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), a consumer may not have the ability at a given time to preserve TILA disclosures presented on-screen. Therefore, when a creditor provides disclosures by electronic communication, to satisfy the retention requirements, the creditor must send the disclosures to a consumer's e-mail address or other location where information may be retrieved at a later date. Proposed comment 34(b)–2 contains this guidance; see also the discussion under § 226.34(e), below. In instances where a creditor controls an electronic terminal used to provide electronic disclosures, a creditor may provide equipment for the consumer to print a paper copy in lieu of sending the information to the consumer's e-mail address or posting the information at another location such as the creditor's website. See proposed comment 34(b)–1.

3. Timing

Creditors must ensure that electronic disclosures comply with all relevant timing requirements of the regulation. TILA and Regulation Z require that disclosures be given at different times, depending on the credit product or the stage of the credit process at which consumers are receiving cost and other information. For example, generic disclosures, including educational brochures, about home-equity lines of credit and adjustable rate mortgage loans must be given at application. Disclosures, oftentimes containing estimated costs, for home-purchase loans must be given three days after application. Disclosures for loans covered by the Home Ownership and Equity Protection Act, 15 U.S.C. 1601 *et seq.*, must be given three days before consummation. Other loan disclosures have to be given anytime prior to becoming obligated for an extension of credit. These timing rules ensure that consumers have an opportunity to read important information about costs and other terms at different stages of the credit process—when shopping, at or shortly after applying for credit, or before becoming obligated under a plan or consummating a transaction.

To illustrate the timing requirements for electronic communication for an open-end plan, assume that a consumer is interested in opening a credit card account with an on-line retailer and uses a personal computer at home to access the retailer's website on the Internet. The creditor provides disclosures to the consumer about the use of electronic communication (the § 226.34(d) disclosures discussed below) and the consumer responds affirmatively. If the creditor's procedures permit the consumer to open the account and make a purchase immediately thereafter, initial disclosures required under § 226.6 would have to be provided. Thus, the disclosures must automatically appear on the screen or the consumer must be required to access the information before becoming obligated on the plan. The timing requirements for providing initial disclosures would not be met if, in this example, the retailer permitted the consumer simultaneously to open the credit card account and make a purchase and sent initial disclosures to an e-mail address thereafter. Proposed comment 34(b)–3 contains this guidance.

On the other hand, if the retailer delays processing the consumer's request to open a credit card account until the required disclosures have been delivered by e-mail, disclosures would not have to also appear on the screen; delivery to the consumer's e-mail address would be sufficient. In either case, the consumer must receive the disclosures before the first transaction.

Similar rules would apply for the timing requirements for electronic communication for a closed-end transaction. For an installment loan, if the creditor's procedures permit the consumer to consummate the loan on-line, disclosures required under § 226.18 must be provided before the consumer becomes obligated. For example, before consummation, the disclosures must automatically appear on the screen or the consumer must be required to access the disclosures on-line before continuing. The timing requirements would not be met if the creditor permitted the consumer to consummate the loan on-line and later sent disclosures to an e-mail address.

34(c) In-Person Exception

The proposal contains some exceptions to the general rule allowing information required by Regulation Z to be provided by electronic communication; where the exceptions apply, paper disclosures would be required. The exceptions, contained in § 226.34(c), seek to address concerns about potential abuses where consumers are transacting business in person but are offered disclosures in electronic form. In such transactions, there is a general expectation that consumers would be given paper copies of disclosures along with paper copies of other documents evidencing the transaction.

Under § 226.34(c), if a consumer becomes obligated for credit in person, the creditor must provide disclosures in paper form. (See § 226.6 for disclosures regarding open-end plans and § 226.18 for closed-end transactions.) The rule would ensure that consumers have the opportunity to consider the costs and terms of the transaction under the timing rules for providing disclosures established by TILA even if the disclosures were provided electronically at an earlier date. Proposed comment 34(c)–1 contains this guidance. The rule also addresses concerns by consumer advocates that providing disclosures by electronic communication is inappropriate when consumers conduct business in person and other aspects of the transaction are paper-based. The Board believes the burden associated with providing paper-based disclosures for in-person transactions is minimal, since other documents will be provided in paper form at that time.

In some instances, creditors may deliver disclosures by electronic communication even if the consumer becomes obligated in person. Under the proposal, if a consumer uses electronic communication to initiate a credit transaction not secured by a dwelling and requests electronic disclosures as provided in paragraph (d), the creditor could provide disclosures electronically. The creditor would have complied with the timing rules under TILA (before the first transaction for open-end plans, before consummation for closed-end transactions) and—assuming the disclosures remain accurate—would not be required to provide disclosures in paper form if the consumer later becomes obligated in person. Proposed comment 34(c)–2 contains this guidance. The Board believes this approach fosters TILA's purpose to promote the informed use of credit. Consumers receiving disclosures by electronic communication could benefit by having additional time to review the costs and terms of the transaction rather than receiving them shortly before becoming obligated for the credit, as is often the case for in-person transactions.

For credit secured by a dwelling, however, the proposal requires paper disclosures if the consumer becomes obligated in person. This is the case even though the creditor previously provided electronic disclosures that remain accurate at the time the consumer becomes obligated. The Board believes that most home-secured loans are consummated in person due to legal requirements such as the need to obtain authenticated signatures, and that most institutions would likely provide paper disclosures for in-person transactions in any event. Moreover, special protection is appropriate generally where a consumer's home is at risk for any extension of credit and specifically where predatory lending practices may occur and the consequences could be the loss of a consumer's home.

Rescission Notices

TILA and Regulation Z provide that in certain transactions secured by a consumer's principal dwelling, the consumer has three business days to rescind the transaction after becoming obligated on the debt (§§ 226.15 and 226.23). Consumers with an ownership interest in the dwelling used as security must receive: (1) Cost disclosures about the transaction, and (2) two copies of a notice that explains consumers' rescission rights and how to effect rescission, including a form the consumer may use to notify the creditor if the consumer decides to rescind the transaction.

In the March 1998 proposed rule, the Board did not explicitly address the electronic delivery of rescission notices. Some commenters asked the Board to clarify whether creditors could provide rescission notices by electronic means, and if so, whether two copies must be sent. Other commenters questioned whether electronic rescission notices should be permitted in any case. One commenter noted that because the potential significant impact of the rescission remedy, creditors would likely continue to deliver paper copies of the rescission notice even if the notices could be delivered electronically.

Under the proposal, creditors must provide notices required under §§ 226.15 and 226.23 in paper form if the consumer either becomes obligated under the plan or consummates the transaction in person. This approach is consistent with other proposed requirements to provide paper-based disclosures for dwelling-secured transactions, and recognizes the significance to both creditors and consumers of ensuring delivery of the notice explaining rescission rights and the accompanying form for the consumer's use. See § 226.34(f)(3) for proposed rules permitting consumers to rescind by electronic communication if

the creditor designates an electronic address for that purpose.

34(d) Disclosure Notice

Section 226.34(d) would identify the specific steps required before a creditor could use electronic communication to satisfy the regulation's disclosure requirements. Proposed Model Forms M–1 and M–2 and Sample Forms M–4 and M–5 are published to aid compliance with these requirements.

34(d)(2)(i) Notice by Creditor

Section 226.34(d)(2)(i) outlines the information that creditors must provide before electronic disclosures can be given. The creditor must: (1) Describe the information to be provided electronically and specify whether the information is also available in paper form or whether the transaction or account is offered only with electronic disclosures; (2) identify the address or location where the information will be provided electronically, and if it will be available at a location other than the consumer's electronic address, specify for how long and where it can be obtained once that period ends; (3) specify any technical requirements for receiving and retaining information sent electronically, and provide a means for the consumer to confirm the availability of equipment meeting those requirements; and (4) provide a toll-free telephone number and, at the creditor's option, an electronic or a postal address for questions about receiving electronic disclosures, or for updating consumers' electronic addresses, and for seeking assistance with technical or other difficulties (see proposed comments to 34(d)(2)(i)). The Board requests comment on whether other information should be disclosed regarding the use of electronic communication and on any format changes that might improve the usefulness of the notice for consumers.

The Board also solicits comment on the benefits of requiring an annual notice in paper form to consumers who receive disclosures by electronic communication. The notice would contain general information about receiving electronic disclosures including, for example, a reminder of the toll-free telephone number where consumers may contact the creditor if they have questions regarding their electronic disclosures. Comment is also requested on whether such a notice may be for feasible for certain types of credit (such as open-end) than others.

Under the proposal, the § 226.34(d)(2)(i) disclosures must be provided, as applicable, before the creditor uses electronic communication to deliver any information required by the regulation. The approach of requiring a standardized disclosure statement addresses, in several ways, the concern that consumers may be steered into using electronic communication without fully understanding the implications. Under this approach, the specific disclosures that would be delivered electronically must be identified, and consumers must be informed whether there is also an option to receive the information in paper form. Consumers must provide an e-mail address where one is required. Technical requirements must also be stated, and consumers must affirm that their equipment meets the requirements, and that they have the capability of retaining electronic disclosures by downloading or printing them (see proposed comment 34(d)–1). Thus, the § 226.34(d)(2)(i) disclosures should allow consumers to make informed judgments about receiving electronic disclosures.

Some commenters requested clarification of whether a creditor may use electronic communication to provide some required disclosures while using paper for others. The proposed rule would permit creditors to do so; the disclosure given under § 226.34(d)(2)(i) must specify which TILA disclosures will be provided electronically.

Commenters requested further guidance on a creditor's obligation under the regulation if the consumer chooses not to receive information by electronic communication. A creditor could offer a consumer the option of receiving disclosures in paper form, but it would not be required to do so. A creditor could establish accounts or loans for which disclosures are given only by electronic communication. Section 226.34(d)(2)(i)(A) would require creditors to tell consumers whether or not they have the option to receive disclosures in paper form. Section 226.34(d)(2)(i)(D) would require creditors to provide a toll-free number that consumers could use to inform creditors if they wish to discontinue receiving electronic disclosures. In such cases the creditor must inform the consumer whether credit transaction is also available with disclosures in paper form. Proposed sample disclosure statements in which the consumer has an option to receive electronic or paper disclosures (Form M–4) or electronic disclosures only (Form M–5) are contained in appendix M.

34(d)(2)(ii) Response by Consumer

Proposed § 226.34(d)(2)(ii) would require creditors to provide a means for the consumer to affirmatively indicate that disclosures may be provided electronically. Examples include a "check box" on a computer screen or a signature line (for requests made in paper form). The requirement is intended to ensure that consumers' consent is established knowingly and voluntarily, and that consent to receive electronic disclosures is not inferred from consumers' use of the account or acceptance of general account terms. See proposed comment 34(d)(2)(ii)–1.

34(d)(3) Changes

Creditors would be required to notify consumers about changes to the information that is provided in the notice required by § 226.34(d)(2)(i)—for example, if upgrades to computer software are required. Proposed comment 34(d)(3)–1 contains this guidance.

The notice must include the effective date of the change and be provided before that date. Proposed comment 34(d)(3)–2 would provide that the notice must be sent a reasonable period of time before the effective date of the change. Although the number of days that constitutes reasonable notice may vary, depending on the type of change involved, the comment would provide creditors with a safe harbor: fifteen days' advance notice would be considered a reasonable time in all cases. The same time period is stated in similar proposals under Regulations B, E, and DD published in today's **Federal Register**. Comment is requested on whether a safe harbor of 15 days is an appropriate time period, and whether a uniform period for changes involving electronic communication is desirable. An alternative approach would adopt notice requirements that are consistent with change-in-terms requirements under the respective regulations. Under this approach, for example, the safe harbor would be 15 days under § 226.9 for Regulation Z, 21 days under § 205.8 for Regulation E, and 30 days under § 230.5 for Regulation DD. Proposed comment 34(b)(3)–3 contains guidance on delivery requirements for the notice of change.

The notice of a change must also include a toll-free telephone number or, at the creditor's option, an address for questions about receiving electronic disclosures. For example, a consumer may call regarding problems related to a change, such as an upgrade to computer software that is not provided by the creditor. Consumers may also use the toll-free number if they wish to discontinue receiving electronic disclosures. In such cases, the creditor must inform consumers whether the credit transaction is also available with

disclosures in paper form. (See proposed comments 34(d)(3)–4 through –6.)

If the change involves providing additional disclosures by electronic communication, creditors generally would be required to provide the notice in § 226.34(d)(2)(i) and obtain the consumer's consent. That notice would not be required if the creditor previously obtained the consumer's consent to the additional disclosures in its initial notice by disclosing the possibility and specifying which disclosures might be provided electronically in the future. Comment is specifically requested on this approach. A list of additional disclosures may be necessary to ensure that consumers' consent is informed and knowing (provided it does not cause confusion).

34(d)(4) Exceptions

Section 226.5a requires creditors to provide certain disclosures on or with a solicitation or an application to open a credit card account. When solicitations or applications appear electronically, the disclosures required by § 226.5a should appear on the screen before the solicitation or application appears. Proposed comment 5a(a)(2)–7(ii) contains this guidance. Since a solicitation or an application is more analogous to an advertisement than to a transaction-specific disclosure, however, the notices to be provided by the creditor regarding the use of electronic communication under § 226.34(d)(2)(i) would not be required. Proposed § 226.34(d)(4) exempts a solicitation or an application to open a credit or charge card account from § 226.34(d)(1)–(d)(3).

34(e) Address or Location to Receive Electronic Communication

Proposed § 226.34(e) identifies addresses and locations where creditors using electronic communication may send information to the consumer. Creditors may send information to a consumer's electronic address, which is defined in proposed comment 34(e)(1)–1 as an e-mail address that the consumer also may use for receiving communications from parties other than the creditor. For periodic statements, for example, a creditor's responsibility to provide disclosures by electronic communication will be satisfied when the information is sent to the consumer's electronic address in accordance with the applicable proposed rules concerning the delivery of disclosures by electronic communication.

Guidance accompanying the March 1998 proposed rule provided that a creditor would not meet delivery requirements by simply posting information to an Internet site such as a creditor's "home page" without appropriate notice on how consumers can access the information. Industry commenters wanted to retain the flexibility of posting disclosures on an Internet website. They did not object to providing a separate notice alerting consumers about the disclosures' availability but requested more guidance on the issue. Consumer advocates and others expressed concern that the mere posting of information inappropriately places the responsibility to obtain disclosures on consumers, and undermines the purpose of the delivery requirements of the regulation.

The Board recognizes that currently, because of security and privacy concerns associated with data transmissions, a number of creditors may choose to provide disclosures at their websites, where the consumer may retrieve them under secure conditions. Under § 226.34(e), a creditor may make disclosures available to a consumer at a location other than the consumer's electronic address. The institution must notify the consumer when the information becomes available and identify the account involved. The notice must be sent to the electronic mail address designated by the consumer; the creditor may, at its option, permit the consumer to designate a postal address. A proposed model form (Model Form M–3) is published below; see also proposed comment 34(e)(2)–1.

The Board believes it would be inconsistent with the TILA to require a consumer to initiate a search—for example, to search the website of each card issuer with whom a consumer has a credit card account—to determine whether a disclosure has been provided. The proposed approach ensures that a consumer would not be required to check a creditor's website repeatedly, for example, to learn whether the creditor posted a change in a term that affects the consumer's credit card account.

The requirements of the regulation would be met only if the required disclosure is posted on the website and the consumer is notified of its availability in a timely fashion. For example, creditors offering open-end plans must provide a change-in-terms notice to consumers at least 15 days in advance of the change. (12 CFR 226.9(c).) For a change-in-terms notice posted on the Internet, a creditor must both post the notice and notify consumers of its availability at least 15 days in advance of the change.

Commenters sought guidance on how long disclosures posted at a particular location must be available to consumers. There is a variety of circumstances when a consumer may not be able immediately to access the information due to illness, travel, or computer malfunction, for example. Under § 226.34(e)(2), creditors must post information that is sent to a location other than the consumer's electronic mail address for 90 days. Proposed comment 34(e)(2)–3 contains this guidance.

Under the modified proposal, creditors that post information at a location other than the consumer's electronic mail address are required—after the 90-day period—to make disclosures available to consumers upon request for a period of not less than two years from the date disclosures are required to be made, consistent with the record retention requirements under § 226.25. The Board requests comments on this approach, including suggestions for alternative means for providing consumers continuing access to disclosures.

As discussed above in connection with proposed § 226.34(b), the provisions of proposed § 226.34(e) are based in part upon the Regulation Z requirement that a creditor provide disclosures in a form that the consumer can retain. Certain disclosures, however, are not subject to the retainability requirement. In particular, footnote 8 to § 226.5(a) excepts the disclosures under §§ 226.5a, 226.5b(d), 226.9(a)(2), 226.9(e), and 226.10(b) from this requirement. Proposed comment § 226.34(e)(2)–4 clarifies that the existing exception applies to electronic disclosures and that the requirements of § 226.34(e) would not apply to disclosures referenced in footnote 8, except § 226.5b(d).

The Board believes that the disclosures required to be given along with an application for a home equity line of credit under § 226.5b(d) should not be excepted from the requirements of proposed § 226.34(e). Although the § 226.5b(d) disclosures are not required, under footnote 8, to be provided in retainable form in the context of paper, as a practical matter consumers usually have the opportunity to keep a copy of these disclosures by some means; indeed, the first disclosure listed in § 226.5b(d) is "a statement that the consumer should make or otherwise retain a copy of the disclosures." In addition, the § 226.5b(d) disclosures contain important information that may not be duplicated by disclosures provided later to the consumer (such as the § 226.6 disclosures); in contrast, the

disclosures under § 226.5a are mostly repeated in the § 226.6 disclosures.

34(f) Consumer Use of Electronic Communication

Proposed § 226.34(f) would clarify consumers' ability to provide certain information to creditors by electronic communication. For open-end accounts, Regulation Z provides that a consumer must submit a written request for the refund of credit balances, that a cardholder may inform a card issuer about the loss or theft of a credit card by notifying the card issuer orally or in writing, and that a consumer with a billing error must provide a written notice to the creditor to initiate the billing-error resolution process. Under the revised proposal, consumers generally would have the option to use electronic communication for these written notices if the consumer has chosen to receive information by electronic communication. Because the consumer's electronic communication serves as written notice, the creditor could not also require a paper notice. A creditor could, however, specify a particular electronic address for receiving the notices.

The issue of consumers' ability to provide certain information to creditors by electronic communication was not raised in the March 1998 proposed rule. The Board, however, stated in the Regulation E interim rule that financial institutions could require paper confirmation of electronic notices where the regulation allows written confirmation. This approach was consistent with the Regulation E 1996 proposed rule, where the Board stated that (as in the case of an oral communication) if the consumer sends an electronic communication to the financial institution, the institution could require paper confirmation from the consumer (particularly since the consumer was entitled to a paper copy of a disclosure upon request under the Regulation E 1996 proposed rule).

Views were mixed on whether institutions should be permitted to require paper confirmations of electronic notices. Many industry commenters requested that the Board allow institutions to request paper confirmations; some stated that paper confirmations protect both the consumer and the institution. Consumer advocates and other commenters believed it would be unfair to require paper confirmation of an electronic communication from consumers who receive electronic communication from an institution.

Based upon the comments received and further analysis, and subject to certain limitations discussed below, the Board is proposing that consumers be permitted to use electronic communications to comply with the regulation.

34(f)(1) Open-end Credit

For open-end transactions, proposed § 226.34(f)(1) permits the consumer to use electronic communications if a creditor uses electronic communication to provide periodic statements which establishes a continuing electronic relationship between the creditor and consumer. If, however, a creditor limits its use of electronic communication to the delivery initial disclosures (that is, if all subsequent disclosures regarding the credit transaction are provided in paper), creditors would not be required to accept an electronic notice, such as a request for refund of credit balances or notice of lost or stolen credit card or of a billing error, from consumers.

34(f)(2) Closed-end Credit

For closed-end transactions, a consumer is required to submit a written request in one instance—to request the refund of credit balances. In contrast to open-end transactions, the disclosure requirements imposed on the creditor for closed-end transactions generally end at consummation with the exception of variable-rate transactions. Therefore, proposed § 226.34(f)(2) permits a consumer to use electronic communication to request the refund of credit balances only if the creditor has designated an electronic address for that purpose.

34(f)(3) Rescission

Similar to allowing a consumer to use electronic communication to request the refund of credit balances in a closed-end transaction, proposed § 226.34(f)(3) allows a consumer to rescind by using electronic communication if the creditor has designated an electronic address for that purpose. (See, also, the discussion in § 226.34(c) regarding the use of electronic communication to provide rescission notices.)

34(f)(4) Creditor's Designation of Address

Section 226.34(f)(4) would provide that a creditor may designate the electronic address that must be used by a consumer for sending electronic communication as permitted by § 226.34(f)(1) through (3).

34(g) Signatures and Similar Authentication

There are three signature requirements under Regulation Z. Under § 226.4(d) consumers may elect to accept credit insurance or debt cancellation coverage by signing or initialing an affirmative written request after receiving disclosures about the insurance. Under §§ 226.15 and 226.23 (and the corresponding model forms and official staff commentary) consumers may cancel certain home-secured loans or waive this right by providing a written signed notice to the creditor. Under § 226.31(c) (and the official staff commentary) telephone disclosures may be provided if the consumer initiates a change and at consummation new disclosures are provided and the consumer and creditor sign a statement indicating that the telephone disclosures were provided three days before consummation.

Proposed § 226.34(g) would allow consumers and creditors to similarly authenticate signatures where required by the regulation. A similar amendment was made to Regulation E in the 1996 review of the regulation.

The Board indicated in the May 1996 Regulation E proposal that any authentication method should provide the same assurance as a signature in a paper-based system. Since the publication of the amended Regulation E and its accompanying commentary, the Board has been asked to give further guidance on this issue. In the supplementary information to the March 1998 proposed rule, the Board expressed interest in learning about other ways in which authentication in an electronic environment might occur in lieu of a consumer's signature.

Some commenters provided alternatives for verifying a consumer's identity, including alphanumeric codes (combinations of letters and numbers) or combinations of unique identifiers (such as account numbers combined with a number representing algorithms of the account numbers). In the supplementary information to the March 1998 proposed rule, the Board cited security codes and digital signatures as examples of authentication devices that might meet the requirements of authentication and signatures. Many commenters stated their concern that the Board approved only these or similar methods. These commenters urged the Board to take a flexible approach to this requirement. They suggested that the Board's implied or explicit endorsement of any particular method could hinder the development of new technologies. Further, these commenters requested that the Board take a "wait and see" approach to this issue, to allow the industry to develop alternatives that will result in more security for consumers.

To avoid unduly influencing the development of electronic authentication methods and to encourage innovation and flexibility, the Board will limit its guidance to the general principle that a home-banking or other electronic communication system must use an authentication device that provides the same assurance as a signature in a paper-based system.

Appendix M to Part 226—Electronic Communication Model Forms and Clauses

The Board solicits comment on three proposed model forms and two sample forms for use by creditors to aid compliance with the disclosure requirements of §§ 226.34(d) and (e). Appendix M–1 and Appendix M–2 would implement § 226.34(d), regarding the notices that creditors must give prior to using electronic communication to provide required disclosures. Appendix M–3 would implement § 226.34(e), regarding notices to consumers about the availability of electronic disclosures at locations such as the creditor's website. Use of any modified version of these forms would be in compliance as long as the creditor does not delete information required by the regulation or rearrange the format in a way that affects the substance, clarity, or meaningful sequence of the disclosure.

Sample Form M–4 illustrates the disclosures under § 226.34(d) for a credit account. The sample assumes that the creditor also offers paper disclosures for consumers who choose not to receive electronic disclosures. Sample Form M–5 assumes that consumers must accept electronic disclosures if they want to open the account or consummate the transaction.

Additional Issue Raised by Electronic Communication

Preemption

A few commenters suggested that any final rule issued by the Board permitting electronic disclosures should explicitly preempt any state law requiring paper disclosures. Under § 226.28 of the regulation, state laws are preempted if they are inconsistent with the act and regulation and only to the extent of the inconsistency. The proposed rule would provide creditors with the option of giving required disclosures by electronic communication as an alternative to paper. There is no apparent inconsistency with the act and regulation if state laws require paper disclosures. The Board will, however, review preemption issues that are brought to the Board's attention. Appendix A outlines the Board's procedures for determining whether a specific law is preempted, which will guide the Board in any determination requested by a state, creditor, or other interested party following publication of a final rule regarding electronic communication.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R–1043, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS-or Windows-based format.

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation Z. Although the proposal would add disclosure requirements with respect to electronic communication, overall, the proposed amendments are not expected to have any significant impact on small entities. A creditor's use of electronic communication to provide disclosures required by the regulation is optional. The proposed rule would give creditors flexibility in providing disclosures. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB number. The OMB control number is 7100–0199.

The collection of information requirements that are relevant to this proposed rulemaking are in 12 CFR Part 226 and in Appendices F, G, H, J, K, and L. This information is mandatory (15 U.S.C. 1604(a)) to evidence compliance with the requirements of Regulation Z and the Truth in Lending Act (TILA). The revised requirements would be used to ensure adequate disclosure of basic terms, costs, and rights relating to credit transactions, at or before the time consumers enter into a consumer credit transaction and when the availability of consumer credit on particular terms is advertised, for consumers receiving certain disclosures by electronic communication. The respondents/recordkeepers are for-profit creditors, including small businesses. Creditors are also required to retain records for 24 months. This regulation applies to all types of creditors, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would allow creditors the option of using electronic communication (for example, via personal computer and modem) to provide disclosures required by the regulation. Although the proposal would add disclosure requirements with respect to electronic communication, the optional use of electronic communication would likely reduce the paperwork burden of creditors. With respect to state member banks, it is estimated that there are 988 respondents/recordkeepers and an average frequency of 134,658,472 responses per respondent each year. Therefore the current amount of annual burden is estimated to be 1,873,223 hours. There is estimated to be no additional annual cost burden and no capital or start-up cost.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises; however, any information obtained by the Federal Reserve may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522 (b)(4), (6) and (8)). The disclosures and information about error allegations are confidential between creditors and the customer.

The Federal Reserve requests comments from creditors, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this proposed regulation would be effective. Comments are invited on: (a) the cost of compliance; (b) ways to enhance the quality, utility, and clarity of the information to be disclosed; and (c) ways to minimize the burden of disclosure on respondents, including through the use of automated disclosure techniques or other forms of

information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503, with copies of such comments sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 226

Advertising, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight proposed changes to Regulation Z. New language is shown inside bold-faced arrows, deletions inside bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 would continue to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

Subpart B—Open-End Credit

2. Section 226.5a is amended by revising paragraph (b)(1)(ii) and adding a new paragraph (b)(1)(iii) to read as follows:

§ 226.5a Credit and charge card applications and solicitations.

* * * * *

(b) *Required disclosures.* * * *

(1) *Annual percentage rate.* * * *

(ii) ►Unless paragraph (b)(1)(iii) of this section applies,◄ when variable rate disclosures are provided under paragraph (c) of this section, an annual percentage rate disclosure is accurate if the rate was in effect within 60 days before mailing the disclosures. When variable rate disclosures are provided under paragraph (e) of this section, an annual percentage rate disclosure is accurate if the rate was in effect within 30 days before printing the disclosures.

► (iii) When variable rate disclosures are provided by electronic communication, an annual percentage rate disclosure is accurate if the rate is one that was in effect within the previous 30-day period before the disclosures are sent or posted.◄

* * * * *

3. Section 226.16 is amended by revising paragraph (c) to read as follows:

§ 226.16 Advertising.

* * * * *

(c) *Catalogs, [and] multiple-page* ►, and electronic◄ *advertisements.* (1) If a catalog or other multiple-page advertisement►, or an advertisement using electronic communication◄ gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (b) of this section, it shall be considered a single advertisement if:

(i) The table or schedule is clearly and conspicuously set forth; and

(ii) Any statement of terms set forth in § 226.6 appearing anywhere else in the catalog or advertisement clearly refers to [that page on which] ►the page or location where◄ the table or schedule begins.

(2) A catalog, [or] multiple-page ►, or electronic◄ advertisement complies with this paragraph if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

* * * * *

Subpart C—Closed-End Credit

4. Section 226.17 is amended by revising the introductory text in paragraph (g) to read as follows:

§ 226.17 General disclosure requirements.

* * * * *

(g) *Mail or telephone orders—delay in disclosures.* If a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or any other written [or electronic] communication ►, excluding electronic communication as described in § 226.34(a),◄ without face-to-face or direct telephone solicitation, the creditor may delay the disclosures until the due date of the first payment, if the following information for representative amounts or ranges of credit is made available in written form to the consumer or to the public before the actual purchase order or request:

* * * * *

5. Section 226.24 is amended by revising paragraph (d) to read as follows:

§ 226.24 Advertising.

* * * * *

(d) *Catalogs, [and] multiple-page* ►, and electronic◄ *advertisements.* (1) If a catalog or other multiple page advertisement►, or an advertisement using electronic communication◄ gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (c)(2) of this section, it shall be considered a single advertisement if:

(i) The table or schedule is clearly set forth; and

(ii) Any statement of terms of the credit terms in paragraph (c)(1) of this section appearing anywhere else in the catalog or advertisement clearly refers to [that page on which] ►the page or location where◄ the table or schedule begins.

(2) A catalog, [or] multiple-page ►, or electronic◄ advertisement complies with paragraph (c)(2) of this section if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

Subpart D—Miscellaneous

6. Section 226.27 is revised to read as follows:

§ 226.27 [Spanish] Language ►of◄ disclosures.

All disclosures required by this regulation ►may be made in a language other than English, provided that the disclosures are made available in English upon the consumer's request.◄ [shall be made in the English language, except in the Commonwealth of Puerto Rico, where creditors may, at their option, make disclosures in the Spanish language. If Spanish disclosures are made, English disclosures shall be provided on the consumer's request, either in substitution for or in addition to the Spanish disclosures.] This requirement for providing English disclosures on request shall not apply to advertisements subject to §§ 226.16 and 226.24 of this regulation.

7. Part 226 is amended by adding a new Subpart F to read as follows:

►Subpart F—Electronic Communications

§ 226.34 Requirements for electronic communications.

(a) *Definition. Electronic communication* means a message transmitted electronically between a creditor and a consumer in a format that allows visual text to be displayed on equipment such as a personal computer monitor.

(b) *Electronic communication between creditor and consumer.* Except as provided in paragraph (c) of this section, a creditor that complied with paragraph (d) of this section may provide by electronic communication any information required by this

regulation to be in writing. The creditor shall make the disclosures required by this part clearly and conspicuously and in a form that the consumer may keep.

(c) *In-person exception.* (1) *General.* When a consumer becomes obligated on an open-end plan or consummates a closed-end transaction in person, the disclosures required under § 226.6 or § 226.18, respectively, shall be provided in paper form; the notice of right to cancel shall also be provided in paper form if, in connection with the plan or transaction, a consumer has a right to rescind under § 226.15 or § 226.23.

(2) *Credit not secured by a dwelling.* For credit not secured by a dwelling, paragraph (c)(1) of this section does not apply if the consumer previously requested the credit by electronic communication and disclosures were provided in compliance with paragraph (d)(2)(i) and (d)(2)(ii) of this section at or around that time.

(d) *Disclosures.* (1) *General.* Except as provided under paragraph (d)(4) of this section, the disclosure notice required by paragraph (d)(2) of this section shall be provided in a manner substantially similar to the applicable model form set forth in Appendix M of this part (Model Forms M–1 and M–2).

(2) *Notice by creditor.* (i) A creditor shall:

(A) Describe the information to be provided electronically and specify whether the information is also available in paper form or whether the credit is offered only with electronic disclosures;

(B) Identify the address or location where the information will be provided electronically; and if it is made available at a location other than the consumer's electronic address, how long the information will be available, and how it can be obtained once that period ends;

(C) Specify any technical requirements for receiving and retaining information sent electronically, and provide a means for the consumer to confirm the availability of equipment meeting those requirements; and

(D) Provide a toll-free telephone number and, at the creditor's option, an address for questions about receiving electronic disclosures, for updating consumers' electronic addresses, and for seeking technical or other assistance related to electronic communication.

(ii) *Response by consumer.* A creditor shall provide a means for the consumer to accept or reject electronic disclosures.

(3) *Changes.* (i) A creditor shall notify affected consumers of any change to the information provided in the notice required by paragraph (d)(2)(i) of this section. The notice shall include the effective date of the change and must be provided before that date. The notice shall also include a toll-free telephone number, and, at the creditor's option, an address for questions about receiving electronic disclosures.

(ii) In addition to the notice under (d)(3)(i) of this section, if the change involves providing additional disclosures by electronic communication, a creditor shall provide the notice in paragraph (d)(2)(i) of this section and obtain the consumer's consent. A notice is not required under paragraph (d)(2)(i) if the creditor's initial notice states that additional disclosures may be provided electronically in the future and specifies which disclosures could be provided.

(4) *Exception.* A solicitation or an application to open an account referenced in § 226.5a shall be exempt from paragraphs (d)(1) through (d)(3) of this section.

(e) *Address or location to receive electronic communication.* A creditor that uses electronic communication to provide information required by this regulation shall:

(1) Send the information to the consumer's electronic address; or

(2) Post the information for at least 90 days at a location such as a website, and send a notice to the consumer when the information becomes available. Thereafter the information shall be available upon request for a period of not less than two years from the date disclosures are required to be made. The notice required by this paragraph (e)(2) shall identify the account involved, shall be sent to an electronic address designated by the consumer (or to a postal address, at the creditor's option), and shall be substantially similar to the model form set forth in Appendix M of this part (Model Form M–3).

(f) *Consumer use of electronic communication.* (1) *Open-end credit plans.* If a creditor uses electronic communication to provide periodic statements, the consumer also may use electronic communication to:

(i) Request a refund under § 226.11(b);

(ii) Notify the creditor of the theft or loss of a credit card under § 226.12(b)(3);

(iii) Assert a claim or defense under § 226.12(c); and

(iv) Notify the creditor of a billing error under § 226.13(b).

(2) *Closed-end credit.* A consumer may request a refund of any credit balance under § 226.21(b) by electronic communication if the creditor has designated an electronic address for that purpose.

(3) *Rescission.* A consumer may exercise or waive a right to rescind under § 226.15 or § 226.23 by electronic communication only if the creditor has designated an electronic address for that purpose.

(4) *Creditor's designation of address.* A creditor may designate the electronic address or location that must be used by a consumer for sending electronic communication under this paragraph.

(g) *Signatures and similar authentication.* Where a writing is required to be signed or initialed, for purposes of an electronic communication, it may be similarly authenticated.◄

9. Part 226 is amended by adding a new appendix M to read as follows:

►Appendix M to Part 226—Electronic Communication Model Forms and Clauses

M–1 Model Disclosures for Electronic Communication (§ 226.34(d)) (Disclosures Available in Paper or Electronically)
M–2 Model Disclosures for Electronic Communication (§ 226.34(d)) (Disclosures Available Only Electronically)
M–3 Model Notice for Delivery of Information Posted at Certain Locations (§ 226.34(e))
M–4 Sample Form for Electronic Communication (§ 226.34(d)) (Disclosures Available in Paper or Electronically)
M–5 Sample Form for Electronic Communication (§ 226.34(d)) (Disclosures Available Only Electronically)

M–1 MODEL DISCLOSURES FOR ELECTRONIC COMMUNICATION (§ 226.34(d)) (Disclosures Available in Paper or Electronically)

You can choose to receive important information required by the Truth in Lending Act in paper or electronically.

Read this notice carefully and keep a copy for your records.

• You can choose to receive the following information in paper form or electronically: (description of specific disclosures to be provided electronically).

• How would you like to receive this information

☐ I want paper disclosures.

☐ I want electronic disclosures.

• [We may provide the following additional disclosures electronically in the future: (description of specific disclosures).]

• [If you choose electronic disclosures, this information will be available at: (specify location) for ____ days. After that, the information will be available upon request (state how to obtain the information). When the information is posted, we will send you a message at the electronic mail address you designate here: (consumer's electronic mail address).]

[If you choose electronic disclosures this information will be sent to the electronic mail address that you designate here: (consumer's electronic mail address).]

• To receive this information you will need: (list hardware and software requirements).

Do you have access to a computer that satisfies these requirements?

☐ Yes ☐ No

• Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

☐ Yes ☐ No

• To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, contact us at (telephone number).

M–2 MODEL DISCLOSURES FOR ELECTRONIC COMMUNICATION (§ 226.34(d)) (Disclosures Available Only Electronically)

You will receive important information required by the Truth in Lending Act electronically.

Read this notice carefully and keep a copy for your records.

• The following information will be provided electronically: (description of specific disclosures to be provided electronically).

• This credit transaction is not available unless you accept electronic disclosures.

• [We may provide the following additional disclosures electronically in the future (description of specific disclosures).]

• [If you choose electronic disclosures, this information will be available at: (specify location) for ____ days. After that, the information will be available upon request (state how to obtain the information). When the information is posted, we will send you a message at the electronic mail address you designate here: (consumer's electronic mail address).]

[If you choose electronic disclosures this information will be sent to the electronic mail address that you designate here: (consumer's electronic mail address).]

• To receive this information you will need: (list hardware and software requirements).

Do you have access to a computer that satisfies these requirements?

☐ Yes ☐ No

• Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

☐ Yes ☐ No

Do you want this credit transaction with electronic disclosures?

☐ Yes ☐ No

• To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, contact us at (telephone number).

M–3 MODEL NOTICE FOR DELIVERY OF INFORMATION POSTED AT CERTAIN LOCATIONS (§ 226.34(e))

Information about your (identify account) is now available at [website address or other location]. The information discusses (describe the disclosure). It will be available for ____ days.

BILLING CODE 6210–01–P

M-4 SAMPLE FORM ELECTRONIC COMMUNICATION (§ 226.34(d))
(Disclosures Available in Paper or Electronically)

You can choose to receive important information required by the Truth in Lending Act in paper form or electronically.

Read this notice carefully and keep a copy for your records.

- You can choose to receive the following information in paper form or electronically: Terms and Conditions of our Credit Card Account, monthly statements, and change-in-terms notices.
- Please indicate how you would like to receive this information:

  ☐ I want paper disclosures ☐ I want electronic disclosures
- If you choose electronic disclosures, this information will be available at our Internet website: *http://www._____.com* for 90 days. After that, the information will be available upon request by contacting us at *1-800-xxx-xxxx*. When the information is posted on our website, we will send you a message at your e-mail address:

  insert address
- To receive this information electronically, you will need: a minimum web browser version of (Browser name). Do you have access to a computer that satisfies these requirements?

  ☐ Yes ☐ No
- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

  ☐ Yes ☐ No
- To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, you may contact us by telephone at *1-800-xxx-xxxx* or by electronic mail at _____*.help@isp.com*.

M-5 SAMPLE FORM ELECTRONIC COMMUNICATION (§ 226.34(d))
(Disclosures Available Only Electronically)

You will receive important information required by the Truth in Lending Act electronically.

Read this notice carefully and keep a copy for your records.

- The following information will be provided electronically: Terms and Conditions of our Credit Card Account, monthly statements, and change-in-terms notices.
- This electronic fund transfer service is available only if you accept these disclosures electronically.
- Information about your account will be available at our Internet website: *http://www._____.com* for 90 days. After that, the information will be available upon request by contacting us at *1-800-xxxx-xxxx*. When the information is posted on our website, we will send you a message at your e-mail address:

  insert address

- To receive this information electronically, you will need: a minimum web browser version of (Browser name). Do you have access to a computer that satisfies these requirements?

  ☐ Yes ☐ No

- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

  ☐ Yes ☐ No

- Do you want this electronic fund transfer service with electronic disclosures?

  ☐ Yes ☐ No

- To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, you may contact us by telephone at *1-800-xxx-xxxx* or by electronic mail at _____*.help@isp.com.*

BILLING CODE 6210–01–C

10. In Supplement I to Part 226, *Section 226.5a—Credit and Charge Card Applications and Solicitations*, under *5a(a)(2) Form of Disclosures*, a new paragraph 7. is added to read as follows:

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart B—Open-End Credit

* * * * *

Section 226.5a—Credit and Charge Card Applications and Solicitations

* * * * *

5a(a) General rules.

* * * * *

5a(a)(2) Form of Disclosures.

* * * * *

►7. *Electronic applications or solicitations.* i. *Format and content of disclosures.* The format and the content of disclosures (other than the accuracy of variable rates) for applications or solicitations made available by electronic communication must comply with:

A. Section 226.5a(c), if the application or solicitation is sent to a consumer's electronic mail address.

B. Section 226.5a(e), if the application or solicitation is made available at another location such as an Internet website.

ii. *Timing.* The disclosures required by § 226.5a must appear on the screen before the solicitation or application appears electronically.◄

* * * * *

11. In Supplement I to Part 226, *Section 226.5b—Requirements for Home Equity Plans*, under *5b(b) Time of Disclosures*, a new paragraph 7. is added to read as follows:

* * * * *

5b(b) Time of Disclosures

* * * * *

►7. *Applications available by electronic communication.* If an application is available by electronic communication such as on a creditor's website, the disclosures and a brochure must appear before an application is provided.◄

* * * * *

12. In Supplement I to Part 226, *Section 226.16—Advertising*, the following amendments are made:

a. The heading *16(c) Catalogs and multiple-page advertisements.* is revised; and

b. Under *Paragraph 16(c)(1).*, paragraph 1. is revised and a new paragraph 2. is added.

The addition and revisions read as follows:

* * * * *

Section 226.16—Advertising

* * * * *

16(c) Catalogs, βandα multiple-page ►, and electronic◄ advertisements

* * * * *

Paragraph 16(c)(1).

1. *General.* Section 226.16(c)(1) permits creditors to put credit information together in one place in a catalog, [or] multiple page►, or electronic◄ advertisement. The rule applies only if the catalog, [or] multiple page►, or electronic◄ advertisement contains one or more of the triggering terms from § 226.16(b).

►2. *Electronic communication.* If an advertisement using electronic communication uses the table or schedule permitted under § 226.16(c)(1), any statement of terms set forth in § 226.6 appearing anywhere else in the advertisement must clearly direct the consumer to the page or location where the table or schedule begins. For example, a term triggering additional disclosures may be accompanied by a link that directly connects the consumer to the additional information.◄

* * * * *

13. In Supplement I to Part 226, *Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions*, under *19(b) Certain variable-rate transactions.*, paragraph 2. is revised to read as follows:

* * * * *

Subpart C—Closed-End Credit

* * * * *

Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

* * * * *

19(b) Certain variable-rate transactions.

* * * * *

►2. *Timing.* A creditor must give the disclosures required under this section at the time an application form is provided or before the consumer pays a nonrefundable fee, whichever is earlier.

i. *Intermediary agent or broker.* In cases where a creditor receives a written application through an intermediary agent or broker, however, footnote 45b provides a substitute timing rule requiring the creditor to deliver the disclosures or place them in the mail not later than three business days after the creditor receives the consumer's written application. (See comment 19(b)–3 for guidance in determining whether or not the transaction involves an intermediary agent or broker.) This three-day rule also applies where the creditor takes an application over the telephone.

ii. *Telephone request.* In cases where the consumer merely requests an application over the telephone, the creditor must include the early disclosures required under this section with the application that is sent to the consumer.

iii. *Mail solicitations.* In cases where the creditor solicits applications through the mail, the creditor must also send the disclosures required under this section if an application form is included with the solicitation.

iv. *Conversion.* In cases where an open-end credit account will convert to a closed-end transaction subject to this section under a written agreement with the consumer, disclosures under this section may be given at the time of conversion. (See the commentary to § 226.20(a) for information on the timing requirements for § 226.19(b)(2) disclosures when a variable-rate feature is later added to a transaction.)

v. *Electronic applications.* In cases where the creditor makes applications available by electronic communication such as on a creditor's website, the disclosures required under this section must appear on-line before an application is provided.◄

* * * * *

14. In Supplement I to Part 226, *Section 226.24—Advertising*, the following amendments are made:

a. Under *24(b) Advertisement of rate of finance charge.*, a new paragraph 6. is added; and

b. Under *24(d) Catalogs and multiple-page advertisements.*, the heading and paragraph 2. are revised and a new paragraph 4. is added.

The revisions and additions would read as follows:

* * * * *

Section 226.24—Advertising

* * * * *

24(b) Advertisement of rate of finance charge.

* * * * *

►6. *Electronic communication.* A simple annual rate or periodic rate that is applied to an unpaid balance may be stated only if it is provided in conjunction with an annual percentage rate. In an advertisement using electronic communication, both rates must appear in the same location so that both rates may be viewed simultaneously. This requirement is not satisfied if the annual percentage rate can be viewed only by use of a link that connects the consumer to information appearing at another location.◄

* * * * *

24(d) Catalogs, [and] multiple-page►, and electronic◄ advertisements.

* * * * *

2. *General.* Section 226.24(d) permits creditors to put credit information together in one place in a catalog, [or] multiple page►, or electronic◄ advertisement. The rule applies only if the catalog, [or] multiple page◄, or electronic◄ advertisement contains one or more of the triggering terms from § 226.24(c)(1). A list of different annual percentage rates applicable to different balances, for example, does not trigger further disclosures under § 226.24(c)(2) and so is not covered by § 226.24(d).

* * * * *

►4. *Electronic advertising.* If an advertisement using electronic communication uses the table or schedule permitted under § 226.24(d)(1), any statement of terms set forth in § 226.24(c)(1) appearing anywhere else in the advertisement must clearly direct the consumer to the page or location where the table or schedule begins. For example, a term triggering additional disclosures may be accompanied by a link

that directly connects the consumer to the additional information (but see comment 24(b)–6).◄

* * * * *

15. In Supplement I to Part 226, a new *Subpart F—Electronic communication*, is added to read as follows:

* * * * *

►**Subpart F—Electronic Communication**

Section 226.34—Requirements for Electronic Communication

34(a) Definition

1. *Coverage.* Information transmitted by facsimile may be received in paper form or electronically, although the party initiating the transmission may not know at the time the disclosures are sent which form will be used. A creditor that provides disclosures by facsimile should comply with the requirements for electronic communication unless the creditor knows that the disclosures will be received in paper form.

34(b) Electronic Communication between Creditor and Consumer

1. *Disclosures provided on creditor's equipment.* Creditors that control equipment providing electronic disclosures to consumers (for example, computer terminals in a creditor's lobby or kiosks located in public places) must ensure that the equipment satisfies the regulation's requirements to provide disclosures in a clear and conspicuous format and in a form that the consumer may keep. A creditor that controls the equipment may provide a printer for consumers' use in lieu of sending the information to the consumer's electronic mail address or posting the information at another location such as the creditor's website.

2. *Retainability.* Creditors must provide electronic disclosures in a retainable format (for example, they can be printed or downloaded). Consumers may communicate electronically with creditors through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), a consumer may not have the ability at a given time to preserve TILA disclosures presented on-screen. To ensure that consumers have an adequate opportunity to retain the disclosures, the creditor also must send them to the consumer's designated electronic mail address or to another location, for example, on the creditor's website, where the information may be retrieved at a later date.

3. *Timing and delivery.* When a consumer opens a credit card account and makes a purchase with the card (or when a consumer consummates a loan) on the Internet, for example, in order to meet the timing and delivery requirements, creditors must ensure that disclosures applicable at that time appear on the screen and are in a retainable format. The delivery requirements would not be met if disclosures do not either appear on the screen or if the consumer is allowed to open a credit card account and make a purchase at that time before receiving the disclosures. For example, a creditor can provide a link to electronic disclosures appearing on a separate page as long as consumers cannot bypass the link and they are required to access the disclosures before making a purchase (or consummating a loan).

34(c) Exceptions

1. *Redisclosure required.* Section 226.34(c) requires certain disclosures in paper form prior to consummation, even if they have been provided electronically at an earlier date, and redisclosure would not otherwise be required.

2. *Initial disclosures in paper form.* If a consumer opens a credit account or consummates a credit transaction in person the creditor generally must provide initial disclosures in paper form. For example, if a consumer visits a creditor's office to close a loan, disclosures are required before consummation and they must be provided in paper form; directing the consumer to disclosures posted on the creditor's website would not be sufficient. If, however, a consumer applies for credit on the Internet, a creditor may send disclosures electronically at or around that time even though the creditor's procedures require the consumer to visit an office at a later time to complete the transaction (for example, to close the loan).

34(d) Disclosure Notice

1. *Consumer's affirmative responses.* Even though a consumer accepts electronic disclosures in accordance with § 226.34(d)(2)(ii), a creditor may deliver disclosures by electronic communication only if the consumer provides an electronic address where one is required, and responds affirmatively to questions about technical requirements and the ability to print or download information (see sample forms M–4 and M–5 in appendix M to this part).

34(d)(2)(i) Notice by Creditor

1. *Toll-free telephone number.* The number must be toll-free for nonlocal calls made from an area code other than the one used in the creditor's dialing area. Alternatively, a creditor may provide any telephone number that allows a consumer to call for information and reverse the telephone charges.

2. *Creditor's address.* Creditors have the option of providing either an electronic or postal address for consumers' use in addition to the toll-free telephone number.

3. *Discontinuing electronic disclosures.* Consumers may use the toll-free number (or optional address) if they wish to discontinue receiving electronic disclosures. In such cases, the creditor must inform consumers whether the credit transaction is also available with disclosures in paper form.

34(d)(2)(ii) Response by consumer

1. *Nature of consent.* Consumers must agree to receive disclosures by electronic communication knowingly and voluntarily. An agreement to receive electronic disclosures is not implied from consumers' use of an account or acceptance of general account terms.

34(d)(3) Changes

1. *Examples.* Examples of changes include a change in technical requirements, such as upgrades to computer software affecting the creditor's disclosures provided on the Internet.

2. *Timing for notices.* A notice of a change must be sent a reasonable period of time before the effective date of the change. The length of a reasonable notice period may vary, depending on the type of change involved; however, fifteen days is a reasonable time for providing notice in all cases.

3. *Delivery of notices.* A creditor meets the delivery requirements if the notice of change is sent to the address provided by the consumer for receiving other disclosures. For example, if the consumer provides an electronic address to receive notices about periodic statements posted at the creditor's website, the same electronic address could be used for the change notice. The consumer's postal address must be used, however, if the consumer consented to additional disclosures by electronic communication when receiving the initial notice under § 226.34(d)(2)(i), but provided a postal address to receive periodic statements in paper form.

4. *Toll-free number.* See comment 34(d)(2)(i)–1.

5. *Creditor's address.* See comment 34(d)(2)(i)–2.

6. *Consumer inquiries.* Consumers may use the toll-free number (or optional address) for questions or assistance with problems related to a change, such as an upgrade to computer software, that is not provided by the creditor. Consumers may also use the toll-free number if they wish to discontinue receiving electronic disclosures; in such cases, the creditor must inform consumers whether the credit transaction is also available with disclosures in paper form.

34(e) Address or location to receive electronic communication.

Paragraph 34(e)(1)

1. *Electronic address.* A consumer's electronic address is an electronic mail address that may be used by the consumer for receiving communications transmitted by parties other than the creditor.

Paragraph 34(e)(2)

1. *Identifying account involved.* A creditor is not required to identify an account by reference to the account number. For example, where the consumer does not have multiple accounts, and no confusion would result, the creditor may refer to "your credit card account," or when the consumer has multiple accounts the creditor may use a truncated account number.

2. *Effective delivery.* Delivery by posting to a location other than the consumer's electronic mail address is effective only after the creditor posts and notifies the consumer when the information becomes available.

3. *Availability.* Information that is not sent to a consumer's electronic mail address must be available for at least 90 days from the date the information becomes available or from the date the notice required by § 226.34(e)(2) is sent to the consumer, whichever occurs later.

4. *Certain open-end disclosures.* The disclosures required under §§ 226.5a, 226.9(a)(2), 226.9(e), and 226.10(b) and referenced in footnote 8 shall be exempt from § 226.34(d)(1).

By order of the Board of Governors of the Federal Reserve System, August 31, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–23138 Filed 9–13–99; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–1044]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is requesting comment on proposed revisions to Regulation DD, which implements the Truth in Savings Act (TISA). The Board previously published a proposed rule that permits depository institutions to use electronic communication (for example, communication via personal computer and modem) to provide disclosures required by the act and regulation, if the consumer agrees to such delivery. (A similar rule was also proposed under various other consumer financial services and fair lending regulations administered by the Board.) In response to comments received on the proposals, the Board is publishing for comment an alternative proposal on the electronic delivery of disclosures, together with proposed commentary that would provide further guidance on electronic communication issues.

DATES: Comments must be received by October 29, 1999.

ADDRESSES: Comments, which should refer to Docket No. R–1044, may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room MP–500 between 9:00 a.m. and 5:00 p.m., pursuant to § 261.12, except as provided in § 261.14 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Michael L. Hentrel, Staff Attorney, or Jane E. Ahrens, Senior Counsel, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667. Users of Telecommunications Device for the Deaf (TDD) *only*, contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Savings Act (TISA), 12 U.S.C. 4301 *et seq.*, requires depository institutions to disclose to consumers yields, fees, and other terms concerning deposit accounts to consumers at account opening, upon request, when changes in terms occur, and in periodic statements. It also includes rules about advertising for deposit accounts. The Board's Regulation DD (12 CFR part 230) implements the act. Credit unions are governed by a substantially similar regulation issued by the National Credit Union Administration.

The TISA and Regulation DD require a number of disclosures to be provided in writing, presuming that institutions provide paper documents. Under many laws that call for information to be in writing, information in electronic form is considered to be "written." Information produced, stored, or communicated by computer is also generally considered to be a writing, where visual text is involved.

In May 1996, the Board revised Regulation E (Electronic Fund Transfers) following a comprehensive review. During that process, the Board determined that electronic communication for delivery of information required by federal laws governing financial services could effectively reduce compliance costs without adversely affecting consumer protections. Consequently, the Board simultaneously issued a proposed rule to permit financial institutions to use electronic communication to deliver disclosures that Regulation E requires to be given in writing. (61 FR 19696, May 2, 1996.) The 1996 proposal required that disclosures be provided in a form the consumer may retain, a requirement that institutions could satisfy by providing information in a format that may be printed or downloaded. The proposed rule also allowed consumers to request a paper copy of a disclosure for up to one year after its original delivery.

Following a review of the comments, on March 25, 1998, the Board issued an interim rule under Regulation E (the "interim rule"), 63 FR 14528. The Board also published proposals under Regulations DD (Truth in Savings), 63 FR 14533, M (Consumer Leasing), 63 FR 14538, Z (Truth in Lending), 63 FR 14548, and B (Equal Credit Opportunity), 63 FR 14552 (collectively, the "March 1998 proposed rules"). The rules would apply to financial institutions, creditors, lessors, and other entities that are required to give disclosures to consumers and others. (For ease of reference, this background section uses the terms "financial institutions," "institutions," and "consumers.") The interim rule and the March 1998 proposed rules were similar to the May 1996 proposed rule; however, they did not require financial institutions to provide paper copies of disclosures to a consumer upon request if the consumer previously agreed to receive disclosures electronically. The Board believed that most institutions would accommodate consumer requests for paper copies when feasible or redeliver disclosures electronically; and the Board encouraged financial institutions to do so.

The March 1998 proposed rules and the interim rule permitted financial institutions to provide disclosures electronically if the consumer agreed, with few other requirements. The rule was intended to provide flexibility and did not specify any particular method for obtaining a consumer's agreement. Whether the parties had an agreement would be determined by state law. The proposals and the interim rule did not preclude a financial institution and a consumer from entering into an agreement electronically, nor did they prescribe a formal mechanism for doing so.

The Board received approximately 200 written comments on the interim rule and the March 1998 proposed rules. The majority of comments were submitted by financial institutions and their trade associations. Industry commenters generally supported the use of electronic communication to deliver information required by the TISA and Regulation DD. Nevertheless, many sought specific revisions and additional guidance on how to comply with the disclosure requirements in particular transactions and circumstances.

Industry commenters were especially concerned about the condition that a consumer had to "agree" to receive information by electronic communication, because the rule did not specify a method for establishing that an "agreement" was reached. These commenters believed that relying on state law created uncertainty about what constitutes an agreement and, therefore, potential liability for noncompliance. To avoid uncertainty over which state's laws apply, some commenters urged the Board to adopt a federal minimum standard for agreements or for informed consent to receive disclosures by

electronic communication. These commenters believed that such a standard would avoid the compliance burden associated with tailoring legally binding "agreements" to the contract laws of all jurisdictions where electronic communications may be sent.

Consumer advocates generally opposed the March 1998 interim rule and proposed rules. Without additional safeguards, they believed, consumers may not be provided with adequate information about electronic communications before an "agreement" is reached. They also believed that promises of lower costs could induce consumers to agree to receive disclosures electronically without a full understanding of the implications. To avoid such problems, they urged the Board, for example, either to require institutions to disclose to consumers that their account with the institution will not be adversely affected if they do not agree to receive electronic disclosures, or to permit institutions to offer electronic disclosures only to consumers who initiate contact with the institution through electronic communication. They also noted that some consumers will likely consent to electronic disclosures believing that they have the technical capability to retrieve information electronically, but might later discover that they are unable to do so. They questioned consumers' willingness and ability to access and retain disclosures posted on Internet websites, and expressed their apprehension that the goals of federally mandated disclosure laws will be lost.

Consumer advocates and others were particularly concerned about the use of electronic disclosures in connection with home-secured loans and certain other transactions that consumers typically consummate in person (citing as examples automobile loans and leases, short-term "payday" loans, or home improvement financing contracts resulting from door-to-door sales). They asserted that there is little benefit to eliminating paper disclosures in such transactions and that allowing electronic disclosures in those cases could lead to abusive practices. Accordingly, consumer advocates and others believed that paper disclosures should always accompany electronic disclosures in mortgage loans and certain other transactions, and that consumers should have the right to obtain paper copies of disclosures upon request for all types of transactions (deposit account, credit card, loan or lease, and other transactions).

A final issue raised by consumer advocates was the integrity of disclosures sent electronically. They stated that there may be instances when the consumer and the institution disagree on the terms or conditions of an agreement and consumers may need to offer electronic disclosures as proof of the agreed-upon terms and to enforce rights under consumer protection laws. Thus, to assure that electronic documents have not been altered and that they accurately reflect the document originally sent, consumer advocates recommended that the Board require that electronic disclosures be authenticated by an independent third party.

The Board's Consumer Advisory Council considered the electronic delivery of disclosures in 1998 and again in 1999. Many Council members shared views similar to those expressed in written comment letters on the 1998 proposals. For example, some Council members expressed concern that the Board was moving too quickly in allowing electronic disclosures for certain transactions, and suggested that the Board might go forward with electronic disclosures for deposit accounts while proceeding more slowly on credit and lease transactions. Others expressed concern about consumer access and consumers' ability to retain electronic disclosures. They believed that, without specific guidance from the Board, institutions would provide electronic disclosures without knowing whether consumers could retain or access the disclosures, and without establishing procedures to address technical malfunctions or nondelivery. The Council also discussed the integrity and security of electronic documents.

II. Overview of Proposed Revisions

Based on a review of the comments and further analysis, the Board is requesting comment on a modified proposed rule that is more detailed than the interim rule and the March 1998 proposed rules. It is intended to provide specific guidance for institutions that choose to use electronic communication to comply with Regulation DD's requirements to provide written disclosures, and ensure effective delivery of disclosures to consumers through this medium. Though detailed, the proposal provides flexibility for compliance with the electronic communication rules. The modified proposal recognizes that some disclosures may warrant different treatment under the rule. Some disclosures are generally available to the public—for example, bank account fee schedules. Under the modified proposal, such disclosures could be made available electronically without obtaining a consumer's consent. Where written disclosures are made to consumers who are transacting business in person, these disclosures generally would have to be made in paper form.

The Board is soliciting comment on a modified approach that addresses both industry and consumer group concerns. Under the proposal, depository institutions would have to provide specific information about how the consumer can receive and retain electronic disclosures—through a standardized disclosure statement—before obtaining consumers' acceptance of such delivery, with some exceptions. If they satisfy these requirements and obtain consumers' affirmative consent, depository institutions would be permitted to use electronic communications. As a general rule an institution would be permitted to offer the option of receiving electronic disclosures to all consumers, whether they initially contact the institution by electronic communication or otherwise. To address concerns about potential abuses, however, the proposal provides that if a consumer contracts to open a deposit account in person, initial disclosures must be given in paper form.

Depository institutions would have the option of delivering disclosures to an e-mail address designated by the consumer or making disclosures available at another location such as the institution's website, for printing or downloading. If the disclosures are posted at a website location, depository institutions generally must notify consumers at an e-mail address about the availability of the information. (Depository institutions may offer consumers the option of receiving alert notices at a postal address.) The disclosures must remain available at that site for 90 days.

Disclosures provided electronically would be subject to the "clear and conspicuous" standard, and the existing format, timing, and retainability rules in Regulation DD. For example, to satisfy the timing requirement, if disclosures are due at the time a deposit account is being opened electronically, the disclosure would have to appear on the screen before the consumer could complete the process.

Depository institutions generally must provide a means for consumers to confirm the availability of equipment to receive and retain electronic disclosure documents. A depository institution would not otherwise have a duty to verify consumers' actual ability to receive, print or download the disclosures. Some commenters suggested that institutions should be required to verify delivery by return receipt. The Board solicits comment on

the need for such a requirement and the feasibility of that approach.

As previously mentioned, consumer advocates and others have expressed concerns that electronic documents can be altered more easily than paper documents. The issue of the integrity and security of electronic documents affects electronic commerce in general and is not unique to the written disclosures required under the consumer protection laws administered by the Board. Consumers' ability to enforce rights under the consumer protection laws could be impaired in some cases, however, if the authenticity of disclosures that they retain cannot be demonstrated. Signatures, notary seals, and other established verification procedures are used to detect alterations for transactions memorialized in paper form. The development of similar devices for electronic communications should reduce uncertainty over time about the ability to use electronic documents for resolving disputes.

The Board's rules require institutions to retain evidence of compliance with Regulation DD. Specific comment is solicited on the feasibility of complying with a requirement that institutions provide disclosures in a format that cannot be altered without detection, or have systems in place capable of detecting whether or not information has been altered, as well as the feasibility of requiring use of independent certification authorities to verify disclosure documents.

Elsewhere in today's **Federal Register**, the Board is publishing similar proposals for comment under Regulations B, E, M, and Z. In a separate notice the Board is publishing an interim rule under Regulation DD, to permit depository institutions to use electronic communication to deliver disclosures on periodic statements. For ease of reference, the Board has assigned new docket numbers to the modified proposals published today.

III. Section-by-Section Analysis

Pursuant to its authority under section 269 of the TISA, the Board proposes to amend Regulation DD to permit institutions to use electronic communication to provide the disclosures required by this regulation to be in writing. Below is a section-by-section analysis of the rules for providing disclosures by electronic communication, including references to proposed commentary provisions.

Section 230.2 Definitions

(q) Periodic Statement

The interim rule under Regulation DD permits institutions to use electronic communication to deliver disclosures on periodic statements. Comment 230.2(q)-1(ii), which addresses information provided by computer through home banking services, would be deleted as obsolete.

Section 230.3 General Disclosure Requirements

3(g) Electronic Communication

3(g)(1) Definition

The definition of the term "electronic communication" in the March 1998 proposed rule remains unchanged. Section 230.3(g)(1) limits the term to a message transmitted electronically that can be displayed on equipment as visual text, such as a message that is displayed on a computer monitor screen. Most commenters supported the term as defined in the March 1998 proposed rule. Some commenters favored a more expansive definition that would encompass communications such as audio and voice response telephone systems. Because the proposal is intended to permit electronic communication to satisfy the statutory requirement for written disclosures, the Board believes visual text is an essential element of the definition.

Commenters asked the Board to clarify the coverage of certain types of communications. A few commenters asked about communication by facsimile. Facsimiles are initially transmitted electronically; the information may be received either in paper form or electronically through software that allows a consumer to capture the facsimile, display it on a monitor, and store it on a computer diskette or drive. Thus, information sent by facsimile may be subject to the provisions governing electronic communication. When disclosures are sent by facsimile, a depository institution should comply with the requirements for electronic communication unless it knows that the disclosures will be received in paper form. Proposed comment 3(g)(1)-1 contains this guidance.

3(g)(2) Electronic Communication between Depository Institution and Consumer

Section 230.3(g)(2) would permit depository institutions to provide disclosures using electronic communication, if the institution complies with provisions in new § 230.3(g)(3), discussed below.

1. *Presenting Disclosures in a Clear and Conspicuous Format.* The Board does not intend to discourage or encourage specific types of technologies. Regardless of the technology, however, disclosures provided electronically must be presented in a clear and conspicuous format as is the case for all written disclosures under the act and regulation. See § 230.3(a).

When consumers consent to receive disclosures electronically and they confirm that they have the equipment to do so, depository institutions generally would have no further duty to determine that consumers are able to receive the disclosures. Institutions do have the responsibility of ensuring sure the proper equipment is in place in instances where the institution controls the equipment. Proposed comment 3(g)(2)–1 contains this guidance.

2. *Providing Disclosures in a Form the Consumer May Keep.* As with other written disclosures, information provided by electronic communication must be in a form the consumer can retain. Under the March 1998 proposals and the interim rule, a depository institution would satisfy this requirement by providing information that can be printed or downloaded. The modified proposal adopts the same approach but also provides that the information must be sent to a specified location to ensure that consumers have an adequate opportunity to retain the information.

Consumers communicate electronically with depository institutions through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), a consumer may not have the ability at a given time to preserve TISA disclosures presented on-screen. Therefore, when a depository institution provides disclosures by electronic communication, to satisfy the retention requirements, the institution must send the disclosures to a consumer's e-mail address or other location where information may be retrieved at a later date. Proposed comment 3(g)(2)–2 contains this guidance; see also the discussion under § 230.3(g)(4), below. In instances where an institution controls an electronic terminal used to provide electronic disclosures, an institution may provide equipment for the consumer to print a paper copy in lieu of sending the information to the consumer's e-mail address or posting the information at another location such as the institution's website. See proposed comment 3(g)(2)–1.

3. *Timing.* Institutions must ensure that electronic disclosures comply with all relevant timing requirements of the regulation. For example, account-opening disclosures must be provided before an account is opened or a service is provided. The rule ensures that consumers have an opportunity to read important information about costs and other terms before opening an account or agreeing to have a service provided.

To illustrate the timing requirements for electronic communication, assume that a consumer is interested in opening a checking account and uses a personal computer at home to access a bank's website on the Internet. The institution provides disclosures to the consumer about the use of electronic communication (the § 230.3(g)(3) disclosures discussed below) and the consumer responds affirmatively. If the institution's procedures permit the consumer to open the account at that time, disclosures required under § 230.4 would have to be provided. Thus, the disclosures must automatically appear on the screen or the consumer must be required to access the information before the account is opened (or before the consumer pays any fees). The timing requirements for providing account-opening disclosures would not be met if, in this example, the bank permitted the consumer to open a deposit account and sent disclosures to an e-mail address thereafter. Proposed comment 3(g)(2)–3 contains this guidance.

On the other hand, assume that a consumer desires to open an account and the institution delays processing of the consumer's request to open the account until the required disclosures have been delivered by e-mail. In that case the information would not have to also appear on the screen; delivery to the consumer's e-mail address would be sufficient. In either case, the consumer must be given the opportunity to receive the disclosures before opening the account.

3(g)(2)(ii) In-Person Exception

The proposal contains an exception to the general rule allowing information required by Regulation DD to be provided by electronic communication; where the exception applies, paper disclosures would be required. The exception, contained in § 230.3(g)(2)(ii), seeks to address concerns about potential abuses where consumers are transacting business in person but are offered disclosures in electronic form. In such transactions, there is a general expectation that consumers would be given paper copies of disclosures along with paper copies of other documents evidencing the transaction.

Under § 230.3(g)(2)(ii), if a consumer opens an account in person, the depository institution must provide account-opening disclosures in paper form. For example, if a consumer opens a deposit account at a depository institution and is provided with TISA account disclosures at that time, the institution would be required to provide those disclosures in paper form; directing the consumer to disclosures posted on the institution's website would not be sufficient. An institution also complies if a consumer opens an account on the Internet and is sent disclosures electronically at or around that time, even though the institution's procedures require the consumer to visit the institution at a later time to complete the transaction (for example, to complete a signature card). Proposed comment 3(g)(2)(ii)–1 contains this guidance. If a consumer makes a request in person for account disclosures pursuant to § 230.4(a)(2), the disclosures also must be provided in paper form.

3(g)(3) Disclosure Notice

Section 230.3(g)(3) would identify the specific steps required before an institution can use electronic communication to satisfy the regulation's disclosure requirements. Proposed Model Forms B–10 and B–11 and proposed Sample Forms B–13 and B–14, are published to aid compliance with these requirements.

3(g)(3)(i) Notice by Depository Institution

Section 230.3(g)(3)(i) outlines the information that depository institutions must provide before electronic disclosures can be given. The depository institution must: (1) describe the information to be provided electronically and specify whether the information is also available in paper form or whether the account is offered only with electronic disclosures; (2) identify the address or location where the information will be provided electronically; and if it will be available at a location other than the consumer's e-mail address, specify for how long and where it can be obtained once that period ends; (3) specify any technical requirements for receiving and retaining information sent electronically, and provide a means for the consumer to confirm the availability of equipment meeting those requirements; and (4) provide a toll-free telephone number and, at the institution's option, an electronic or a postal address for questions about receiving electronic disclosures, or for updating consumers' electronic addresses, and for seeking assistance with technical or other difficulties (see proposed comments to 3(g)(3)(i)). The Board requests comment on whether other information should be disclosed regarding the use of electronic communication and on any format changes that might improve the usefulness of the notice for consumers.

The Board also solicits comment on the benefits of requiring an annual notice in paper form to consumers who receive disclosures by electronic communication. The notice would contain general information about receiving electronic disclosures including, for example, a reminder of the toll-free telephone number where consumers may contact the institution if they have questions regarding their electronic disclosures. The Board solicits comment on whether an annual notice is feasible for all types of accounts covered by Regulation DD.

Under the proposal, the § 230.3(g)(i) disclosures must be provided, as applicable, before the depository institution uses electronic communication to deliver any information required by the regulation. The approach of requiring a standardized disclosure statement addresses, in several ways, the concern that consumers may be steered into using electronic communication without fully understanding the implications. Under this approach, the specific disclosures that would be delivered electronically must be identified, and consumers must be informed whether there is also an option to receive the information in paper form. Consumers must provide an e-mail address where one is required. Technical requirements must also be stated, and consumers must affirm that their equipment meets the requirements, and that they have the capability of retaining electronic disclosures by downloading or printing them (see proposed comment 3(g)(3)–1). Thus, the § 230.3(g)(3)(i) disclosures should allow consumers to make informed judgments about receiving electronic disclosures.

Some commenters requested clarification of whether a depository institution may use electronic communication to provide some required disclosures while using paper for others. The proposed rule would permit institutions to do so; the disclosure given under § 230.3(g)(3)(i) must specify which TISA disclosures will be provided electronically.

Commenters requested further guidance on a depository institution's obligation under the regulation if the consumer chooses not to receive information by electronic communication. A depository institution could offer a consumer the

option of receiving disclosures in paper form, but it would not be required to do so. A depository institution could establish accounts or services for which disclosures are given only by electronic communication. Section 230.3(g)(3)(i)(A) would require institutions to tell consumers whether or not they have the option to receive disclosures in paper form. Section 230.3(g)(i)(D) would require depository institutions to provide a toll-free number that consumers could use to inform institutions if they wish to discontinue receiving electronic disclosures. In such cases, the institution must inform the consumer whether the deposit account is also available with disclosures in paper form. Proposed sample disclosure statements in which the consumer has an option to receive electronic or paper disclosures (Form B–13) or electronic disclosures only (Form B–14) are contained in appendix B.

3(g)(3)(ii) Response by Consumer

Proposed § 230.3(g)(3)(ii) would require a means for the consumer to affirmatively indicate that disclosures may be provided electronically. Examples include a signature (for requests made in paper form) or a "check box" on a computer screen or a signature line (for requests made in paper form). The requirement is intended to ensure that consumers' consent is established knowingly and voluntarily, and that consent to receive electronic disclosures is not inferred from consumers' use of the account or acceptance of general account terms. See proposed comment 3(g)(3)(ii)–1.

3(g)(3)(iii) Changes

Depository institutions would be required to notify consumers about changes to the information provided in the notice required by § 230.3(g)(3)(i)—for example, if technical upgrades to software are required. Proposed comment 3(g)(3)(iii)–1 contains this guidance.

The notice must include the effective date of the change and be provided before that date. Proposed comment 3(g)(3)(iii)–2 would provide that the notice must be sent a reasonable period of time before the effective date of the change. Although the number of days that constitutes reasonable notice may vary, depending on the type of change involved, the comment would provide institutions with a safe harbor: fifteen days' advance notice would be considered a reasonable time in all cases. The same time period is stated in similar proposals under Regulations B, Z, and E published in today's **Federal Register**. Comment is requested on whether a safe harbor of 15 days is an appropriate time period, and whether a uniform period for changes involving electronic communication is desirable. An alternative approach would adopt notice requirements that are consistent with change-in-terms requirements under the respective regulations. Under this approach, for example, the safe harbor would be 21 days under § 205.8 for Regulation E, 15 days under § 226.9 for Regulation Z, and 30 days under § 230.5 for Regulation DD. Proposed comment 3(g)(3)(iii)–3 contains guidance on delivery requirements for the notice of change.

The notice of a change must also include a toll-free telephone number or, at the institution's option, an address for questions about receiving electronic disclosures. For example, a consumer may call regarding problems related to a change, such as an upgrade to computer software that is not provided to the institution. Consumers may also use the toll-free number if they wish to discontinue receiving electronic disclosures. In such cases, the institution must inform consumers whether the account is also available with disclosures in paper form. (See proposed comments 3(g)(3)(iii)–4 through –6.)

If the change involves providing additional disclosures by electronic communication, institutions generally would be required to provide the notice in § 230.3(g)(3)(i) and obtain the consumer's consent. That notice would not be required if the institution previously obtained the consumer's consent to the additional disclosures in its initial notice by disclosing the possibility and specifying which disclosures might be provided electronically in the future. Comment is specifically requested on this approach. A list of additional disclosures may be necessary to ensure that consumers' consent is informed and knowing (provided it does not cause confusion).

3(g)(4) Address or Location To Receive Electronic Communication

Proposed § 230.3(g)(4) identifies addresses and locations where institutions using electronic communication may send information to the consumer. Institutions may send information to a consumer's electronic address, which is defined in proposed comment 3(g)(4)(i)–1 as an e-mail address that the consumer also may use for receiving communications from parties other than the depository institution. For periodic statements, for example, a depository institution's responsibility to provide disclosures by electronic communication will be satisfied when the information is sent to the consumer's e-mail address in accordance with the applicable proposed rules concerning delivery of disclosures by electronic communication.

Guidance accompanying the March 1998 proposed rule provided that an institution would not meet delivery requirements by simply posting information to an Internet site such as the institution's "home page" without appropriate notice on how consumers can access the information. Industry commenters wanted to retain the flexibility of posting disclosures on an Internet website. They did not object to providing a separate notice alerting consumers about the disclosures' availability but requested more guidance on the issue. Consumer advocates and others expressed concern that the mere posting of information inappropriately places the responsibility to obtain disclosures on consumers, and undermines the purpose of the delivery requirements of the regulation.

The Board recognizes that currently, because of security and privacy concerns associated with data transmissions, a number of institutions may choose to provide disclosures at their websites, where the consumer may retrieve them under secure conditions. Under § 230.3(g)(4), a depository institution may make disclosures available to a consumer at a location other than the consumer's electronic address. The institution must notify the consumer when the information becomes available and identify the account involved. The notice must be sent to the electronic mail address designated by the consumer; the depository institution may, at its option, permit the consumer to designate a postal address. A proposed model form (Model Form B–12) is published below; see also proposed comment 3(g)(4)(ii)–1.

The Board believes it would be inconsistent with the TISA to require a consumer to initiate a search—for example, to search the website of each institution with which an account is held—to determine whether a disclosure has been provided. The proposed approach ensures that a consumer would not be required to check an institution's website repeatedly, for example, to learn whether the institution posted a change in a term that affects a deposit account held by the consumer.

The requirements of the regulation would be met only if the required disclosure is posted on the website and the consumer is notified of its availability in a timely fashion. For

example, depository institutions must provide a change-in-terms notice to consumers at least 30 days in advance of the change. (12 CFR 230.5(a).) For a change-in-terms notice posted on the Internet, an institution must both post the notice and notify consumers of its availability at least 30 days in advance of the change.

Commenters sought guidance on how long disclosures posted at a particular location must be available to consumers. There is a variety of circumstances when a consumer may not be able immediately to access the information due to illness, travel, or computer malfunction, for example. Under § 230.3(g)(4), institutions must post information that is sent to a location other than the consumer's e-mail address for 90 days. Proposed comment 3(g)(4)(ii)–2 contains this guidance.

Under the modified proposal, institutions that post information at a location other than the consumer's e-mail address are required—after the 90 day period—to make disclosures available to consumers upon request for a period of not less than two years from the date disclosures are required to be made, consistent with the record retention requirements under § 230.9(c). The Board requests comment on this approach, including suggestions for alternative means for providing consumers continuing access to disclosures.

Section 230.4 Account Disclosures

4(a) Delivery of Account Disclosures—(1) Account Opening.

Account-opening disclosures required under § 230.4(a) set forth the terms and conditions of the account. These disclosures inform the consumers of the types and amount of any fees that may be imposed and the interest rate and annual percentage yield that will be paid on the account. Section 230.4(a)(1) requires that account disclosures be provided before an account is opened or a service is provided, whichever is earlier; § 230.4(a)(2) requires that account disclosures be provided upon request.

Section 266(b) of TISA and § 230.4(a)(1) of the regulation provide that if the consumer is not physically present at the institution when an initial deposit is accepted (and the disclosures have not been furnished previously) the institution shall mail or deliver the disclosures no later than ten days after the account is opened or the service is provided. The rationale underlying the ten-day delay is that the institution cannot provide written disclosures before an account is opened in some instances (such as when an account is opened by telephone). Similarly, § 230.4(a)(2) provides that if the consumer is not present at the institution when the request for account disclosures is made, the institution must mail or deliver the disclosures within a reasonable time after the institution receives the request; comment 4(a)(2)(i)–3 clarifies that ten days is a reasonable time.

The Board indicated in the March 1998 proposed rule that the ten-day delay did not apply to accounts opened by electronic communication, such as on the Internet. The difficulties associated with an account opening by telephone, for example, do not exist for accounts opened electronically; thus, depository institutions would be required to provide account-opening disclosures before the account is opened or a service is provided, when an account is opened using electronic communication.

Views were mixed on the Board's interpretation that the ten-day delay in providing disclosures would not apply to accounts opened electronically. Many commenters were opposed to the Board's position. These commenters believed that it would be difficult to furnish transaction-specific disclosures before the account is opened. For example, interest rates may change after the consumer submits account information but before the account is opened in accord with the institution's procedures. Other commenters supported the Board's position. They believed that all of the information that would be available to a consumer present in a depository institution is available to a consumer via a website controlled by the depository institution. A few commenters stated that it would not be overly burdensome to provide required disclosures on a website.

Based on the comments received and further analysis, the modified proposals address an institution's duties when a consumer is not physically present at the institution and uses electronic communication to open an account or request a service, or to request account disclosures. Section 230.4(a)(1)(ii) is proposed under the Board's exception authority in section 269(a)(3) of the act and would require institutions to provide account disclosures before an account is opened or a service is provided; the ten-day delay would not apply. Proposed § 230.4(a)(2)(i) would provide that institutions must respond to requests within a reasonable period after receiving the request and may provide account disclosures electronically to a consumer's electronic mail address or in paper form. The requirements of § 230.3(g)(3) would not apply to such requests. Comment is also requested on whether, in the context of electronic communication, the ten-day time period provided in comment 4(a)(2)(i)–3 for responding to requests for account disclosures is reasonable.

Section 230.8 Advertising

8(a) Misleading or Inaccurate Advertisements

Section 230.8 provides that advertising certain terms triggers the disclosure of other account terms. Although Regulation DD does not address multi-page advertisements, Regulations Z (Truth in Lending) and M (Consumer Leasing) permit creditors to provide required advertising disclosures on more than one page, if certain conditions are met. Elsewhere in today's **Federal Register**, the Board is proposing guidance to creditors and lessors on how to comply with rules on multi-page advertising in the context of electronic advertisements. Consistent with the approach taken for Regulations Z and M, the Board believes that a depository institution that advertises electronically can comply with the regulation's advertising requirements if the required terms are disclosed at more than one location, under certain conditions. If a triggering term (such as a bonus or an annual percentage yield) appears at a location that does not contain other required disclosures, the location with the triggering term must clearly refer the consumer to the page or location that sets forth clearly and conspicuously all additional required disclosures. Proposed comment 8(a)–9 contains this guidance.

8(b) Permissible Rates

Section 230.8(b) provides that an advertisement may state an interest rate, as long as the interest rate is stated in conjunction with, but not more conspicuously than, the annual percentage yield to which it relates. Proposed comment 8(b)–4 contains guidance on how this rule applies to rates stated in an electronic advertisement.

8(e) Exemption for Certain Advertisements

Section 230.8(e) exempts advertisements made through broadcast or electronic media, such as television and radio, from several of the advertising disclosures. The Board provided guidance on the scope of the exemption in the supplementary information to the March 1998 proposed rule. The Board stated that the "electronic media" exemption would

not apply to advertisements made electronically, such as those posted on the Internet.

The rationale for the broadcast and electronic media exemption is that these media have time or space constraints that make it extremely burdensome to provide the required disclosures. The Board believes that advertisements posted on the Internet generally do not have these constraints. A few commenters disagreed. They stated that there are space constraints on "non-proprietary" websites and urged the Board to apply the exemption to third-party websites. The Board believes, however, that space constraints on a non-proprietary website are not significantly different than those for a print advertisement. Thus, advertisements made electronically such as advertisements posted on the Internet are subject to Regulation DD's general advertising rules. Proposed comment 8(e)(1)(i)–1 contains this guidance.

Appendix B to Part 230—Model Clauses and Sample Forms

The Board solicits comment on three proposed model forms and two sample forms for use by depository institutions to aid compliance with the disclosure requirements of §§ 230.3(g)(3) and (g)(4). Model Forms B–10 and B–11 would implement § 230.3(g)(3), regarding the notice that depository institutions must give prior to using electronic communication to provide required disclosures. Model Form B–12 would implement § 230.3(g)(4), regarding notices to consumers about the availability of electronic disclosures at locations such as the depository institution's website. Use of any modified version of these forms would be in compliance as long as the institution does not delete information required by the regulation or rearrange the format so as to affect the substance, clarity, or meaningful sequence of the disclosure. For example, institutions that combine Regulation E and Regulation DD disclosures on a deposit account can modify the model form to provide a single disclosure statement about electronic delivery of those disclosures.

Sample Form B–13 illustrates the disclosures under § 230.3(g)(3) for a deposit account. The sample assumes that the institution also offers paper disclosures for consumers who choose not to receive electronic disclosures. Sample Form B–14 assumes that consumers must accept electronic disclosures if they want to open the deposit account.

Additional Issues Raised by Electronic Communication

Preemption

A few commenters suggested that any final rule issued by the Board permitting electronic disclosures should explicitly preempt any state law requiring paper disclosures. Under Appendix C of the regulation, state laws are preempted if they are inconsistent with the act and regulation and only to the extent of the inconsistency. The proposed rule would provide depository institutions with the option of giving required disclosures by electronic communication as an alternative to paper. There is no apparent inconsistency with the act and regulation if state laws require paper disclosures. The Board, however, will review preemption issues that are brought to the Board's attention. Appendix C outlines the Board's procedures for determining whether a specific law is preempted, which will guide the Board in any determination requested by a state, depository institution, or other interested party following publication of a final rule regarding electronic communication.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R–1044, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS or Windows-based format.

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation DD. Although the proposal would add disclosure requirements with respect to electronic communication, overall, the proposed amendments are not expected to have any significant impact on small entities. A depository institution's use of electronic communication to provide disclosures required by the regulation is optional. The proposed rule would give depository institutions flexibility in providing disclosures. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB number. The OMB control number is 7100–0271.

The collection of information requirements relevant to this proposed rulemaking are in 12 CFR Part 230. This information is mandatory (12 U.S.C. 4301 *et seq.*) to evidence compliance with the requirements of the Regulation DD and the Truth in Savings Act (TISA). The revised requirements would be used to ensure adequate disclosure of basic terms, costs, and rights relating to services affecting consumers holding deposit accounts and receiving certain disclosures by electronic communication. The respondents/recordkeepers are for-profit depository institutions, including small businesses. Institutions are also required to retain records for 24 months. This regulation applies to all types of depository institutions, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would allow institutions the option of using electronic communication (for example, via personal computer and modem) to provide disclosures required by the regulation. Although the proposal would add disclosure requirements with respect to electronic communication, the optional use of electronic communication would likely reduce the paperwork burden of depository institutions. With respect to state member banks, it is estimated that there are 988 respondents/recordkeepers and an average frequency of 87,071 responses per respondent each year. Therefore, the current amount of annual burden is estimated to be 1,464,216 hours. There is estimated to be no additional annual cost burden and no capital or start-up cost.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises; however, any

information obtained by the Federal Reserve may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522(b)(4), (6) and (8)). The disclosures and information about error allegations are confidential between institutions and the customer.

The Federal Reserve requests comments from institutions, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this proposed regulation would be effective. Comments are invited on: (a) the cost of compliance; (b) ways to enhance the quality, utility, and clarity of the information to be disclosed; and (c) ways to minimize the burden of disclosure on respondents, including through the use of automated disclosure techniques or other forms of information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0271), Washington, DC 20503, with copies of such comments sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 230

Advertising, Banks, banking, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in savings.

Text of Proposed Revisions

Certain conventions have been used to highlight proposed changes to Regulation DD. New language is shown inside bold-faced arrows and deletions are shown in bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend Regulation DD, 12 CFR part 230, as set forth below:

PART 230—TRUTH IN SAVINGS (REGULATION DD)

1. The authority citation for part 230 continues to read as follows:

Authority: 12 U.S.C. 4301 *et seq.*

2. Section 230.3 is amended by adding a new paragraph (g) to read as follows:

§ 230.3 General disclosure requirements.

* * * * *

►(g) *Electronic communication.* (1) *Definition. Electronic communication* means a message transmitted electronically between a consumer and a depository institution in a format that allows visual text to be displayed on equipment such as a personal computer monitor.

(2) *Electronic communication between depository institution and consumer.* (i) *General.* Except as provided in paragraph (g)(2)(ii) of this section, a depository institution that has complied with paragraph (g)(3) of this section may provide by electronic communication any information required by this regulation to be in writing.

(ii) *In-person exception.* When a consumer opens a deposit account or requests a service in person, disclosures required under § 230.4(a)(1) shall be provided in paper form, unless the consumer previously initiated the process of opening the account by electronic communication and disclosures were provided in compliance with paragraphs (g)(3)(i) and (g)(3)(ii) of this section at or around that time. A depository institution shall also provide account disclosures in paper form to a consumer who makes a request in person pursuant to § 230.4(a)(2).

(3) *Disclosure notice.* The disclosure notice required by this paragraph shall be provided in a manner substantially similar to the applicable model form set forth in Appendix B of this part (Model Forms B–10 and B–11).

(i) *Notice by depository institution.* A depository institution shall:

(A) Describe the information to be provided electronically and specify whether the information is also available in paper form or whether the account is offered only with electronic disclosures;

(B) Identify the address or location where the information will be provided electronically; and if it is made available at a location other than the consumer's electronic address, how long the information will be available, and how it can be obtained once that period ends;

(C) Specify any technical requirements for receiving and retaining information sent electronically, and provide a means for the consumer to confirm the availability of equipment meeting those requirements; and

(D) Provide a toll-free telephone number and, at the institution's option, an address for questions about receiving electronic disclosures, for updating consumers' electronic addresses, and for seeking technical or other assistance related to electronic communication.

(ii) *Response by consumer.* A depository institution shall provide a means for the consumer to accept or reject electronic disclosures.

(iii) *Changes.* (A) A depository institution shall notify affected consumers of any change to the information provided in the notice required by paragraph (g)(3)(i) of this section. The notice shall include the effective date of the change and must be provided before that date. The notice shall also include a toll-free telephone number, and, at the institution's option, an address for questions about receiving electronic disclosures.

(B) In addition to the notice under paragraph (g)(3)(iii)(A) of this section, if the change involves providing additional disclosures by electronic communication, a depository institution shall provide the notice in paragraph (g)(3)(i) of this section and obtain the consumer's consent. A notice is not required under paragraph (g)(3)(i) of this section if the institution's initial notice states that additional disclosures may be provided electronically in the future and specifies which disclosures could be provided.

(4) *Address or location to receive electronic communication.* A depository institution that uses electronic communication to provide information required by this regulation shall:

(i) Send the information to the consumer's electronic address; or

(ii) Post the information for at least 90 days at a location such as a website, and send a notice to the consumer when the information becomes available. Thereafter the information shall be available upon request for a period of not less than two years from the date disclosures are required to be made. The notice required by paragraph (g)(4)(ii) shall identify the account involved, shall be sent to an electronic address designated by the consumer (or to a postal address, at the institution's option), and shall be substantially similar to the model form set forth in Appendix B of this part (Model Form B–12).◄

3. Section 230.4 is amended by revising paragraph (a)(1) and paragraph (a)(2)(i) to read as follows:

§ 230.4 Account disclosures

(a) *Delivery of account disclosures.* (1) *Account opening.* (i) ►General.◄ A depository institution shall provide account disclosures to a consumer before an account is opened or a service is provided, whichever is earlier. An institution is deemed to have provided a service when a fee required to be disclosed is assessed. ►Except as provided in paragraph (a)(1)(ii) of this section, if◄ [If] the consumer is not present at the institution when the account is opened or the service is provided and has not already received the disclosures, the institution shall mail or deliver the disclosures no later than 10 business days after the account

is opened or the service is provided, whichever is earlier.

►(ii) *Electronic communication.* If a consumer is not present at the institution and uses electronic communication to open an account or request a service, the disclosures required under paragraph 4(a)(1) of this section must be provided before an account is opened or a service is provided.◄

(2) *Requests.* (i) A depository institution shall provide account disclosures to a consumer upon request. If the consumer is not present at the institution when a request is made, the institution shall mail or deliver the disclosures within a reasonable time after it receives the request ►and may provide the disclosures in paper form or electronically at the consumer's electronic address. The requirements of § 230.3(g)(3) shall not apply.◄

* * * * *

4. Appendix B to Part 230 is amended by:

a. Adding entries for appendices B–10 through B–14 to the table of contents at the beginning of the appendix; and

b. Adding new Appendices B–10, B–11, B–12, B–13, and B–14.

The additions read as follows:

Appendix B to Part 230—Model Disclosure Clauses and Sample Forms

* * * * *

►B–10—Model Disclosures for Electronic Communication (§ 230.3(g)(3)) (Disclosures Available in Paper Form or Electronically)

B–11—Model Disclosures for Electronic Communication (§ 230.3(g)(3)) (Disclosures Available Only Electronically)

B–12—Model Notice for Delivery of Information Posted at Certain Locations (§ 230.3(g)(4))

B–13—Sample Form for Electronic Communication (§ 230.3(g)(3)) (Disclosures Available in Paper Form or Electronically)

B–14—Sample Form for Electronic Communication (§ 230.3(g)(3)) (Disclosures Available Only Electronically)◄

►**B–10 MODEL DISCLOSURES FOR ELECTRONIC COMMUNICATION (§ 230.3(g)(3)) (Disclosures Available in Paper or Electronically)**

You can choose to receive important information required by the Truth in Savings Act in paper or electronically.

Read this notice carefully and keep a copy for your records.

• You can choose to receive the following information in paper form or electronically: (description of specific disclosures to be provided electronically).

How would you like to receive this information

☐ I want paper disclosures.

☐ I want electronic disclosures.

• [We may provide the following additional disclosures electronically in the future: (description of specific disclosures).]

• [If you choose electronic disclosures, this information will be available at: (specify location) for ____ days. After that, the information will be available upon request (State how the consumer can obtain the information). When the information is posted, we will send you a message at the electronic mail address you designate here: (consumer's electronic mail address).]

[If you choose electronic disclosures this information will be sent to the electronic mail address that you designate here: (consumer's electronic mail address).]

• To receive this information you will need: (list hardware and software requirements).

Do you have access to a computer that satisfies these requirements?

☐ Yes ☐ No

• Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

☐ Yes ☐ No

• To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, contact us at (telephone number).

B–11 MODEL DISCLOSURES FOR ELECTRONIC COMMUNICATION (§ 230.3(g)(3)) (Disclosures Available Only Electronically)

You will receive important information required by the Truth in Savings Act electronically.

Read this notice carefully and keep a copy for your records.

• The following information will be provided electronically: (description of specific disclosures to be provided electronically).

• This deposit account is not available unless you accept electronic disclosures.

• [We may provide the following additional disclosures electronically in the future: (description of specific disclosures).]

• [If you choose electronic disclosures, this information will be available at: (specify location) for ____ days. After that, the information will be available upon request (state how the consumer can obtain the information). When the information is posted, we will send you a message at the electronic mail address you designate here: (consumer's electronic mail address).]

[If you choose electronic disclosures this information will be sent to the electronic mail address that you designate here. (consumer's electronic mail address).]

• To receive this information you will need: (list hardware and software requirements).

Do you have access to a computer that satisfies these requirements?

☐ Yes ☐ No

• Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

☐ Yes ☐ No

Do you want this deposit account with electronic disclosures?

☐ Yes ☐ No

• To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, contact us at (telephone number).

B–12 MODEL NOTICE FOR DELIVERY OF INFORMATION POSTED AT CERTAIN LOCATIONS (§ 230.3(g)(4))

Information about your (identify account) is now available at [website address or other location]. The information discusses (describe the disclosure). It will be available for ____ days.

BILLING CODE 6210–01–P

B-13 SAMPLE FORM FOR ELECTRONIC COMMUNICATION (§ 230.3(g)(3))
(Disclosures Available in Paper or Electronically)

You will receive important information required by the Truth in Savings Act electronically.

Read this notice carefully and keep a copy for your records.

- You can choose to receive the following information in paper form or electronically: Annual percentage yields, fees and other terms of our deposit accounts; monthly statements; and change-in-terms.

- Please indicate how you would like to receive this information:

  ☐ I want paper disclosures ☐ I want electronic disclosures

- Information about your account will be available at our Internet website: *http://www._____.com* for 90 days After that, the information will be available upon request by contacting us at *1-800-xxx-xxxx.* When the information is posted on our website, we will send you a message at your e-mail address:

  insert address

- To receive this information electronically, you will need: a minimum web browser version of (Browser name). Do you have access to a computer that satisfies these requirements?

  ☐ Yes ☐ No

- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

  ☐ Yes ☐ No

- Do you want this electronic fund transfer service with electronic disclosures?

  ☐ Yes ☐ No

- To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, you may contact us by telephone at *1-800-xxx-xxxx* or by electronic mail at_____*.help@isp.com.*

B-14 SAMPLE FORM FOR ELECTRONIC COMMUNICATION (§ 230.3(g)(3))
(Disclosures Available Only Electronically)

You will receive important information required by the Truth in Savings Act electronically.

Read this notice carefully and keep a copy for your records.

- The following account information is available electronically: Annual Percentage Yields, fees and other terms of our deposit accounts; monthly statements; and change-in-terms notices.
- This account is available only if you accept these disclosures electronically.
- Information about your account will be available at our Internet website: *http://www._____.com* for 90 days After that, the information will be available upon request by contacting us at *1-800-xxx-xxxx*. When the information is posted on our website, we will send you a message at your e-mail address:

  insert address

- To receive this information electronically, you will need: a minimum web browser version of (Browser name). Do you have access to a computer that satisfies these requirements?

  ☐ Yes ☐ No

- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

  ☐ Yes ☐ No

- Do you want this electronic fund transfer service with electronic disclosures?

  ☐ Yes ☐ No

- To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, you may contact us by telephone at *1-800-xxx-xxxx* or by electronic mail at_____*.help@isp.com.*◂

BILLING CODE 6210–01–C–

5. In Supplement I to Part 230 in Section 230.2—Definitions, under *(q) Periodic Statement,* paragraph 1.ii. is removed and paragraph 1.iii. is redesignated as paragraph 1.ii.

6. In Supplement I to Part 230, under Section 230.3— General disclosure requirements, a new paragraph *(g) Electronic communication,* is added to read as follows:

Supplement I to Part 230—Official Staff Interpretations

* * * * *

Section 230.3 General disclosure requirements

* * * * *

(g) Electronic communication

(g)(1) Definition

1. *Coverage.* Information transmitted by facsimile may be received in paper form or electronically, although the party initiating the transmission may not know at the time the disclosures are sent which form will be used. A depository institution that provides disclosures by facsimile should comply with the requirements for electronic communication unless the depository institution knows that the disclosures will be received in paper form.

(g)(2) Electronic communication between depository institution and consumer

1. *Disclosures provided on institution's equipment.* Institutions that control equipment providing electronic disclosures to consumers (for example, computer terminals in an institution's lobby or kiosks located in public places) must ensure that the equipment satisfies the regulation's requirements to provide disclosures in a clear and conspicuous format and in a form the consumer may retain. A depository institution that controls the equipment may provide a printer for the consumers' use in lieu of sending the information to the consumer's electronic mail address or posting the information at another location such as the institution's website.

2. *Retainability.* Institutions must provide electronic disclosures in a retainable format (for example, they can be printed or downloaded). Consumers may communicate electronically with depository institutions through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), a consumer may not have the ability at a given time to preserve TISA disclosures presented on-screen. To ensure that consumers have an adequate opportunity to retain the disclosures, the institution also must send them to the consumer's designated electronic mail address or to another location, for example, on the institution's website, where the information may be retrieved at a later date.

3. *Timing and delivery.* When a consumer opens an account on the Internet or by other electronic means, in order to meet the timing and delivery requirements, institutions must ensure that disclosures applicable at that time appear on the screen and are in a retainable format. The delivery requirements would not be met if disclosures do not either appear on the screen or if the consumer is allowed to open an account before receiving the disclosures. For example, an institution can provide a link to electronic disclosures appearing on a separate page as long as consumers cannot bypass the link and they are required to access the disclosures before completing the opening of the account.

(g)(2)(ii) In-person exception

1. *Account-opening disclosures in paper form.* If a consumers opens a deposit account in person, the depository institution generally must provide account-opening disclosures in paper form. For example, if a consumer visits a depository institution's branch office to open a deposit account, account-opening disclosures are required before the consumer opens an account or a service is provided and they must be provided in paper form; directing the consumer to disclosures posted on the institution's website would not be sufficient. If, however, a consumer makes a request on the Internet to open an account, a depository institution may send disclosures electronically at or around that time even though the depository institution's procedures require the consumer to visit a branch office at a later time to complete the agreement (for example, to execute a signature card).

(g)(3) Disclosure notice

1. *Consumer's affirmative responses.* Even though a consumer accepts electronic disclosures in accordance with § 230.3(g)(3)(ii), a depository institution may deliver disclosures by electronic communication only if the consumer provides an electronic address where one is required, and responds affirmatively to questions about technical requirements, access to a printer or the ability to download information; (see sample forms B–13 and B–14 in appendix B to this part).

(g)(3)(i) Notice by depository institution

1. **TOLL-FREE TELEPHONE NUMBER.** The number must be toll-free for nonlocal calls made from an area code other than the one used in the institution's dialing area. Alternatively, a depository institution may provide any telephone number that allows a consumer to call for information and reverse the telephone charges.

2. *Institution's address.* Depository institutions have the option of providing either an electronic or postal address for consumers' use in addition to the toll-free telephone number.

3. *Discontinuing electronic disclosures.* Consumers may use the toll-free number (or optional address) if they wish to discontinue receiving electronic disclosures. In such cases, the institution must inform consumers whether the account is also available with disclosures in paper form.

(g)(3)(ii) Response by consumer

1. *Nature of consent.* Consumers must agree to receive disclosures by electronic communication knowingly and voluntarily. An agreement to receive electronic disclosures is not implied from consumers' use of an account or acceptance of general account terms.

(g)(3)(iii) Changes

1. *Examples.* Examples of changes include a change in technical requirements, such as upgrades to software packages affecting the institution's disclosures provided on the Internet.

2. *Timing for notices.* A notice of a change must be sent a reasonable period of time before the effective date of the change. The length of a reasonable notice period may vary, depending on the type of change involved; however fifteen days is a reasonable time for providing notice in all cases.

3. *Delivery of notices.* An institution meets the delivery requirements if the notice of a change is sent to the address provided by the consumer for receiving other disclosures. For example, if the consumer provides an electronic address to receive notices about periodic statements posted at the institution's website, the same electronic address may be used for the change notice. The consumer's postal address must be used, however, if the consumer consented to additional disclosures by electronic communication when receiving the notice under § 230.3(g)(3)(i) but provided a postal address to receive periodic statements in paper form.

4. *Toll-free number.* See comment 3(g)(3)(i)–1.

5. *Institution's address.* See comment 3(g)(3)(i)–2

6. *Consumer inquiries.* Consumers may use the toll-free telephone number (or optional address) for questions or assistance with problems related to a change, such as an upgrade to computer software that is not provided by the institution. Consumers may also use the toll-free number if they wish to discontinue receiving electronic disclosures; in such cases, the institution must inform consumers whether the account is also available with disclosures in paper form.

(g)(4) Address or location to receive electronic communication

(g)(4)(i)

1. *Electronic address.* A consumer's electronic address is an electronic mail address that may be used by the consumer for receiving communications transmitted by parties other than the depository institution.

(g)(4)(ii)

1. *Identifying account involved.* A depository institution is not required to identify an account by reference to the account number. For example, where the consumer does not have multiple accounts, and no confusion would result, the institution may refer to "your checking account," or when the consumer has multiple accounts the institution may use a truncated account number.

2. *Availability.* Information that is not sent to a consumer's electronic mail address must be available for at least 90 days from the date the information becomes available or from the date the notice required by § 230.3(g)(4)(ii) is sent to the consumer, whichever occurs later.◄

7. In Supplement I to Part 230, under § 230.8—Advertising, the following amendments are made:

a. Under *(a) Misleading or inaccurate advertisements,* a new paragraph 9. is added;

b. Under *(b) Permissible rates,* a new paragraph 4. is added; and

c. Under *(e)(1) Certain Media,* a new heading *(e)(1)(i),* and a new paragraph 1. are added.

The additions read as follows:

* * * * *

Section 230.8 Advertising

(a) Misleading or inaccurate advertisements

* * * * *

►9. *Electronic advertising.* A depository institution that provides a multi-page advertisement electronically may display a triggering term (such as a bonus or an annual percentage yield) at one location, as long as the consumer is clearly referred—for example, by clicking an icon that directly connects the consumer—to the location that sets forth clearly and conspicuously the additional disclosures required by the regulation. For example, the icon could instruct the consumer to "click here for additional cost information."◄

* * * * *

(b) Permissible rates

* * * * *

►4. *Electronic communication.* An interest rate may be stated in conjunction with, but not more conspicuously than, the annual percentage yield to which it relates. In an advertisement using electronic communication, both rates must appear in the same location so that both rates may be viewed simultaneously. This requirement is not satisfied if the annual percentage yield can be viewed only by use of a link that connects the consumer to information appearing at another location.◄

* * * * *

(e)(1) Certain media.

►*(e)(1)(i)*

1. *Internet advertisements.* The exemption for advertisements made through broadcast or electronic media does not extend to advertisements made by electronic communication, such as advertisements posted on the Internet.◄

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 31, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–23140 Filed 9–13–99; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–207–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require replacement of a flight attendant panel and modification of its associated wiring. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the disabling of the "Fasten Seat Belt" and "No Smoking" signs when they are required to be illuminated. Such disabling could result in the inability to instruct the passengers to extinguish their cigarettes and fasten their seat belts when required, which may contribute to passenger injury should a hard landing or in-flight turbulence be experienced.

DATES: Comments must be received by October 14, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–207–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–207–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–207–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that, when the reading light switches that are located on the flight attendant panel are in the OFF position, the seat belt warning light switch and the no smoking warning light switch that are located on the flight deck overhead panel are inhibited from operating the passenger cabin "Fasten Seat Belt" and "No Smoking" warning lights. This condition, if not corrected, could result in the inability to instruct the passengers to extinguish their cigarettes and fasten their seat belts when required, which may contribute to passenger injury should a hard landing or in-flight turbulence be experienced.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328–33–271, dated September 17, 1998, which describes procedures for replacement of a flight attendant panel with a new or modified panel and modification of its associated wiring. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 1999–053, dated February 25, 1999, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of a flight attendant panel and modification of its associated wiring. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 51 Model 328–100 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the airplane manufacturer free of charge. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,060, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dornier Luftfahrt GmbH: Docket 99–NM–207–AD.

Applicability: Model 328–100 series airplanes, serial numbers 3005 through 3093 inclusive and 3095 through 3111 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To ensure that passengers are properly instructed to extinguish their cigarettes and fasten their seat belts when required, and to prevent consequent passenger injury should a hard landing or in-flight turbulence be experienced, accomplish the following:

Panel Replacement

(a) Within 120 days after the effective date of this AD, replace the existing flight attendant panel 19VE with a new or modified panel, part number 328–0100, Amendment D, and modify the wiring associated with it; in accordance with Dornier Service Bulletin SB–328–33–271, dated September 17, 1998.

Spares

(b) As of the effective date of this AD, no person shall install on any airplane a flight attendant panel 19VE, unless it has been modified in accordance with Dornier Service Bulletin SB–328–33–271, dated September 17, 1998.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

(e) This amendment becomes effective on [date 35 days after date of publication of final rule in the **Federal Register**].

Note 3: The subject of this AD is addressed in German airworthiness directive 1999–053, dated February 25, 1999.

Issued in Renton, Washington, on September 7, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23744 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Airspace Docket No. 99–AGL–46]

Modification of Class E Airspace; Fort Wayne, IN Correction

AGENCY: Federal Aviation Administration (FAA, DOT).

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This action corrects an error in the notice of proposed rulemaking that was published in the **Federal Register** on Friday, August 27, 1999 (64 FR 46868), Airspace Docket No. 99–AGL–46. The notice of proposed rulemaking modified Class E Airspace at Fort Wayne, IN.

DATES: Comments must be received on or before October 11, 1999.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone: (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 99–22062, Airspace Docket No. 99–AGL–46, published on August 27, 1999 (64 FR 46868), modified Class E Airspace at Fort Wayne, IN. An incorrect latitude and longitude was published for the Smith Field Airport in this airspace notice of proposed rulemaking. This action corrects that error.

Correction to Notice of Proposed Rulemaking

Accordingly, pursuant to the authority delegated to me, the error for the Class E airspace, Fort Wayne, IN, as published in the **Federal Register** August 27, 1999 (64 FR 46868), (FR Doc. 99–22062), is corrected as follows:

On page 46869, Column 1, change the latitude and longitude for the Fort Wayne, Smith Field Airport, IN, to the following:

(Lat. 41° 08′ 26″N., long. 85° 09′ 10″W.)

Issued in Des Plaines, IL on September 1, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–23943 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–50]

Proposed modification of Class D airspace and establishment of Class E airspace; Dayton, Wright-Patterson AFB, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class D airspace at Dayton, Wright-Patterson AFB, OH. This action would amend the effective hours of the Class D surface area to coincide with the airport traffic control tower (ATCT) hours of operation for Wright-Patterson AFB. The purpose of this action is to clarify when two-way radio communication with the ATCT is required. This action also proposes to create a Class E surface area for those times when the ATCT is closed.

DATES: Comments must be received on or before October 29, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–50, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines. Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–50." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class D airspace at Dayton, Wright-Patterson AFB, OH, by amending the effective hours to coincide with the ATCT hours of operation for Wright-Patterson AFB, and by creating Class E airspace for those times when the ATCT is closed. Controlled airspace extending upward from the surface is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class D airspace designations are published in paragraph 5000, and Class E airspace designations for a surface area are published in paragraph 6002, of FAA Order 7400.9F dated September

10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D designations and Class E designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

AGL OH D Dayton, Wright-Patterson AFB, OH [Revised]

Dayton, Wright-Patterson AFB, OH
(Lat. 39° 39′34″ N., long 84° 02′54″ W.)
Patterson VORTAC
(Lat. 39° 49′06″ N., long 84° 03′16″ W.)

That airspace extending upward from the surface to and including 3,400 feet MSL within an 4.6-mile radius of Wright-Patterson AFB, and within 1.3 miles each side of the Patterson VORTAC 046° radial extending from the 4.6-mile radius to 5.6 miles northeast of the VORTAC, excluding that airspace within the James M. Cox Dayton International Airport, OH, Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace designated as a surface area.

* * * * *

Dayton, Wright-Patterson AFB, OH
(Lat. 39° 49′34″ N., long 84° 02′54″ W.)
Patterson VORTAC
(Lat. 39° 49′06″ N., long 84° 03′16″ W.)

That airspace extending upward from the surface to and including 3,400 feet MSL within an 4.6-mile radius of Wright-Patterson AFB, and within 1.3 miles each side of the Patterson VORTAC 046° radial extending from the 4.6-mile radius to 5.6 miles northeast of the VORTAC, excluding that airspace within the James M. Cox Dayton International Airport, OH, Class C airspace area. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on August 30, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–23942 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–49]

Proposed Modification of Class E Airspace; Caledonia, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Caledonia, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 31 has been developed for Houston County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to remove the extension to the existing controlled airspace for this airport.

DATES: Comments must be received on or before October 29, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–49, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–49." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each

substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of a Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Caledonia, NM, to accommodate aircraft executing the proposed GPS Rwy 31 SIAP at Houston County Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface on the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for part 71 continues to read as follows:

Authoity: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Caledonia, MN [Revised]

Caledonia, Houston County Airport, MN
(Lat. 43° 35′ 47″N., long. 91° 30′ 14″W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Houston County Airport.

* * * * *

Issued in Des Plaines, Illinois on August 30, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–23944 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

RIN 1076–AD90

Acquisition of Title to Land in Trust

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule; Reopening of comment period.

SUMMARY: This notice reopens the comment period for the proposed rule published at 64 FR 17574–17588, April 12, 1999 on the Acquisition of title to land in trust.

DATES: Comments must be received on or before October 12, 1999.

ADDRESSES: You may mail comments to the Office of Trust Responsibilities, Bureau of Indian Affairs, 1849 C Street, NW, MS–4513–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Terry Virden, Director, Office of Trust Responsibilities, Bureau of Indian Affairs, MS–4513, Main Interior Building, 1849 C Street, NW, Washington, DC 20240; by telephone at (202) 208–5831; or by telefax at (202) 219–1065.

SUPPLEMENTARY INFORMATION: On Monday, April 12, 1999, the Bureau of Indian Affairs published a proposed rule, 64 FR 17574–17588, concerning the Acquisition of title to land in trust. The deadline for receipt of comments was July 12, 1999, which was extended to September 12, 1999. The comment period is extended for an additional thirty days to allow additional time for comment on the proposed rule. Comments must be received on or before October 12, 1999.

Dated: September 7, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–23815 Filed 9–13–99; 8:45 am]

BILLING CODE 4310–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6438–4]

Assessment of Visibility Impairment at the Grand Canyon National Park: Advance Notice of Proposed Rulemaking; Extension of Public Comment Period

AGENCY: Environmental Protection Agency.

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

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for an advance notice of proposed rulemaking, published June 17, 1999 (64 FR 32458), regarding visibility impairment at the Grand Canyon National Park (GCNP) and the possibility that the Mohave Generating Station (MGS) in Laughlin, Nevada may contribute to that impairment. In the June 17 document, EPA requests information that it should consider in determining whether visibility problems at the GCNP can be reasonably

attributed to MGS, and if so, what, if any, pollution control requirements should be applied.

The public comment period for the advance notice of proposed rulemaking was originally due to expire on August 16, 1999. On August 6, 1999, at the request of Southern California Edison Company, EPA published a document extending the public comment period for 30 days (64 FR 42891). At the request of the Grand Canyon Trust, EPA is now extending the public comment period for an additional 15 days.

DATES: The comment period on the advance notice of proposed rulemaking is extended until September 30, 1999.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: EPA Region IX, 75 Hawthorne Street (AIR2), San Francisco, CA 94105, Attn: Regina Spindler.

FOR FURTHER INFORMATION CONTACT: Regina Spindler (415) 744–1251, Planning Office (AIR2), Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Dated: September 3, 1999.

Felicia Marcus,

Regional Administrator, Region 9.

[FR Doc. 99–23917 Filed 9–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–6422–2]

Hazardous Waste Management Program: Final Authorization and Incorporation by Reference of State Hazardous Waste Management Program for Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to incorporate by reference in part 272 of Title 40 of the Code of Federal Regulations (CFR) EPA's approval of the Texas Natural Resource Conservation Commission's (TNRCC) hazardous waste regulations for Resource Conservation and Recovery Act Clusters II, III and IV and to approve its revisions to that program submitted by the State of Texas. The EPA will incorporate by reference into the CFR those provisions of the State statutes and regulations that are authorized and federally enforceable. In the "Rules and Regulations" section of this **Federal Register** (FR), the EPA is codifying and incorporating by reference the State's hazardous waste program as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the immediate final rule. If the EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If the EPA receives adverse written comments, a second FR document will be published before the time the immediate final rule takes effect. The second document may withdraw the immediate final rule or identify the issues raised, respond to the comment and affirm that the immediate final rule will take effect as scheduled. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments on this proposed rule must be received on or before October 14, 1999.

ADDRESSES: Written comments may be mailed to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD-G), Multimedia Planning and Permitting Division, at the address shown below. Copies of the materials submitted by TNRCC may be examined during normal business hours at the following locations: EPA Region 6 Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444; or the Texas Natural Resource Conservation Commission, 1700 N. Congress Avenue, Austin, TX 70711–3087, (512) 239–1000.

FOR FURTHER INFORMATION CONTACT: Alima Patterson at (214) 665–8533.

SUPPLEMENTARY INFORMATION:

For additional information see the immediate final rule published in the rules section of this **Federal Register**.

Dated: June 24, 1999

Jerry Clifford,

Deputy Regional Administrator, Region 6.

[FR Doc. 99–22182 Filed 9–13–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 212, 225, and 252

[DFARS Case 99–D301]

Defense Federal Acquisition Regulation Supplement; Domestic Source Restrictions—Commercial Items

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to address requirements pertaining to the applicability of domestic source restrictions to contracts and subcontracts for the acquisition of commercial items and commercial components.

DATES: Comments on the proposed rule should be submitted in writing to the address specified below on or before November 15, 1999, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–3050. Please cite DFARS Case 99–D301.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil.

Please cite DFARS Case 99–D301 in all correspondence related to this issue. E-mail correspondence should cite DFARS Case 99—D301 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0288. Please cite DFARS Case 99–D301.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes amendments to DFARS 212.503, 212.504, 225.7019–2, and 252.225–7016 to address the applicability of domestic source restrictions to contracts and subcontracts for the acquisition of commercial items and commercial components. The rule specifies that the domestic source restrictions in 10 U.S.C. 2534 and annual defense appropriations acts are inapplicable if the restricted foreign goods are components of commercial items or commercial components being acquired. The rule also removes the Trade Agreements Act (19 U.S.C. 2512) and the Buy American Act (41 U.S.C. 10) from the list of laws that are inapplicable to subcontracts for the acquisition of commercial items, since the Trade Agreements Act and the Buy American Act apply to end items only.

This proposed rule supersedes the proposed rule published at 62 FR 59641 on November 4, 1997 (DFARS Case 97–D028), pertaining to commercial ball or roller bearings that are components of

noncommercial items. No public comments were received on that proposed rule, which is hereby withdrawn.

B. Regulatory Flexibility Act

The proposed 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.*, because the primary effect of the rule is a restriction on the acquisition of ball and roller bearings manufactured in the United Kingdom. The clause at DFARS 252.225–7016 presently permits the acquisition of commercial ball and roller bearings manufactured in the United Kingdom, regardless of whether the bearings are acquired as end items or components. The proposed rule would no longer permit the acquisition of commercial ball and roller bearings from the United Kingdom if the bearings are acquired as end items. This change is not expected to have a significant impact on U.S. firms. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 99–D301 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 212, 225, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 212, 225, and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 212, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

2. Section 212.503 is amended by revising paragraph (a)(xi) to read as follows:

212.503 Applicability of certain laws to Executive Agency contracts for the acquisition of commercial items.

(a) * * *

(xi) Section 8099, Public Law 104–61, Restriction on Acquisition of Ball and Roller Bearings, and similar sections in subsequent defense appropriations acts, if ball or roller bearings are components of the commercial items being acquired.

* * * * *

3. Section 212.504 is amended by revising paragraphs (a) (xviii) and (xxvi) and removing and reserving paragraphs (a) (xxiii) and (xxiv) to read as follows:

212.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) * * *

(xviii) 10 U.S.C. 2534, Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods, if the restricted foreign goods are components of—

(A) The commercial items being acquired; or

(B) The commercial components being acquired.

* * * * *

(xxiii) [Reserved.]

(xxiv) [Reserved.]

* * * * *

(xxvi) Section 8099, Public Law 104–61, Restriction on Acquisition of Ball and Roller Bearings, and similar sections in subsequent defense appropriations acts, if ball or roller bearings are components of—

(A) The commercial items being acquired; or

(B) The commercial components being acquired.

* * * * *

PART 225—FOREIGN ACQUISITION

4. Section 225.7019–2 is amended by revising paragraph (b) to read as follows:

225.7019–2 Exceptions.

* * * * *

(b) The restriction in 225.7019–1(b) does not apply to—

(1) Contracts for the acquisition of commercial items incorporating ball or roller bearings (see 212.503(a)(xi); or

(2) Subcontracts for the acquisition of—

(i) Commercial items incorporating ball or roller bearings; or

(ii) Commercial components incorporating ball or roller bearings (see 212.504(a)(xxvi)).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 252.225–7016 is amended by revising the clause date and paragraphs (c)(1) and (d) to read as follows:

252.225–7016 Restriction on acquisition of ball and roller bearings.

* * * * *

Restriction on Acquisition of Ball and Roller Bearings (XXX 1999)

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(c)(1) The restriction in paragraph (b) of this clause does not apply to the extent that the end items containing ball or roller bearings or components containing ball or roller bearings are commercial items.

* * * * *

(d) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7019–3 of the Defense Federal Acquisition Regulation Supplement (DFARS). If the restriction is waived for miniature and instrument ball bearings, the Contractor agrees to acquire a like quantity and type of domestic manufacture for nongovernmental use, unless the miniature and instrument ball bearings being acquired are manufactured in the United Kingdom or an exception applies in accordance with DFARS 225.7019–2(a).

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[FR Doc. 99–23729 Filed 9–13–99; 8:45 am]

BILLING CODE 5000–04–M

Notices

Federal Register
Vol. 64, No. 177
Tuesday, September 14, 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.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for Approval for an Addendum to a Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Farm Service Agency (FSA) to amend a current information collection. To facilitate payment to vendors, invoice and payment forms (KC–269, Notice to Deliver and KC–269–A, Forwarding Notice) previously cleared by the Office of Management and Budget (OMB), are being amended to include a self-certification form concerning delivery of commodities. These commodities are purchased for use in domestic food assistance programs, which are operated through a cooperative effort of the Commodity Credit Corporation (CCC) and three agencies within the Department of Agriculture: FSA, the Food and Nutrition Service (FNS) and the Agriculture Marketing Service (AMS).

DATES: Comments on this notice must be received on or before November 15, 1999 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Greg Borchert, Chief, Planning and Analysis Division, Kansas City Commodity Office, 9200 Ward Parkway, Kansas City, Missouri 64114, telephone (816) 926–3536, fax (816) 926–6767.

SUPPLEMENTARY INFORMATION:

Title: Offer Forms and Shipment Information Log—5 CFR 1320.

OMB Control Number: 0560–0177.

Expiration Date: 1/31/01.

Type of Request: Approval of an Addendum to a Currently Approved Information Collection.

Abstract: FSA and AMS purchase commodities for FNS's domestic food assistance programs for delivery to warehouses operated for, or under contract with, State agencies. Under an agreement among FSA, CCC, AMS, and FNS, each agency agrees to perform a certain function in order to carry out the domestic food assistance programs. One of the FSA's functions is to handle billing documents and make payments. Until now, FSA has solely relied upon consignee receipts to provide sufficient proof of delivery to allow payments to vendors. Because these receipts were handled by several parties, including State Governments and warehouses, the amount of time it took for such receipts to reach the FSA payment office because quite lengthy. To shorten the payment process, FSA is allowing vendors to self-certify to the quantity of commodity delivered and to the date of delivery. Self-certification will ease the burden on small business' cash flow by allowing payments for commodities to be issued more timely. The self-certification will be included in the package of forms previously approved by OMB under 0560–0052. The use of self-certification provides reasonable and proper financial controls and accountability for program funds. Procurement agencies will also amend purchase announcements and transportation contracts to allow for the self-certification. FNS will still require the submission of an FNS–57 (Report of Shipment Received Over, Short, and/or Damaged (OSD)), when necessary.

Regulations governing paperwork burdens on the public require that before an agency collects information from the public, the agency must receive approval from OMB. In accordance with those regulations, FSA is seeking approval for these forms to provide for delivery self-certification.

Estimate of Burden: Public reporting burden for collecting information under this notice is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Business and other for-profit organizations.

Estimated Number of Respondents: 176 for form KC–269, and 30 for form KC–269–A.

Estimated Number of Annual Responses per Respondent: 100 for form KC–269, and 150 for form KC–269–A.

Estimated Total Annual Burden on Respondents: 1,467 hour for form KC–269, and 375 hours for form KC–269–A.

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

Comments regarding this information collection requirement should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Agriculture, Washington, DC 20503, and to Greg Borchert, Chief, Planning and Analysis Division, Kansas City Commodity Office, 9200 Ward Parkway, Kansas City, Missouri 64114, telephone (816) 926–3536, fax (816) 926–6767.

OMB is required to make a decision concerning the collection of information contained in this notice between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of consideration if OMB receives it within 30 days of publication of this notice. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC., on September 8, 1999.

Parks Shackelford,

Acting Administrator, Farm Service Agency.

[FR Doc. 99–23952 Filed 9–13–99; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lemhi Pass Management Plan, Beaverhead-Deerlodge National Forest, Beaverhead County, Montana, and Salmon-Challis National Forest, Lemhi County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to develop recreation facilities at Lemhi Pass, and manage the Lemhi Pass National Historic Landmark.

DATES: Comments concerning the scope of the analysis should be received in writing by October 15, 1999.

ADDRESSES: Send written comments to Dillon Ranger District, Beaverhead-Deerlodge National Forest, 420 Barrett St., Dillon, MT 59725.

FOR FURTHER INFORMATION CONTACT: Katie R. Bump, Lemhi Pass project coordinator, (406) 683–3900.

SUPPLEMENTARY INFORMATION: Lemhi Pass, on the Continental Divide between Idaho and Montana, is a National Historic Landmark, on the Lewis and Clark National Historic Trail. With the approaching bicentennial of Lewis and Clark's expedition (2003–2006), the Beaverhead-Deerlodge and Salmon-Challis National Forests are studying ways to preserve the historic, natural landscape of Lemhi Pass, and accommodate increased numbers of visitors. The decision to be made is selection of the facilities and management standards and guidelines appropriate to preserve the historic value of the site in the bicentennial years and for the long term, and accommodate visitors at Lemhi Pass. The general direction for management at Lemhi Pass comes from the two Forest Plans, and from the Comprehensive Management Plan for the Lewis and Clark Trail, developed by the National Park Service; this decision will determine specific management actions at the site.

Scoping will include a public meeting to be held at Lemhi Pass on September 25, 1999, at 10:30 am. The Forests will also use a mailing list of interested parties, and news releases to local media to ensure public involvement. The Forests are working to develop and analyze the effects of a range of alternatives. An initial alternative has been prepared, and is available for public review and comment. This initial alternative addresses proposed facilities including parking areas, picnic sites, road and trail improvements, and interpretation, along with management standards for the site. Issues that have been identified include protection of the historic values associated with the natural landscape and scenic qualities of the area, accommodation for visitors including physically challenged people, concern for public safety, and effects on the Continental Divide National Scenic Trail, Roadless area, recreation opportunities, livestock grazing, wildlife, fisheries and vegetation.

The joint lead agencies are the Beaverhead-Deerlodge and Salmon-Challis National Forests, USDA Forest Service. The responsible officials are David Fallis, Dillon District Ranger, Beaverhead-Deerlodge National Forest, 420 Barrett St., Dillon, MT 59725, and Richard Ward, Leadore District Ranger, Salmon-Challis National Forest, P.O. Box 180, Leadore, ID 83464. Written comments and suggestions are invited.

The draft EIS is tentatively planned for filing in January 2000, with the final EIS filed by May 2000. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

It is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

Dated: September 2, 1999.

David S. Fallis,

District Ranger.

[FR Doc. 99–23957 Filed 9–13–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

BA–3c Naomi Siphon Outfall Management Project/PBA–12a Barataria Bay Waterway West Bank Protection Project; Jefferson and Plaquemines Parishes, LA

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Naomi Siphon Outfall Management Project and the Barataria Bay Waterway East Bank Protection Project, Jefferson and Plaquemines Parishes, Louisiana.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302; telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of the federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that preparation and review of an environmental impact statement is not needed for this project.

The project will evaluate potential impacts attributed to management of the Naomi Siphons outfall and the evaluation of potential impacts attributed to bank protection measures along the east bank of Barataria Bay Waterway. The project area encompasses approximately 26,603 acres of marsh and open water habitat. Project features include the construction of a fixed crested weir with a boat bay on the Goose Bayou Canal, construction of a fixed crested weir with a barge bay on Bayou Dupont Canal, and construction of approximately 17,600 linear feet of rock bankline protection.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and

interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data collected during the environmental assessment are on file and may be reviewed by contacting Donald W. Gohmert.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Donald W. Gohmert,

State Conservationist.

[FR Doc. 99–23831 Filed 9–13–99; 8:45 am]

BILLING CODE 3410–16–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 35).

Agency: Bureau of Export Administration (BXA).

Title: Offsets in Military Reports.

Agency Form Number: n/a.

OMB Approval Number: 0694–0084.

Type of Request: Renewal of an existing collection of information.

Burden: 1,000 hours.

Average Time Per Response: 10 hours per response.

Number of Respondents: 100 respondents.

Needs and Uses: The Defense Production Act Amendments of 1992, Section 123 (Pub.L. 102558), which amended Section 309 or the Defense Production Act of 1950, requires United States firms to furnish information regarding offset agreements exceeding $5,000,000 in value associated with sales of weapon systems or defense-related items to foreign countries. The information collected on offset transactions will be used to assess the cumulative effect of offset compensation practices on U.S. trade and competitiveness, as required by statute.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, Office of the Chief Information Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

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: September 8, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 99–23852 Filed 9–13–99; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members To Serve on the Census Advisory Committee on the African American Population

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, as amended by Pub. L. 94–409, Pub. L. 96–523, and Pub. L. 97–375), the Census Bureau invites and requests nominations of individuals for appointment by the Secretary of Commerce to the Census Advisory Committee on the African American Population. The terms of some of the members of the Committee will soon expire. The Census Bureau will consider nominations received in response to this notice for appointment to the Committee in addition to nominations already received. The Supplementary Information section for this notice provides information about the objectives and duties of the Advisory Committee and membership criteria.

DATES: Please submit nominations on or before September 29, 1999.

ADDRESSES: Please submit nominations to Nampeo R. McKenney, Senior Research and Technical Advisor, Department of Commerce, Bureau of the Census, Room 3631, Federal Building 3, Washington, DC 20233, telephone 301–457–2070. Nominations may also be submitted via FAX to 301–457–2642 or by e-mail to Nampeo.R.McKenney@ccmail.census.gov.

FOR FURTHER INFORMATION CONTACT: Nampeo R. McKenney, Senior Research and Technical Advisor, at the above address or via e-mail.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act, (Title 5, United States Code (U.S.C.), Appendix 2) in 1995. The following provides information about the Committee, membership, and the nomination process.

Objectives and Duties

1. The Committee provides an organized and continuing channel of communication between the African American community and the Bureau of the Census on efforts to reduce the differentials in totals for all population groups during Census 2000 and on ways census data can be disseminated for maximum usefulness of the African American population and other users.

2. The Committee draws on the experience of its members with the 1990 census process and procedures, results of evaluation and research studies, test censuses, and the expertise and insight of its members to provide advice and recommendations on data collection, processing, promotional, and evaluation activities during the implementation phase of Census 2000. The Committee provides advice regarding the tabulation plans for race and ethnic data.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Committee reports to the Director of the Bureau of the Census.

Membership

The Committee consists of nine members who are appointed for three-year terms by, and serve at the discretion of, the Secretary of Commerce. Committee members are selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidelines. The Committee aims to have a balanced representation, considering factors such as geography, gender, and ethnic diversity of Committee membership and the expertise and knowledge of census procedures and activities. The Committee aims to include members from academic, media, research, community-based, and religious organizations, the business community, and local governments. No employee of the Federal Government can serve as a member of the Committee. Consideration for reappointment of membership after a term is contingent upon the individual's satisfactory attendance and participation in the activities of the advisory committee as well as criteria established for input and advice from the advisory committee.

Miscellaneous

1. Members of the Committee serve without compensation, but the Census Bureau will, upon request, reimburse travel expenses as authorized by 5 U.S.C. 5701 *et seq.*

2. The Committee meets at least once a year, but additional meetings may be held as deemed necessary by the Director or Designated Federal Official. Meetings are one to two days in duration.

3. Committee meetings are open to the public.

Nomination Information

1. Nominations are sought as described above.

2. Nominees should have expertise and knowledge of the cultural patterns and issues and/or data needs of their communities to provide advice and recommendations to the Census Bureau on the best ways to use census operations and procedures to obtain complete and accurate data on their population. The experience that qualifies the candidate for membership should be outlined in the nomination letter. Nominations may come from individuals or organizations. A summary of the candidate's qualifications should be included with the nomination. Nominees should be able to actively participate in good faith in the tasks of the Committee. Besides participation in the Committee meetings, active participation may include review of materials and participation in conference calls, working groups, and observation trips.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: September 8, 1999.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 99–23903 Filed 9–13–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members To Serve on the Census Advisory Committee on the American Indian and Alaska Native Populations

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, as amended by Pub. L. 94–409, Pub. L. 96–523, and Pub. L. 97–375), the Census Bureau invites and requests nominations of individuals for appointment by the Secretary of Commerce to the Census Advisory Committee on the American Indian and Alaska Native Populations. The terms of some of the members of the Committee will soon expire. The Census Bureau will consider nominations received in response to this notice for appointment to the Committee in addition to nominations already received. The Supplementary Information section for this notice provides information about the objectives and duties of the Advisory Committee and membership criteria.

DATES: Please submit nominations on or before September 29, 1999.

ADDRESSES: Please submit nominations to Nampeo R. McKenney, Senior Research and Technical Advisor, Department of Commerce, Bureau of the Census, Room 3631, Federal Building 3, Washington, DC 20233, telephone 301–457–2070. Nominations may also be submitted via FAX to 301–457–2642 or by e-mail to Nampeo.R.McKenney@ccmail.census.gov.

FOR FURTHER INFORMATION CONTACT: Nampeo R. McKenney, Senior Research and Technical Advisor, at the above address or via e-mail.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act (Title 5, United States Code (U.S.C.), Appendix 2) in 1995. The following provides information about the Committee, membership, and the nomination process.

Objectives and Duties

1. The Committee provides an organized and continuing channel of communication between the American Indian and Alaska Native communities and the Bureau of the Census on efforts to reduce the differentials in totals for all population groups during Census 2000 and on ways census data can be disseminated for maximum usefulness of the American Indian and Alaska Native populations, their tribal governments, and other users.

2. The Committee draws on the experience of its members with the 1990 census process and procedures, results of evaluation and research studies, test censuses, and the expertise and insight of its members to provide advice and recommendations on data collection, processing, promotional, and evaluation activities during the implementation phase of Census 2000. The Committee provides advice regarding the tabulation plans for race and ethnic data.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Committee reports to the Director of the Bureau of the Census.

Membership

The Committee consists of nine members who are appointed for three-year terms by, and serve at the discretion of, the Secretary of Commerce. Committee members are selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidelines. The Committee aims to have a balanced representation, considering factors such as geography, gender, and ethnic diversity of Committee membership and the expertise and knowledge of census procedures and activities. The Committee aims to include members from academic, media, research, community-based, and religious organizations, the business community, and tribal and local governments. No employee of the Federal Government can serve as a member of the Committee. Consideration for reappointment of membership after a term is contingent upon the individual's satisfactory attendance and participation in the activities of the advisory committee as well as criteria established for input and advice from the advisory committee.

Miscellaneous

1. Members of the Committee serve without compensation, but the Census Bureau will, upon request, reimburse travel expenses as authorized by 5 U.S.C. 5701 *et seq.*

2. The Committee meets at least once a year, but additional meetings may be held as deemed necessary by the Director or Designated Federal Official. Meetings are one to two days in duration.

3. Committee meetings are open to the public.

Nomination Information

1. Nominations are sought as described above.

2. Nominees should have expertise and knowledge of the cultural patterns and issues and/or data needs of their American Indian and Alaska Native tribal governments and communities to provide advice and recommendations to the Census Bureau on the best ways to use census operations and procedures to obtain complete and accurate data on their population. The experience that qualifies the candidate for membership should be outlined in the nomination

letter. Nominations may come from individuals or organizations. A summary of the candidate's qualifications should be included with the nomination. Nominees should be able to actively participate in good faith in the tasks of the Committee. Besides participation in the Committee meetings, active participation may include review of materials and participation in conference calls, working groups, and observation trips.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: September 8, 1999.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 99–23902 Filed 9–13–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members To Serve on the Census Advisory Committee on the Asian and Pacific Islander Populations

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, as amended by Pub. L. 94–409, Pub. L. 96–523, and Pub. L. 97–375), the Census Bureau invites and requests nominations of individuals for appointment by the Secretary of Commerce to the Census Advisory Committee on the Asian and Pacific Islander Populations. The terms of some of the members of the Committee will soon expire. The Census Bureau will consider nominations received in response to this notice for appointment to the Committee in addition to nominations already received. The **SUPPLEMENTARY INFORMATION** section for this notice provides information about the objectives and duties of the Advisory Committee and membership criteria.

DATES: Please submit nominations on or before September 29, 1999.

ADDRESSES: Please submit nominations to Nampeo R. McKenney, Senior Research and Technical Advisor, Department of Commerce, Bureau of the Census, Room 3631, Federal Building 3, Washington, DC 20233, telephone 301–457–2070. Nominations may also be submitted via FAX to 301–457–2642 or by e-mail to Nampeo.R.McKenney@ccmail.census.gov.

FOR FURTHER INFORMATION CONTACT: Nampeo R. McKenney, Senior Research and Technical Advisor, at the above address or via e-mail.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act, (Title 5 United States Code (U.S.C.), Appendix 2) in 1995. The following provides information about the Committee, membership, and the nomination process.

Objectives and Duties

1. The Committee provides an organized and continuing channel of communication between the Asian and Pacific Islander communities and the Bureau of the Census on efforts to reduce the differentials in totals for all population groups during Census 2000 and on ways census data can be disseminated for maximum usefulness of the Asian and Pacific Islander populations and other users.

2. The Committee draws on the experience of its members with the 1990 census process and procedures, results of evaluation and research studies, test censuses, and the expertise and insight of its members to provide advice and recommendations on data collection, processing, promotional, and evaluation activities during the implementation phase of Census 2000. The Committee provides advice regarding the tabulation plans for race and ethnic data.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Committee reports to the Director of the Bureau of the Census.

Membership

The Committee consists of thirteen members who are appointed for three-year terms by, and serve at the discretion of, the Secretary of Commerce. The Committee is divided into two Subcommittees—the "Asian" Population with eight members and the "Native Hawaiian and Other Pacific Islander Populations" with five members. Committee members are selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidelines. The Committee aims to have a balanced representation, considering factors such as geography, gender, and ethnic diversity of Committee membership and the expertise and knowledge of census procedures and activities. The Committee aims to include members from academic, media, research, community-based, and religious organizations, the business community, and local governments. No employee of the Federal Government can serve as a member of the Committee. Consideration for reappointment of membership after a term is contingent upon the individual's satisfactory attendance and participation in the activities of the advisory committee as well as criteria established for input and advice from the advisory committee.

Miscellaneous

1. Members of the Committee serve without compensation, but the Census Bureau will, upon request, reimburse travel expenses as authorized by 5 U.S.C. 5701 *et seq.*

2. The Committee meets at least once a year, but additional meetings may be held as deemed necessary by the Director or Designated Federal Official. Meetings are one to two days in duration.

3. Committee meetings are open to the public.

Nomination Information

1. Nominations are sought as described above.

2. Nominees should have expertise and knowledge of the cultural patterns and issues and/or data needs of their communities to provide advice and recommendations to the Census Bureau on the best ways to use census operations and procedures to obtain complete and accurate data on their population. The experience that qualifies the candidate for membership should be outlined in the nomination letter. Nominations may come from individuals or organizations. A summary of the candidate's qualifications should be included with the nomination. Nominees should be able to actively participate in good faith in the tasks of the Committee. Besides participation in the Committee meetings, active participation may include review of materials and participation in conference calls, working groups, and observation trips.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: September 8, 1999.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 99–23901 Filed 9–13–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members to Serve on the Census Advisory Committee on the Hispanic Population

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Request for Nominations.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, as amended by Pub. L. 94–409, Pub. L. 96–523, and Pub. L. 97–375), the Census Bureau invites and requests nominations of individuals for appointment by the Secretary of Commerce to the Census Advisory Committee on the Hispanic Population. The terms of some of the members of the Committee will soon expire. The Census Bureau will consider nominations received in response to this notice for appointment to the Committee in addition to nominations already received. The Supplementary Information section for this notice provides information about the objectives and duties of the Advisory Committee and membership criteria.

DATES: Please submit nominations on or before September 29, 1999.

ADDRESSES: Please submit nominations to Nampeo R. McKenney, Senior Research and Technical Advisor, Department of Commerce, Bureau of the Census, Room 3631, Federal Building 3, Washington, DC 20233, telephone 301–457–2070. Nominations may also be submitted via FAX to 301–457–2642 or by e-mail to Nampeo.R.McKenney@ccmail.census.gov.

FOR FURTHER INFORMATION CONTACT: Nampeo R. McKenney, Senior Research and Technical Advisor, at the above address or via e-mail.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act, (Title 5, United States Code (U.S.C.), Appendix 2) in 1995.

Objectives and Duties

1. The Committee provides an organized and continuing channel of communication between the Hispanic community and the Bureau of the Census on efforts to reduce the differentials in totals for all population groups during Census 2000 and on ways census data can be disseminated for maximum usefulness of the Hispanic population and other users.

2. The Committee draws on the experience of its members with the 1990 census process and procedures, results of evaluation and research studies, test censuses, and the expertise and insight of its members to provide advice and recommendations on data collection, processing, promotional, and evaluation activities during the implementation phase of Census 2000. The Committee provides advice regarding the tabulation plans for race and ethnic data.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Committee reports to the Director of the Bureau of the Census.

Membership

The Committee consists of nine members who are appointed for three-year terms by, and serve at the discretion of, the Secretary of Commerce. Committee members are selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidelines. The Committee aims to have a balanced representation, considering factors such as geography, gender, and ethnic diversity of Committee membership and the expertise and knowledge of census procedures and activities. The Committee aims to include members from academic, media, research, community-based, and religious organizations, the business community, and local governments. No employee of the Federal Government can serve as a member of the Committee. Consideration for reappointment of membership after a term is contingent upon the individual's satisfactory attendance and participation in the activities of the advisory committee as well as criteria established for input and advice from the advisory committee.

Miscellaneous

1. Members of the Committee serve without compensation, but the Census Bureau will, upon request, reimburse travel expenses as authorized by 5 U.S.C. 5701 et. seq.

2. The Committee meets at least once a year, but additional meetings may be held as deemed necessary by the Director or Designated Federal Official. Meetings are one to two days in duration.

3. Committee meetings are open to the public.

Nomination Information

1. Nominations are sought as described above.

2. Nominees should have expertise and knowledge of the cultural patterns and issues and/or data needs of their communities to provide advice and recommendations to the Census Bureau on the best ways to use census operations and procedures to obtain complete and accurate data on their population. The experience that qualifies the candidate for membership should be outlined in the nomination letter. Nominations may come from individuals or organizations. A summary of the candidate's qualifications should be included with the nomination. Nominees should be able to actively participate in good faith in the tasks of the Committee. Besides participation in the Committee meetings, active participation may include review of materials and participation in conference calls, working groups, and observation trips.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: September 8, 1999.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 99–23900 Filed 9–13–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Encryption; Notice of Partially Closed Meeting

The President's Export Council Subcommittee on Encryption (PECSENC) will meet on September 29, 1999, at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The meeting will begin in open session at 9:00 a.m. The open session is scheduled to adjourn at 2:30 p.m. The closed session will begin at 2:45 p.m. The Subcommittee provides advice on matters pertinent to policies regarding commercial encryption products.

Open Session: 9:00 a.m.–2:30 p.m.

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on Bureau of Export Administration initiatives.
4. Issue briefings.
5. Open discussion.

Closed Session: 2:45 p.m.–5:00 p.m.

6. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The meeting is open to the public and a limited number of seats will be available. Reservation are not required.

To the extent time permits, member of the public may present oral statements to the PECSENC. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to pecsence members, the PECSENC suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, U.S. Department of Commerce, 14th St. & Pennsylvania Ave., NW, Washington, DC 20230.

A Notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved May 7, 1998, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For more information, contact Ms. Lee Ann Carpenter on (202) 482–2583.

Dated: September 8, 1999.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 99–23891 Filed 9–13–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–704]

Final Results of Expedited Sunset Review: Brass Sheet and Strip From Japan

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

ACTION: Notice of Final Results of Expedited Sunset Review: Brass Sheet and Strip from Japan.

SUMMARY: On February 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on brass sheet and strip from Japan (64 FR 4840) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the "Final Result of Review" section of this notice.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: September 14, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752(c) of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this order is brass sheet and strip, other than leaded and tinned, from Japan. The chemical composition of the covered products is currently defined in the Copper Development Association ("C.D.A.") 200 Series or the Unified Numbering System ("U.N.S.") C2000. This review does not cover products with chemical compositions that are defined by anything other than either the C.D.A. or U.N.S. series. In physical dimensions, the products covered by this review have a solid rectangular cross section over .0006 inches (.15 millimeters) through .1888 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included. The merchandise is currently classified under the Harmonized Tariff Schedule ("HTS") item numbers 7409.21.00 and 7409.29.00. The HTS numbers are provided for convenience and U.S. Customs purposes. The written description remains dispositive.

History of the Order

The antidumping duty order on brass sheet and strip from Japan was published in the **Federal Register** on August 12, 1988 (53 FR 30454). In that order, the Department estimated that the weighted-average dumping margins for Nippon Mining Co., Ltd. ("Nippon"), Sambo Copper Alloy Co., Ltd. ("Sambo"), Mitsubishi Shindoh Co., Ltd. ("Mitsubishi"), Kobe Steel ("Kobe") (hereinafter collectively referred to as "respondent interested parties"), and "all-others" were 57.98, 13.20, 57.98, 57.98, and 45.72 percent, respectively. Since that time, the Department has completed no administrative review.[1] The order remains in effect for all manufacturers and exporters of the subject merchandise.

Background

On February 1, 1999, the Department initiated a sunset review of the antidumping duty order on brass sheet and strip from Japan (64 FR 4840), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate for each of these findings on behalf of Heyco Metals, Inc. ("Heyco"), Hussey Copper Ltd. ("Hussey"), Olin Corporation—Brass Group ("Olin"), Outokumpu American Brass ("OAB"), PMX Industries, Inc. ("PMX"), Revere Copper Products, Inc. ("Revere"), the International Association of Machinists and Aerospace Workers, the United Auto Workers (Local 2367), and the United Steelworkers of America (AFL/CIO) (collectively "the domestic interested parties") on February 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations.* The domestic interested parties claimed interested party status under sections 771(9)(C) and 771(9)(D) of the Act as U.S. brass mills, rerollers, and unions whose workers are engaged in the production of subject brass sheet and strip in the United States.

We received a complete substantive response from the domestic interested parties on March 3, 1999 within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). In their substantive response, the domestic interested parties indicate that most of their members were parties to the original investigation with a few exceptions: Heyco did not participate in the original investigation but fully supports the instant review, and PMX was

[1] On one occasion, the Department initiated an administrative review upon a request by respondent interested parties. The said review, however, was terminated because respondent interested parties subsequently withdrew their request for review. Consequently, the Department terminated the review, see *Brass Sheet and Strip from Japan; Termination of Antidumping Duty Administrative Review,* 55 FR 5641 (February 16, 1990).

established after the original petitions were filed. The domestic party also notes that OAB was formerly known as American Brass Company.

We did not receive a substantive response from any respondent interested parties in this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.[2]

On June 7, 1999, the Department extended the time limit for completion of the final results of this review until not later than August 30, 1999, in accordance with section 751(c)(5)(B) of the Act, based upon its finding under section 751(c)(5)(C)(v) that, as a transition order (*i.e.*, an order in effect on January 1, 1995), the sunset review of the order on Brass Sheet and Strip from Japan is extraordinarily complicated.[3]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, domestic interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin,* the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations,* this constitutes a waiver of participation.

In their substantive response, the domestic interested parties argue that revocation of the order will likely lead to continuation or recurrence of dumping of brass sheet and strip from Japan (*see* March 3, 1999 Substantive Response of the domestic interested parties at 40–41). In support of their argument, domestic interested parties compare three-year averages of import volumes of the subject merchandise before and after the issuance of the order: during 1984–1986, imports of the subject merchandise averaged 20 million pounds; whereas, during 1989–1991, the import volumes reached, on the average, just 1.3 million pounds; *i.e.*, average annual imports of the subject merchandise declined by 93.5 percent after the imposition of the order. Furthermore, domestic interested parties argue, the import volumes of the subject merchandise continue to remain very low: since the imposition of the order, annual Japanese exports of the subject merchandise have never reached one-quarter of the volume of 1986.

In addition, domestic interested parties point out that since the inception of the order, the margins found in the original investigation have continued to prevail because no administrative review of the order has been completed.[4] In other words, as domestic interested parties further state, dumping of the subject merchandise is continuing above the *de minimis* level.

In conclusion, the domestic interested parties argue that the Department should determine that continuation or recurrence of dumping is likely if the order is revoked because dumping margins have existed over the life of the order and continue to exist at above *de minimis* levels for all producers/exporters of the subject merchandise, and because imports of the subject merchandise have declined dramatically since the imposition of the order. The domestic interested parties denote, these two factors are probative of the fact that the Japanese producers/exporters are unable to sell in the United States without dumping.

As indicated in section II.A.3 of the *Sunset Policy Bulletin,* the SAA at 890, and the House Report at 63–64, the Department considers whether dumping continued at any level above *de minimis* after the issuance of the order. If companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue were the discipline removed. Because there is no published findings with respect to weighted-average dumping margins in previous administrative reviews, the Department agrees with the domestic interested parties that weighted-average dumping margins at a level above *de minimis* have persisted over the life of the order and currently remain in place for all Japanese producers and exporters of brass sheet and strip.[5]

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the order. The data supplied by the domestic interested parties and those of the United States Census Bureau (reported in form IM146) and

[2] The domestic interested parties filed comments pertaining to the Department's decision to conduct a expedited (120-day) sunset review for the present review, in which the domestic party concurred with the Department's decision. *See* May 12, 1999 domestic interested parties' comments on the Adequacy of Responses and the Appropriateness of Expedited Sunset Review at 2.

[3] *See Parcelain-on-Steel Cooking Ware Fram the People's Republic af China, Porcelain-on-Steel Caoking Ware Fram Taiwan, Top-of-the-Stove Stainless Steel Cooking Ware Fram Karea (Sauth) (AD & CVD), Tap-af-the-Stove Stoinless Steel Caaking Ware From Taiwon (AD & CVD), Stondord Carnatians From Chile (AD & CVD), Fresh Cut Flowers From Mexico, Fresh Cut Flawers Fram Ecuadar, Brass Sheet ond Strip Fram Brazil (AD & CVD), Bross Sheet ond Strip From Koreo (South), Brass Sheet and Strip Fram France (AD & CVD), Brass Sheet and Strip Fram Germany, Brass Sheet ond Strip Fram Italy, Brass Sheet ond Strip Fram Sweden, Bross Sheet and Strip From Japan, Pampan Chrysanthemums Fram Peru: Extensian of Time Limit far Final Results af Five-Year Reviews,* 64 FR 30305 (June 7, 1999).

[4] *See* footnote 1, supra.

[5] *See* footnote 1, supra.

the United Stated International Trade Commission indicate that, since the imposition of the order, the import volumes of the subject merchandise have declined substantially. Namely, the import volumes of the subject merchandise declined substantially immediately following the imposition of the order'a drop of 93.5 percent. Moreover, for the entire period of 1989–1998, annual imports of the subject merchandise have never reached one-quarter of the 1986 volume. Therefore, the Department determines that the import volumes of the subject merchandise decreased significantly after the issuance of the order.

Given that dumping has continued over the life of the order; that the import volumes of the subject merchandise decreased significantly after the issuance of the order; that respondent interested parties have waived their right to participate in this review, and that there are no arguments and/or evidence to the contrary, the Department agrees with the domestic interested parties' contention that respondent interested parties are incapable of selling the subject merchandise in the United States at fair value. Consequently, the Department determines that dumping is likely to continue if the order is to be revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin.*) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin.*)

The Department, in its final determination of sales at less than fair value, published weighted-average dumping margins for four Japanese producers/exporters of the subject merchandise: Nippon Mining—57.98, Sambo Copper Alloy—13.30, Mitsubishi Shindo—57.98, and Kobe Steel—57.98, all-others—45.72 percent (53 FR 23296, June 21, 1988). We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, citing the SAA at 890 and the *Sunset Policy Bulletin*, the domestic interested parties state that the Department normally will provide the Commission with the dumping margins from the investigation because those are the only calculated margins that reflect the behavior of exporters without the discipline of the order in place. (*See* the March 3, 1999 Substantive Response of the domestic interested parties at 45–46.) Therefore, the domestic interested parties urge that the Department should abide by its practice, as set forth in the regulations, and should provide to the Commission the margins set forth in the original investigation.

The Department agrees with the domestic interested parties' suggestion pertaining to the margins that are likely to prevail if the order were revoked. As correctly noted by the domestic interested parties, the Department normally will provide to the Commission the margins found in the original investigation. Moreover, since there has been no administrative review of this order, the margins from the original investigation are the only ones available to the Department. Absent argument and evidence to the contrary, the Department sees no reason to change its usual practice of selecting the rate from the original investigation. We will report to the Commission the company-specific and all others rates contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of these reviews, the Department finds that revocation of the antidumping orders would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Nippon Mining Co	57.98
Sambo Copper Alloy Co., Ltd	13.30
Mitsubishi Shindoh Co., Ltd	57.98
Kobe Steel, Ltd	57.98
All Others	45.72

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 30, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–23041 Filed 9–13–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–602]

Final Results of Expedited Sunset Review: Brass Sheet and Strip From Germany

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

ACTION: Notice of final results of expedited sunset review: brass sheet and strip from Germany.

SUMMARY: On February 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on brass sheet and strip from Germany (64 FR 4840) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the "Final Result of Review" section of this notice.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: September 14, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752(c) of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset*

Regulations"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

This order covers shipments of brass sheet and strip, other than leaded and tinned, from Germany. The chemical composition of the covered products is currently defined in the Copper Development Association ("C.D.A.") 200 Series or the Unified Numbering System ("U.N.S.") C2000. This review does not cover products with chemical compositions that are defined by anything other than either the C.D.A. or U.N.S. series. In physical dimensions, the products covered by this review have a solid rectangular cross section over .0006 inches (.15 millimeters) through .1888 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included. The merchandise is currently classified under Harmonized Tariff Schedule ("HTS") item numbers 7409.21.00 and 7409.29.00. The HTS numbers are provided for convenience and U.S. Customs purposes. The written description remains dispositive.

History of the Order

The antidumping duty order on brass sheet and strip from Germany was published in the **Federal Register** on March 6, 1987 (52 FR 6997).[1] In that order, the Department indicated that the weighted-average dumping margins of brass sheet and strip from Germay were as follows:

Manufactures/producers/ exporters	Weighted-average Margins (percent)
Wieland-Werke AG ("Wieland-AG")	3.81
Langenberg Kupfer-und Messingwerke GmbH KG	16.18
All-others	7.30

The Department has completed numerous administrative reviews since that time.[2] Also, in one administrative review, the Department found that Wieland did not circumvent the antidumping duty order.[3] The order remains in effect for all manufacturers and exporters of the subject merchandise.

Background:

On February 1, 1999, the Department initiated a sunset review of the antidumping order on brass sheet and strip from Germany (64 FR 4840), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Heyco Metals, Inc. ("Heyco"), Hussey Copper Ltd. ("Hussey"), Olin Corporation—Brass Group ("Olin"), Outokumpu American Brass ("OAB"), PMX Industries, Inc. ("PMX"), Revere Copper Products, Inc. ("Revere"), the International Association of Machinists and Aerospace Workers, the United Auto Workers (Local 2367), and the United Steelworkers of America (AFL/CIO) (collectively "the domestic interested parties") on February 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. The domestic interested parties claimed interested party status under sections 771(9)(C) and 771(9)(D) of the Act as U.S. brass mills, rerollers, and unions whose workers are engaged in the production of subject brass sheet and strip in the United States.

We received a complete substantive response from the domestic interested parties on March 3, 1999, within the 30–day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). In their substantive response, the domestic interested parties indicate that most of their members were parties to the original investigation with a few exceptions: Heyco did not participate in the original investigation but fully supports the instant review, and PMX was established after the original petitions were filed. The domestic parties also note that OAB was formerly known as American Brass Company.

We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.[4]

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order—an order which was in effect on January 1, 1995. *See* section 751(c)(6)(C) of the Act. The Department determined that the sunset review of the antidumping duty order on brass sheet and strip from the Germany is extraordinarily complicated. Therefore, on June 7, 1999, the Department extended the time limit for completion of the preliminary results of this review until not later than August 30, 1999, in accordance with section 751(c)(5)(B) of the Act.[5]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the

[1] See *Antidumping Duty Order; Brass Sheet and Strip From the Federal Republic of Germony*, 52 FR 6997 (March 6, 1987), as amended, *Final Determination of Sales at Less Thon Fair Value and Amendment to Antidumping Duty Order: Brass Sheet and Strip From Germany*, 52 FR 35750 (April 8, 1987).

[2] *See Bross Sheet ond Strip From the Federal Republic of Germony; Finol Results of Antidumping Duty Administrative Review*, November 27, 1991 (56 FR 60087); *Bross Sheet ond Strip From the Federol Republic of Germany; Amendment to Finol Results of Antidumping Duty Administrotive Review*, January 3, 1992 (57 FR 276); *Bross Sheet and Strip From Germony; Finol Results of Antidumping Duty Administrative Review*, July 25, 1995 (60 FR 38031); *Brass Sheet ond Strip From Germony; Finol Results of Antidumping Duty Administrative Reviews*, July 27, 1995 (60 FR 38542); *Brass Sheet ond Strip From Germany; Amendment of Final Results of Antidumping Duty Administrative Reviews*, April 29, 1996 (61 FR 18720); *Brass Sheet ond Strip From Germany; Final Results of Antidumping Duty Administrative Review and Determinotion Not to Revoke in Part*, September 23, 1996 (61 FR 49727); *Brass Sheet and Strip From Germony; Amended Final Results of Antidumping Duty Administrative Review*, July 17, 1997 (62 FR 38256); *Brass Sheet ond Strip From Germany; Final Results of Antidumping Duty Administrotive Review*, August 11, 1998 (63 FR 42823); *Finol Results of Antidumping Duty Administrative Review: Brass Sheet ond Strip From Germany*, 64 FR 43342 (August 10, 1999).

[3] See *Brass Sheet and Strip From Germany; Negative Final Determinatian af Circumvention of Antidumping Duty Order*, 56 FR 65884 (December 19, 1991). The Department determined that C.D.A. 667-series manganese brass was not a minor alteration of brass sheet and strip of the C.D.A. 200–series, and consequently, that Wieland did not circumvent the order.

[4] The domestic interested parties filed comments, pertaining to the Department's decision to conduct a expedited (120–day) sunset review for the present review, in which they concurred with the Department's decision. *See* May 12, 1999, domestic interested parties' comments on the Adequacy of Responses and the Appropriateness of Expedited Sunset Review at 2.

[5] *See Porceloin-on-Steel Cooking Wore Fram the People's Republic of China, Porcelain-on-Steel Caaking Wore Fram Taiwan, Tap-of-the-Stove Stoinless Steel Caaking Ware Fram Kareo (South) (AD & CVD), Top-of-the-Stave Stainless Steel Cooking Wore From Taiwan (AD & CVD), Stondord Carnotians Fram Chile (AD &CVD), Fresh Cut Flowers Fram Mexico, Fresh Cut Flowers From Ecuador, Brass Sheet and Strip From Brozil (AD & CVD), Brass Sheet ond Strip From Koreo (South), Brass Sheet and Strip Fram France (AD & CVD), Bross Sheet and Strip Fram Germony, Brass Sheet and Strip From Italy, Brass Sheet ond Strip From Sweden, Brass Sheet ond Strip From Japan, Pompan Chrysanthemums Fram Peru: Extensian af Time Limit for Final Results af Five-Yeor Reviews, 64 FR 30305 (June 7, 1999).*

Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, the domestic interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In their substantive response, the domestic interested parties claim that revocation of the order will likely lead to continuation or recurrence of dumping of brass sheet and strip from Germany (*see* March 3, 1999 Substantive Response of the domestic interested parties at 38). To illustrate their contention, the domestic interested parties point out a drastic decline of import volumes of the subject merchandise since the issuance of the order. Also, the domestic interested parties submit an argument that, since the imposition of the order, dumping of the subject merchandise has continued and is presently persisting above the de minimis level. *Id.* at 39–40. [6] As a result, the domestic interested parties conclude that dumping of the subject merchandise will continue were the order revoked.

With respect to import volumes of the subject merchandise, the domestic interested parties compare a three-year (1983–1985) average import volume prior to the issuance of the order with a three-year (1987–1989) average import volume subsequent to the order: 56.8 million pounds verses 25.4 million pounds—a 55.2 percent decline. *Id.* In addition, the domestic interested parties note that imports of the subject merchandise continued to fall: 7.4 million pounds in 1992, 4.9 million pounds in 1993, and 2.6 million pounds in 1994. *Id.* Finally, the domestic interested parties emphasize that, during 1995–1998, the import volumes of the subject merchandise have never exceeded 10 percent of the pre-order volumes. *Id.*

While acknowledging that the weighted-average dumping margin for Wieland-AG had, at one point, been de minimis for three consecutive years, the domestic interested parties contend that this is not indicative of what will happen if the order is revoked. The domestic interested parties suggest that Wieland-AG had achieved zero or de minimis margin by further reducing its exports of the subject merchandise during the period. In addition, the domestic interested parties direct our attention to the Department's previous decision in which the Department, despite Wieldand-AG's de minimis margins in three consecutive administrative reviews, refused to grant revocation on behalf of Wieland-AG because, the Department could not determine that Wieland-AG will be able to export the subject merchandise priced at or above fair value. [7]

In conclusion, the domestic interested parties urge that the Department should find dumping would be likely to continue if the order is revoked because dumping margins have existed significantly above the de minimis level over the life of the order for all producers/exporters of the subject merchandise, and because imports of the subject merchandise have declined dramatically since the imposition of the order. The aforementioned two circumstances, according to the domestic interested parties, provide a strong indication that the German producers/exporters are unable to sell in the United States without dumping.

As indicated in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and House Report at 63–64, the Department considered whether dumping continued at any level above de minimis after the issuance of the order. If companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue were the discipline removed. After examining the published findings with respect to weighted-average dumping margins in previous administrative reviews, the Department agrees with the domestic interested parties that weighted-average dumping margins at a level above de minimis have persisted over the life of the order, at least for some German producers and exporters of brass sheet and strip and currently remain in place. [8]

[8] The Department, in its first review, determined that Langenberg Kupfer-und Messingwerke GmbH KG and Metallwerke Schwarwald GmbH are wholly-owned subsidiaries of Wieland-AG. *See Brass Sheet and Strip From the Federol Republic of Germany; Finol Results of Antidumping Duty Administrative Review*, November 27, 1991 (56 FR 60087). For the investigated period of 1986–1988, the Department found dumping margins for Wieland-AG of 14.65 percent (*see Brass Sheet and Strip From Germany; Amended Final Results of Antidumping Duty Administrative Review*, July 17, 1997 (62 FR 38256)) (this is a third and final amendment of the final results of the first review, 56 FR 60087), and for William Prym and Schwermetall Halbzeugwerke of 23.49 percent (*see Brass Sheet and Strip From the Federal Republic of Germany; Amendment to Final Results of Antidumping Duty Administrotive Review*, January 3, 1992 (57 FR 276)) (this is the first amendment of the first review, 56 FR 60087). Since that time the Department has dealt exclusively with Wieland-AG as a lone respondent interested party in subsequent administrative reviews. For subsequent administrative reviews, Wieland-AG's dumping margins were 2.57 percent for 1990–1991, 2.37 percent for 1991–1992, 0.37 percent for 1992–1993, 0.495 percent for 1993–1994, 0 percent for 1994–1995, 16.18 percent for 1996–1997, and 16.18 percent for 1997–1998. *See* footnote 2, supra.

[7] *See Brass and Strip From Germany; Finol Results of Antidumping Duty Administrative Review ond Determination Not To Revoke in Port*, 61 FR 49727 (September 23, 1996).

[8] *See* supra footnote 2, for the list of final determinations of administrative reviews in which the Department found above de minimis weighted-average margins for, at least, some German

Continued

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the order. The data supplied by the domestic interested parties and those of the United States Census Bureau IM146s and the United States International Trade Commission indicate that, since the imposition of the order, import volumes of the subject merchandise have declined substantially. Namely, the import volumes of the subject merchandise declined substantially immediately following the imposition of the order. In addition, the Department's findings of either zero or de minimis margins coincide with further decline of import volumes of the subject merchandise. Moreover, for the period 1995–1998, annual import volumes never rose to even 10 percent of the pre-order volumes. Therefore, the Department determines that the import volumes of the subject merchandise have decreased significantly after the issuance of the order.

Given that dumping has continued over the life of the order, import volumes of the subject merchandise decreased significantly after the issuance of the order, respondent interested parties have waived their right to participate in this review, that there are no arguments and/or evidence to the contrary, the Department agrees with the domestic interested parties' contention that dumping is likely to continue if the order is revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its final determination of sales at less than fair value, published weighted-average dumping margins for Wieland-AG and all others of 3.81 and 7.30 percent, respectively (52 FR 822, January 9, 1987), as amended, (52 FR 35750, September 23, 1987). We also note that the Department has found duty absorption in the most recently completed administrative review.[9]

In its substantive response, the domestic interested parties urge that the Department should choose more recently calculated margins rather than those determined in the original investigation. (*See* March 3, 1999 Substantive Response of the domestic interested parties at 47–48.) The domestic interested parties stress that when companies increase dumping in order to maintain or enhance their market share, increasing margins may be more representative of a company's behavior in the absence of an order. Since Wieland-AG was found dumping at higher margins (than original margins) in two most recent administrative reviews, and since Wieland-AG has been historically able to dump at even higher rates with the order in place, the domestic interested parties assert, the more recently calculated rate of 16.18 percent should be used for Wieland-AG.

The Department disagrees with the domestic interested parties' argument as to why the Department should select a more recently calculated margin for Wieland-AG from the most recent administrative review. The continuous and rather consistent decline of the import volumes of the subject merchandise since the issuance of the order evinces that Wieland-AG has not really attempted to enhance their market share in the United States by increasing dumping. Furthermore, the fluctuations that have occurred in import volumes since the imposition of the order simply manifest a downward trend rather than illustrate a concerted attempt by Wieland-AG to expand market share by increasing dumping. Therefore, but for the reason discussed below, the Department would not deviate from its normal policy of selecting the rate from the original investigation and, consequently, determines that the rate from the original investigation, as amended, is the proper one to report to the Commission as the rate that is likely to prevail if the order is revoked.

Specifically, section II.B.3.b of the *Sunset Policy Bulletin*, the SAA, at 885, and the House Report at 60, provide that the Department normally will provide to the Commission the higher of the margin that the Department otherwise would have reported to the Commission or the most recent margin for that company adjusted to account for the Department's findings on duty absorption if the Department has found duty absorption. The Department explained that it normally will adjust a company's most recent margin to reflect its findings on duty absorption by incorporating the amount of duty absorption on those sales for which the Department found duty absorption. In the most instant review, the Department found duty absorption exists on "all" of Wieland-AG's exports to the United States. Consistent with the *Sunset Policy Bulletin*, we are adjusting the most recent margin to account for duty absorption. Because the adjusted margin for Wieland-AG is higher than rates from the original investigation, we will report to the Commission a recently calculated margin that takes into account the recent duty absorption finding as contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Wieland-AG	32.36
All others	7.30

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 30, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–23043 Filed 9–13–99; 8:45 am]

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producers/exporters in all periods of investigation. Also, *see* supra footnote 6 for a history of weighted-average dumping margins found for the subject merchandise.

[9] In its latest review, noting that it determined a margin exists for Wieland-AG on adverse facts available and, lacking other information, the Department found that duty absorption exists on all sales. *See Final Results of Antidumping Duty Administrative Reviews: Brass Sheet and Strip From Germany*, 64 FR 43342 (August 10, 1999).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–602]

Industrial Phosphoric Acid From Belgium; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Review of Industrial Phosphoric Acid from Belgium.

SUMMARY: On May 7, 1999, the Department of Commerce ("the Department") published the preliminary results of its administrative review of the antidumping order on industrial phosphoric acid ("IPA") from Belgium. This review covers imports of IPA from one producer, Societe Chimique Prayon-Rupel S.A. ("Prayon") and the period of review (POR) is August 1, 1997, through July 31, 1998.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have revised the results from those presented in the preliminary results of review.

EFFECTIVE DATE: September 14, 1999.

FOR FURTHER INFORMATION CONTACT: Frank Thomson or Jim Terpstra, AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4793, and 482–3965, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 20, 1987, the Department published in the **Federal Register** (52 FR 31439) the antidumping duty order on IPA from Belgium. On August 11, 1998, the Department published in the **Federal Register** (63 FR 42821) a notice of opportunity to request an administrative review of this antidumping duty order. On August 27, 1998, in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended ("the Act") and 19 CFR 351.213(b), FMC Corporation ("FMC"), and Albright & Wilson Americas, Inc. ("Wilson"), both domestic producers of the subject merchandise, requested that the Department conduct an administrative review of Prayon's exports of subject merchandise to the United States. We published the notice of initiation of this review on September 29, 1998 (63 FR 51893). On May 7, 1999, the Department published the *Notice of Preliminary Results of Antidumping Duty Administrative Review of Industrial Phosphoric Acid from Belgium*, 64 FR 24574 (Preliminary Results). On May 12, 1999, Prayon submitted a response to our supplemental questionnaire of April 21, 1999, in which we asked for certain additional information regarding Prayon's reported home market and U.S. market commissions. We gave interested parties an opportunity to comment on the preliminary results. We received case and rebuttal briefs from Prayon and the domestic producers on June 9, 1999, and June 16, 1999, respectively. We did not receive any request from interested parties for a hearing. The Department has now completed this review in accordance with section 751 of the Act.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR Part 351 (1998).

Scope of the Review

The products covered by this review include shipments of IPA from Belgium. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 2809.2000 and 4163.0000. The HTS item number is provided for convenience and U.S. Customs Service (Customs Service) purposes. The written description remains dispositive.

Analysis of Comments Received

Comment 1: Sales commissions

Prayon argues that the Department erroneously treated its home and U.S. market commission payments to affiliated parties as arm's-length transactions. Prayon claims that the commission it paid to its affiliated sales agent in the United States, Quadra Corporation (USA) ("Quadra"), is not comparable to the commissions it paid to its non-affiliated sales agents in third countries.

Specifically, Prayon asserts that the commission paid to Quadra was significantly higher than those paid to non-affiliated sales agents in all other countries except one. According to Prayon, the only commission rate comparable to the one it pays Quadra is the rate it pays to Quadra Chimie Limite ("QCL"), with which Prayon claims to be affiliated. Prayon asserts that this is not an appropriate comparison, and thus, the Department does not have an appropriate basis for concluding that the commission to Quadra was made at arm's-length. Prayon concludes that the Department should find that its commission payment to Quadra was not at arm's-length.

Regarding commission payments in the home market, Prayon points out that its home-market sales agent (Zinchem Benelux) is virtually wholly owned by Prayon, and that the Department has, in past segments of this proceeding, treated this commission as not being at arm's-length (*see Industrial Phosphoric Acid from Belgium; Final Results of Antidumping Duty Administrative Review*, 63 FR 55087 (October 14, 1998) (*Final Results 1996–1997*); *Industrial Phosphoric Acid from Belgium; Final Results of Antidumping Duty Administrative Review*, 62 FR 41359 (August 1, 1997) (*Final Results 1995–1996*); *Industrial Phosphoric Acid from Belgium; Final Results of Antidumping Duty Administrative Review*, 61 FR 51424 (October 2, 1996) (*Final Results 1994–1995*); *Industrial Phosphoric Acid from Belgium; Final Results of Antidumping Duty Administrative Review*, 61 FR 20227 (May 6, 1996) (*Final Results 1993–1994*)). Prayon also points to the original investigation, where the Department determined that these payments were not made at arm's-length (*see Notice of Final Determination of Sales at Less Than Fair Value: Industrial Phosphoric Acid from Belgium*, 52 FR 25436 (July 7, 1987) (*LTFV*)). Prayon asserts that since the completion of those segments, there has been no change in the circumstances of this commission arrangement, and thus no reason for the Department's reversal of its treatment in the current review.

The domestic producers agree with the Department's treatment of these commissions in the preliminary results of review, and assert that the commission Prayon paid to QCL represents a valid basis for comparison and, furthermore, is consistent with the commission paid to Quadra. The domestic producers disagree with Prayon's contention that these commission payments were not at arm's-length. First, the domestic producers assert that the Department's comparison of commission payments using QCL is valid because QCL received them for sales made directly to specific customers on its own, not for sales jointly made with Quadra. Second, QCL ran its business operation

independently from Prayon, also an indication of the arm's-length nature of the commission payments, according to the domestic producers.

In further support for finding that the commission paid to Quadra was at arm's-length, the domestic producers point out that Prayon, as a minority shareholder in Quadra, is not in a position to freely set commission rates to Quadra, benefit from paying out unduly high commissions to it, or have negotiating power over Quadra. The domestic producers conclude that the commission payment in question reflects an open market rate negotiation.

Finally, the domestic producers assert that, even were the Department to disregard the commission paid to QCL, the commissions paid by Prayon to non-affiliated sales agents in other countries are sufficiently similar to that paid to Quadra to support the Department's finding of the arm's-length nature of this commission.

Department's position: During the POR, Prayon used an affiliated sales agent in the home market and a different affiliated sales agent in the United States. For the preliminary results, we compared the commission rates Prayon submitted for its affiliated sales agents in both the home and U.S. market, with the rates paid to unaffiliated parties in other markets. Since the preliminary results were published, Prayon submitted additional documentation regarding these commission rates. As discussed in the preliminary results of review, we have applied the Department's guidelines for determining whether affiliated party commissions are paid on an arm's-length basis. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Finding*, 61 FR 57629 (November 7, 1996). Accordingly, because Prayon did not use an unaffiliated sales agent in either the U.S. or home market, we compared the affiliated commission rates with rates Prayon paid to unaffiliated parties in other markets. Based on our comparison of commission rates for affiliated and unaffiliated parties, we find that Prayon's affiliated commission rates in all markets are reasonably similar to the range of commission rates Prayon paid to unaffiliated sales agents, such that we conclude that the affiliated commissions were arm's-length transactions.

As to Prayon's assertion that the Department, in the four previous reviews, treated Prayon's commissions to its affiliated sales agent in the home market as not being at arm's-length, we agree. However, in those reviews the Department found that Prayon did not use unaffiliated sales agents. Thus, no information existed that would allow the Department to establish a benchmark against which to compare the arm's-length nature of the commission payments from Prayon to its affiliated home market sales agent. The Department was therefore unable to carry out an analysis as to the arm's-length nature of Prayon's commission payments. Accordingly, the Department's treatment of home market commissions in those reviews is not dispositive of the arm's-length nature of the transactions. *See Final Results 1996–1997; Industrial Phosphoric Acid From Belgium; Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 25830, 25832 (May 11, 1998); *Final Results 1995–1996; Industrial Phosphoric Acid From Belgium; Preliminary Results of Antidumping Duty Administrative Review*, 62 FR 31073, 31074 (June 6, 1997); *Final Results 1994–1995; Industrial Phosphoric Acid From Belgium; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 26160, 26161 (May 24, 1996); *Final Results 1993–1994; Industrial Phosphoric Acid From Belgium; Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 57398 (November 15, 1995). Prayon's reliance on the previous reviews, therefore, is misplaced.

As to Prayon's assertion that the Department, in the original investigation, determined that Prayon's commissions to its affiliated sales agent in the home market were not at arm's-length, our analysis indicates otherwise. At the time of the investigation, the Department considered Prayon's commission payments to be "part of the general expenses of the company, and [thus] not costs directly related to particular sales." *See LTFV* at 25439. In addition, at the time of the *LTFV* investigation, the Department did not have a practice or policy with respect to considering commissions paid to unaffiliated sales agents in other (*i.e.*, third country) markets in determining whether a respondent's affiliated commission rates were at arm's-length, since we considered such transactions to be intracompany transfers of funds. *Id.* Consequently, Prayon's argument is not supported by the *LTFV*.

Since the time of the investigation, the Department has changed its practice regarding the arm's-length nature of commissions paid to affiliated selling agents. Under guidelines the Department subsequently developed, the Department compares the commission paid to affiliated selling agents with the commission paid by the respondent to any unaffiliated selling agents in the same market, (*i.e.*, home or U.S.) or in any third country market to determine the arm's-length nature of the affiliated commissions. *See Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from the United Kingdom*, 56 FR 56403, 56405–06 (November 4, 1991) (*Paper from United Kingdom*); *see also Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland*, 56 FR 56363, 56371–72 (November 4, 1991) (*Paper from Finland*); *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Germany*, 56 FR 56385, 56389 (November 4, 1991) (*Paper from Germany*). Pursuant to the current practice, the Department will make an adjustment for commissions between affiliated parties where we find the commissions paid to such parties to be at arm's-length. *See Paper from United Kingdom*, 56 FR at 56406; *Paper from Finland*, 56 FR at 56372; *Paper from Germany, 56 FR at 56389.*

In the present review, Prayon used the services of unaffiliated agents and provided detailed information on the record regarding the commission rates it paid to these unaffiliated sales agents, (*see* "Background" section, above). Consequently, in this review, the Department does have information appropriate for use as a benchmark in establishing the arm's-length nature of Prayon's affiliated commission rates.

Since the Department has determined that the commissions paid to affiliated selling agents are comparable to the commissions paid by the respondent to unaffiliated selling agents in third country markets, for purposes of these final results we continue to find that the affiliated commissions in both the home and U.S. market are made at arm's-length and, for these final results, we are accepting Prayon's reported home and U.S. market commissions. Accordingly, we have continued to make a circumstance of sale adjustment for commissions in both markets.

Comment 2: Prayon argues that, even were the Department to continue to treat its U.S. market commission payments as having been made at arm's-length, the Department committed a clerical error

in deducting U.S. commission expense from U.S. price, instead of adding it to normal value (NV).

The domestic producers disagree with Prayon and assert that in conducting an administrative review, the Department considers individual U.S. sales, and thus it is proper that the commission expense associated with each U.S. sale be deducted from U.S. price.

Department's position: We agree with Prayon that this was a clerical error. For the final results we have added U.S. commissions to NV as is our normal practice in the treatment of circumstances of sale adjustments for export price (EP) transactions.

Final Results of Review

As a result of our review, we have determined that the following weighted-average dumping margin exists for the period August 1, 1997 through July 31, 1998:

Manufacturer/exporter	Margin (percent)
Prayon	3.92

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the importer-specific sales to the total entered value of the same sales. The rate will be assessed uniformly on all entries by that particular importer made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of IPA from Belgium entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a) of the Act: (1) for the company named above, the cash deposit rate will be the rate listed above; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results which covered that manufacturer or exporter; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent final results which covered that manufacturer; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 14.67 percent, the "all others" rate established in the *LTFV*.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review. This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.306 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 1, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23954 Filed 9–13–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–040]

Stainless Steel Plate From Sweden: Notice of Recission of Antidumping Duty Administrative Review

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

ACTION: Notice of Recission of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from petitioners, the Department of Commerce ("the Department") initiated an administrative review of Uddeholm Tooling AB on July 29, 1999. The review covered one manufacturer/exporter of the subject merchandise to the United States, Uddeholm Tooling AB and its U.S. sales subsidiary (Bohler-Uddeholm Corporation). The period of review is June 1, 1998 through May 31, 1999. The Department received a timely request for withdrawal on August 10, 1999 from petitioners. In accordance with 19 CFR 351.213(d)(1), the Department is now terminating this review because the petitioner has withdrawn their request for review and no other interested parties have requested a review.

EFFECTIVE DATE: September 14, 1999.

FOR FURTHER INFORMATION CONTACT: Jonathan Lyons or Chris Cassel, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0374 or 482–0194, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19 CFR Part 351 (1998).

Background

The Department of the Treasury published an antidumping finding on stainless steel plate from Sweden on June 8, 1973 (38 FR 15079). The Department of Commerce published a notice of "Opportunity To Request Administrative Review" of the antidumping finding for the 1998–1999 review period on June 9, 1999 (64 FR 30962). On June 30, 1999, the petitioners, Allegheny Ludlum Steel Corp., G.O. Carlson, Inc., and Lukens, Inc. filed a request for review of Uddeholm Tooling AB ("Uddeholm"). No other interested party requested review of this antidumping duty order. We initiated the review on July 29, 1999 (64 FR 41075). On August 10, 1999 petitioners withdrew their request for review.

Section 19 CFR 351.213(d)(1) of the Department's regulations stipulates that the Secretary may permit a party that requests a review to withdraw the request not later than 90 days after the date of publication of the notice of initiation of the requested review. In this case, petitioners have withdrawn their request for review within the 90-

day period. No other interested party requested a review and we have received no other submissions regarding petitioner's withdrawal of their request for review. Therefore, we are terminating this review of the antidumping duty order on stainless steel plate from Sweden.

This notice is published in accordance with section 751 of the Act and section 19 CFR 351.213(d)(1) of the Department's regulations.

Dated: September 8, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–23955 Filed 9–13–99; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Korea

September 9, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 15, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, carryover, carryforward and recrediting unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 56005, published on October 20, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 9, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 14, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Korea and exported during the period which began on January 1, 1999 and extends through December 31, 1999.

Effective on September 15, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
Group I	
200–223, 224–V [2], 224–O [3], 225, 226, 227, 300–326, 360–363, 369pt. [4], 400–414, 464, 469pt. [5], 600–629, 666, 669–P [6], 669pt. [7], and 670–O [8], as a group.	419,066,390 square meters equivalent.
Sublevels within Group I	
200	544,724 kilograms.
201	2,348,699 kilograms.
611	4,339,204 square meters.
619/620	104,534,265 square meters.
624	9,333,255 square meters.
625/626/627/628/629	18,018,024 square meters.
Group II	
237, 239pt. [9], 331–348, 350–352, 359–H [10], 359pt. [11], 431, 433–438, 440–448, 459–W [12], 459pt. [13], 631, 633–652, 659–H [14], 659–S [15] and 659pt. [16], as a group.	584,701,106 square meters equivalent.
Sublevels within Group II	
333/334/335	313,817 dozen of which not more than 160,396 dozen shall be in Category 335.
336	66,932 dozen.
338/339	1,369,820 dozen.
340	725,268 dozen of which not more than 370,795 dozen shall be in Category 340–D [17].
341	201,639 dozen.
342/642	250,060 dozen.
345	136,751 dozen.
347/348	511,444 dozen.
350	19,467 dozen.
351/651	267,430 dozen.
352	208,107 dozen.
359–H	2,777,955 kilograms.
433	15,019 dozen.
434	7,703 dozen.
435	38,570 dozen.
436	16,492 dozen.
438	64,906 dozen.
442	55,732 dozen.
443	344,600 numbers.
444	59,616 numbers.
445/446	56,342 dozen.
447	95,227 dozen.
448	39,207 dozen.
459–W	106,058 kilograms.
631	351,386 dozen pairs.
633/634/635	1,369,588 dozen of which not more than 157,830 dozen shall be in Category 633 and not more than 588,183 dozen shall be in Category 635.
636	302,379 dozen.
638/639	5,498,535 dozen.
640–D [18]	3,190,923 dozen.
640–O [19]	2,659,102 dozen.
641	1,126,577 dozen of which not more than 42,553 dozen shall be in Category 641–Y [20].
643	795,254 numbers.
644	1,196,425 numbers.
645/646	3,655,166 dozen.
647/648	1,436,136 dozen.
650	28,487 dozen.
659–H	1,465,444 kilograms.
659–S	209,498 kilograms.
Sublevel within Group III	
835	31,617 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[3] Category 224–O: all remaining HTS numbers in Category 224.

[4] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091, 6307.90.9905, (Category 369–L); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

[5] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[6] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[7] Category 669pt.: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[8] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[9] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[10] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060.

[11] Category 359pt.: all HTS numbers except 6505.90.1540, 6505.20.2060 (Category 359–H); and 6406.99.1550.

[12] Category 459–W: only HTS number 6505.90.4090.

[13] Category 459pt.: all HTS numbers except 6505.90.4090 (Category 459–W); 6405.20.6030, 6405.20.6060, 6405.20.6090, 6405.99.1505 and 6406.99.1560.

[14] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[15] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[16] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S); 6406.99.1510 and 6406.99.1540.

[17] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030.

[18] Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[19] Category 640–O: only HTS numbers 6203.23.0080, 6203.29.2050, 6205.30.1000, 6205.30.2050, 6205.30.2060, 6205.30.2070, 6205.30.2080 and 6211.33.0040.

[20] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–23909 Filed 9–13–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE/The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Pharmacy Redesign Demonstration

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of two-site implementation of the Pharmacy Redesign Demonstration.

SUMMARY: This notice is to advise interested parties of a two-site implementation of the Pharmacy Redesign Demonstration for certain military health system (MHS) beneficiaries who are 65 years of age or older, pursuant to the requirements in the Strom Thurmond National Defense Authorization Act for fiscal Year 1999. Specifically, Section 723 of this act mandates the pharmacy redesign to incorporate private sector "best business practices" in providing pharmacy services in the MHS, including both military medical treatment facilities (MTFs) and the mail-order and retail pharmacy benefit under TRICARE. It is projected that participation in this demonstration will extend access to a system-wide drug benefit for up to 6,000 over-age 65 DoD eligible beneficiaries that has not been available until now. In the past, Medicare-eligible MHS beneficiaries' access to pharmacy benefits has generally been limited to the MTFs; therefore, the purpose of this pharmacy redesign demonstration is to assess the feasibility and cost of a system-wide pharmacy benefit for Medicare eligible MHS beneficiaries. The demonstration is limited to two sites where up to three thousand eligible beneficiaries will be enrolled at each site. A random selection process resulted in Fleming, Kentucky and Okeechobee, Florida as the pilot sites.

The pharmacy benefit under this demonstration will require an annual $250 enrollment fee. The TRICARE retail network pharmacies will provide up to a 30-day supply of medications for a 20% co-payment with each prescription. The beneficiaries will also have access to the National Mail-Order Pharmacy Program (NMOP) where quantities up to a 90-day supply will be dispensed for a flat fee of $8 for each prescription.

The pharmacy redesign demonstration is projected to last for three (3) years and will be evaluated by an independent entity outside the Department of Defense.

EFFECTIVE DATE: Enrollment in the demonstration is projected to begin on or after March 1, 2000 with Delivery of services on April 1, 2000.

FOR FURTHER INFORMATION CONTACT: CAPT Charles Hostettler, Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity, (703) 681–1740.

SUPPLEMENTARY INFORMATION:

A. Background

In June 1998, the General Accounting Office (GAO) testified before the Subcommittee on Military Personnel, Committee on Armed Services, House of Representatives, that over the past several years, concern about the costs and quality of DoD's pharmacy benefit has surfaced. GAO recommended that DoD establish a more system-wide approach to managing its pharmacy benefit by establishing a uniform, incentive-based formulary across its pharmacy programs. Furthermore, GAO recommended that a system-wide pharmacy benefit be granted to Medicare-eligible retirees who are excluded from the contractor retail network and NMOP pharmacy systems.

In response to the June 1998 GAO report, the FY 1999 Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261) directed DoD to develop a system-wide pharmacy redesign plan and to implement the system-wide redesigned benefit at two sites for Medicare-eligible beneficiaries.

An eligible beneficiary for the pharmacy redesign demonstration is a member or former member of the uniformed services as described in section 1074(b) of title 10; a dependent of the member described in section 1076(a)(2)(B) or 1076(b) of title 10; or a dependent of a member of the uniformed services who died while on active duty for a period of more than 30 days, who meets the following requirements: (a) 65 years of age or older, (b) entitled to Medicare Part A, (c) enrolled in Medicare Part B, and (d) resides in an implementation area.

The pharmacy redesign implementation will be evaluated by an independent entity outside the Department of Defense. The evaluation shall include: (a) An analysis of the cost of the pharmacy redesign implementation under TRICARE, and also to the eligible individuals who participate in the demonstration, (b) an assessment of the eligible beneficiaries' satisfaction with the redesigned pharmacy benefit, (c) an assessment of the effect, if any, on military medical readiness, (d) a description of the rate of participation, and (e) an evaluation of any other matters that the Department considers appropriate.

The DoD component responsible for the conduct of this project is the TRICARE Management Activity.

Dated: September 8, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison, Department of Defense.

[FR Doc. 99–23818 Filed 9–18–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense Education Activity (DoDEA), DOD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Advisory Council on Dependents' Education (ACDE) is scheduled to be held from 1 p.m. to 5 p.m. on Thursday, October 7, and 8 a.m. to 4:30 p.m. on Friday, October 8, 1999. The meeting will be open to the public and will be held in the Ederle Conference Center in Vicenza, Italy. The meeting will be preceded by visits by ACDE members and DoDEA representatives to DoD overseas schools in Italy, Turkey, and Bahrain from October 4–6. The purpose of the Council is to recommend to the Director, Department of Defense Dependents Schools (DoDDS), general policies for the operation of the DoDDS; to provide the Director with information about effective educational programs and practices that should be considered by DoDDS; and to perform other tasks as may be required by the Secretary of Defense. The focus of this meeting will be on the role of school counselors, in addition to other educational issues. For further information contact Ms. Polly Purser, at 703–696–4235, extension 1911.

Dated: September 8, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–23819 Filed 9–13–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Joint Advisory Committee on Nuclear Weapons Surety; Meeting

ACTION: Notice of advisory committee meeting.

SUMMARY: The Joint Advisory Committee on Nuclear Weapons Surety will conduct a closed session on September 24, 1999 at the Institute for Defense Analyses, Alexandria, Virginia.

The Joint Advisory Committee is charged with advising the Secretaries of Defense and Energy, and the Joint Nuclear Weapons Council on nuclear weapons systems surety matters. At this meeting the Joint Advisory Committee will receive classified briefings on nuclear weapons operations, sustainment, and Department of Defense nuclear readiness.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended Title 5, U.S.C. App. II, (1988)), this meeting concerns matters sensitive to the interests of national security, listed in 5 U.S.C. 552b(c)(1) and accordingly this meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–23820 Filed 9–13–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wages Committee; Notice of Closed Meeting

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that the closed meetings of the Department of Defense Wage Committee will be held on October 5, 1999, October 12, 1999, October 19, 1999, and October 26, 1999, at 10 a.m. in Room A105. The Nash Building 1400 Key Boulevard, Rossyln, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington DC 20301–4000.

Dated: September 8, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–23821 Filed 9–13–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Defense Security Service

Privacy Act of 1974; System of Records

AGENCY: Defense Security Service, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Security Service is proposing to consolidate two existing exempt systems of records (V8–01, Industrial Personnel Security Clearance File into V5–03, Case Control Management System (CCMS)) under one notice. This consolidation also requires that the existing exemption rule for V5–03 be altered to add a "(k)(5)" exemption for the records formerly under V8–01.

DATES: This proposed action will be effective without further notice on October 14, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Office of the General Counsel, Defense Security Service, 1340 Braddock Place, Alexandria, VA 22314–1651.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie Blake (703) 325–9450.

SUPPLEMENTARY INFORMATION: The Defense Security Service systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available for the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 30, 1999, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: September 8, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

V5–03

SYSTEM NAME:

Defense Integrated Management System (DIMS) *(February 22, 1993, 58 FR 10904).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with "Case Control Management System (CCMS)."

SYSTEM LOCATION:

Delete entry and replace with "Primary location: Defense Security Service, Operation Center—Baltimore, 881 Elkridge Landing Road, Linthicum, MD 21090–2902.

Decentralized locations: Remote terminals processing CCMS data are located at DSS's twelve Operating Locations (OL) and Operation Center—Columbus. Operating Locations addresses can be obtained from the Primary location."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Any person who is the subject or co-subject of an ongoing or completed Defense Security Service (DSS) investigation to include employees and major stockholders of DoD affiliated government contractors who have been issued, now possess, are, or have been in process for personnel security clearance eligibility determinations."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "CCMS is composed of investigations conducted by DSS and clearance actions taken for contractors. Information may include investigative assignment records, which may serve as the basis for the investigation, or which serve to guide and facilitate investigative activity; information used to open and conduct the investigation; records on the type of investigation, on the type and number of leads assigned to DSS field elements and leads sent to National Agencies for investigations in progress and the results of those leads received from the National Agencies. The system also identifies the current status of an investigative request (open/closed) and the status of individual leads being conducted, to include additions to, deletion of or amendment to those leads. The system also consists of records pertaining to clearance information on contractors, which may include name, Social Security Number, case number, date and level of security clearance granted, results of interim or final eligibility determinations, clearance applications, record of clearance, foreign clearance and travel information, clearance processing information, adverse information and other internal and external correspondence and administrative memoranda relative to the clearance."

* * * * *

PURPOSE(S):

Delete entry and replace with "To determine the existence, location, and status of subject cases; to control workload and prepare statistical reports; to inform federal agencies or requesters of the status of on-going investigative or personnel security action request and to manage the granting of interim and final clearances for contractor personnel."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "File data composed of the Official Reports of Investigation (ROIs) and associated material (clearance applications/forms) on closed investigations completed by DSS are transferred to the Personnel Security Investigative File Automation Subsystem (V5–01) and will be retained for a period corresponding to the retention of investigative files described in V5–01. Clearance data on contractors reflecting the existence of an open case, record of a National Agency Check (NAC) in progress/completed, record of clearance, are entered into the DCII data base and retained for a period corresponding to the retention of DCII files described V5–02. Data pertaining to favorable adjudicative actions on contractors will be retained for 2 years following the termination of employment. Unfavorable adjudicative actions (clearance denied/suspended/revoked) will be retained for 5 years following the termination of the clearance. In cases involving the death of an individual holding a clearance, the clearance data will be retained until the subject would have attained the age of 80 years. Data released in accordance with the Privacy Act or Freedom of Information Act (FOIA) will be retained for 5 years. Historical data (non-personal statistical data on numbers of cases opened/closed, number of leads, types of investigations, number of clearances granted/denied, etc.) will be retained indefinitely."

Paper records are destroyed by burning or shredding; electronic records are deleted."

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Subject's of DSS investigations and DSS investigative reports; records of other DoD activities and components, federal, state, county and municipal records.'

EXEMPTIONS CLAIMED FOR THE SYSTEM:

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

V5–03

SYSTEM NAME:

Case Control Management System (CCMS).

SYSTEM LOCATION:

Primary location: Defense Security Service, Operation Center-Baltimore, 881 Elkridge Landing Road, Linthicum, MD 21090–2902.

Decentralized locations: Remote terminals processing CCMS data are located at DSS's twelve Operating Locations (OL) and Operation Center-Columbus. Operating Locations addresses can be obtained from the Primary location.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person who is the subject or co-subject of an ongoing or completed Defense Security Service (DDS) investigation to include employees and major stockholders of DoD affiliated government contractors who have been issued, now possess, are, or have been in process for personnel security clearance eligibility determinations.

CATEGORIES OF RECORDS IN THE SYSTEM:

CCMS is composed of investigations conducted by DSS and clearance actions taken for contractors. Information may include investigative assignment records, which may serve as the basis for the investigation, or which serve to guide and facilitate investigative activity; information used to open and conduct the investigation; records on the type of investigation, on the type and number of leads assigned to DSS field elements and leads sent to National Agencies for investigations in progress and the results of those leads received from the National Agencies. The system also identifies the current status of an investigative request (open/closed) and the status of individual leads being conducted, to include

additions to, deletion of or amendment to those leads. The system also consists of records pertaining to clearance information on contractors, which may include name, Social Security Number, case number, date and level of security clearance granted, results of interim or final eligibility determinations, clearance applications, record of clearance, foreign clearance and travel information, clearance processing information, adverse information and other internal and external correspondence and administrative memoranda relative to the clearance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DoD Directive 5105.42, Defense Security Service (32 CFR part 361); DoD Regulation 5200.2, Personnel Security Program (32 CFR part 156); and E.O. 9397 (SSN).

PURPOSE(S):

To determine the existence, location, and status of subject cases; to control workload and prepare statistical reports; to inform federal agencies or requester of the status of on-going investigative or personnel security action request and to manage the granting of interim and final clearances for contractor personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of DSS' compilation of systems of records, notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

CCMS is stored on disk as part of a central database that has a mirrored structure (duplicate file) to provide immediate recovery in case of disk failure. It is regularly backed up onto magnetic tape for storage as a contingency in case of system or disk failure.

RETRIEVABILITY:

CCMS records are retrieved by name or Social Security Number. History file records may also contain a case control number (CCN), which can be used to retrieve records.

SAFEGUARDS:

Generalized validation is provided through online and batch edit criteria that must be honored before an information request or update will occur. Remote terminals must pass through the DSS Firewall or equivalent access controls, both of which have encryption that exceeds the DES standard. All data transfers and information retrievals that use remote communication facilities are encrypted to at least the DES standard. The DSS computer facility housing the CCMS is protected by security guards at all times and access to the computer room is controlled by a combination lock to prevent unauthorized access. Organizations that receive our information and provide responses are responsible for ensuring that only individual's in their organizations who have appropriate authority and need-to-know gain access to CCMS data.

RETENTION AND DISPOSAL:

File data composed of the Official Reports of Investigation (ROIs) and associated material (clearance applications/forms) on closed investigations completed by DSS are transferred to the Personnel Security Investigative File Automation Subsystem (V5–01) and will be retained for a period corresponding to the retention of investigative files described in V5–01. Clearance data on contractors reflecting the existence of an open case, record of a National Agency Check (NAC) in progress/completed, record of clearance, are entered into the DCII data base and retained for a period corresponding to the retention of DCII files described V5–02. Data pertaining to favorable adjudicative actions on contractors will be retained for 2 years following the termination of employment. Unfavorable adjudicative actions (clearance denied/suspended/revoked) will be retained for 5 years following the termination of the clearance. In cases involving the death of an individual holding a clearance, the clearance data will be retained until the subject would have attained the age of 80 years. Data released in accordance with the Privacy Act or Freedom of Information Act (FOIA) will be retained for 5 years. Historical data (non-personal statistical data on numbers of cases opened/closed, number of leads, types of investigations, number of clearances granted/denied, etc.) will be retained indefinitely.

Paper records are destroyed by burning or shredding; electronic records are deleted.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Operations Center-Baltimore, 881 Elkridge Landing Road, Linthicum, MD 21090–2902.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314–1651.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Defense Security Service, Privacy Branch, PO Box 46060, Baltimore, MD 21240–6060.

Individual should provide full name and all maiden and alias names under which files may be maintained. For verification purposes, the Social Security Number may be necessary for positive identification of certain records.

Personal visits will require a valid driver's license or other picture identification and are limited to the Defense Security Service, 881 Elkridge Landing Road, Linthicum, MD 21090–2902.

CONTESTING RECORD PROCEDURES:

DSS' rules for accessing records, contesting contents, and appealing initial agency determinations are contained in DSS Regulation 01–13: 32 CFR part 321; or may be obtained from the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314–1651.

RECORD SOURCE CATEGORIES:

Subject's of DSS investigations and DSS investigative reports; records of other DoD activities and components, federal, state, county and municipal records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

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

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment,

military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 321. For additional information contact the system manager.

[FR Doc. 99–23825 Filed 9–13–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

One-Time-Only (OTO) Personal Property Solicitation and Award Procedures

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC) will solicit and award personal property One-Time-Only shipments for all household goods, unaccompanied baggage, volume movements, mobile homes, international and domestic boats via Electronic Transportation Acquisition accessed through MTMC's homepage.

DATES: Effective date of this program will be 1 October 99.

ADDRESSES: Headquarters, Military Traffic Management Command, ATTN: MTPP–HS, Room 625, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Ms. Gail Collier (703) 681–9577.

SUPPLEMENTARY INFORMATION: Currently One-Time-Only rates are processed via Easylink message system. The transition to the internet, will expedite the processing of rates and reduce costs for soliciting and awarding One-Time-Only shipments.

William G. Balkus,

Col, GS, DCS Passenger and Personal Property.

[FR Doc. 99–23934 Filed 9–13–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to delete systems of records.

SUMMARY: The Department of the Army is deleting two systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on October 14, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, Army Records Management and Declassification Agency, ATTN: TALC–PAD–RP, Stop C, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended.are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 8, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0725–1 AMC

SYSTEM NAME:

Small Arms Sales Record Files (*November 6, 1997, 62 FR 60073*).

Reason: The responsibility for these records now exists with the Corporation for the Promotion of Rifle Practice and Firearms Safety, Inc. Therefore, the Department of the Army no longer maintains these records.

A0920–15 SFDM

SYSTEM NAME:

Civilian Marksmanship Program *(February 22, 1993, 58 FR 10002).*

Reason: The responsibility for these records now exists with the Corporation for the Promotion of Rifle Practice and Firearms Safety, Inc. Therefore, the Department of the Army no longer maintains these records.

[FR Doc. 99–23823 Filed 9–13–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the Performance Review Boards for the Department of the Army.

EFFECTIVE DATE: September 14, 1999.

FOR FURTHER INFORMATION CONTACT: Marilyn D. Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army (Manpower and Reserve Affairs), 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the U.S. Army Corps of Engineers are:

1. MG Russell Fuhrman, Deputy Chief of Engineers/Deputy Commander, Office of the Chief of Engineers, Headquarters, U.S. Army Corps of Engineers (HQ USACE).
2. MG Milton Hunter, Director of Military Programs, HQ USACE.
3. MG Phillip Anderson, Commanding General, United States Army Engineer Division, Mississippi Valley Division, USACE.
4. BG Carl Strock, Commanding General, United States Army Engineer Division, Northwestern Division, USACE.
5. Dr. Susan Duncan, Director of Human Resources, HQ USACE.
6. Ms. Kristine Allaman Director, U.S. Army Center for Public Works, HQ USACE.
7. Mr. Thomas Ushijima, Director of Programs Management, Pacific Ocean Division, USACE.
8. Mr. William Dawson, Director of Programs Management, Southwestern Division, USACE.
9. Dr. Michael O'Connor, Director, U.S. Army Construction Engineering

Research Lab, Engineering Research and Development Center.

The members of the Performance Review Board for The Surgeon General are:

1. Mr. James C. Reardon, Executive Director, Defense Medical Information Management, Office of the Assistant Secretary of Defense (Health Affairs).

2. Ms. Sandra R. Riley, Deputy Administrative Assistant to the Secretary of the Army, Office of the Secretary.

3. MG Patrick D. Sculley, Deputy The Surgeon General/Chief, Dental Corps.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–23932 Filed 9–13–99; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend a record system.

SUMMARY: The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The action will be effective on October 14, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

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

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report. The record system being amended is set forth below, as amended, published in its entirety.

Dated: September 8, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S500.40 DLA-I

SYSTEM NAME:

Police Force Records *(February 22, 1993, 58 FR 10854).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'S500.40 CAAS'.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'File contains name, Social Security Number, and documents relating to operation and use of security police, their security clearances, weapons qualification, training, uniforms, weapons, shift assignments and related papers.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; Section 21 of the Internal Security Act of 1950 (50 U.S.C. 797); and E.O. 9397 (SSN).'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Records are maintained in areas accessible only to DLA security supervisory personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during nonduty hours.'

* * * * *

S500.40 CAAS

SYSTEM NAME:

Police Force Records.

SYSTEM LOCATION:

Security offices of the Defense Logistics Agency Primary Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defense Logistics Agency (DLA) Security Police personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains name, Social Security Number, and documents relating to operation and use of security police, their security clearances, weapons qualification, training, uniforms, weapons, shift assignments and related papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; Section 21 of the Internal Security Act of 1950 (50 U.S.C. 797); and E.O. 9397 (SSN).

PURPOSE(S):

Information is maintained and used by DLA Security Officers and Police Supervisors to maintain control of property, weapons and ammunition; to ensure proper training; to develop schedules and procedures to improve efficiency. Records are used to determine if an individual is qualified in the use of firearms and if he/she has a security clearance which would authorize him/her to handle classified information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are in paper and electronic form.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA security supervisory personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during nonduty hours.

RETENTION AND DISPOSAL:

Destroy after 1 year or when superseded or obsolete, as applicable.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officers of the Defense Logistics Agency Primary Level Field

Activities (PLFAs) who are responsible for the operation of base or facility security forces. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, or the Privacy Act Officer of the particular DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, or the Privacy Act Officer of the particular DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

RECORD SOURCE CATEGORIES:

DLA Security Officers and Security Police personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99-23822 Filed 9-13-99; 8:45 am]
BILLING CODE 5001-10-F

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability of the Draft Environmental Impact Statement (DEIS) for the Daniel Island Terminal Located in the City of Charleston, Berkeley County, South Carolina and Notice of Public Hearing

AGENCY: U.S. Army Corps of Engineers, Charleston District, DoD.

ACTION: Notice of Availability and Public Hearing.

SUMMARY: The U.S. Army Corps of Engineers, Charleston District has prepared a Draft Environmental Impact Statment (DEIS) for the proposed Daniel Island Terminal that will be located in the City of Charleston, Berkeley County, South Carolina. A public hearing will be held to receive oral and written comments on the DEIS. Federal, state and local agencies and interested parties are invited to be present at the hearing.

DATES: The public hearing will be held on Wednesday, November 17, 1999. The time and place will be advertised locally via public notice.

FOR FURTHER INFORMATION CONTACT: For further information and/or questions about the proposed action and DEIS, please contact Ms. Tina Hadden, Project Manager, telephone (843) 727-4330 or 1-800-208-2054, CESAC-TS-RP, 334 Meeting Street, Charleston, South Carolina.

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500-1508), the Charleston District has prepared a DEIS on the proposed marine cargo terminal on Daniel Island which is located in the City of Charleston, Berkeley County, South Carolina. This project is proposed by the South Carolina State Ports Authority (SPA).

1. Description of Proposed Project

The proposed project is the creation by the South Carolina State Ports Authority (SCSPA) of a marine cargo terminal compex at Daniel Island in the City of Charleston, Berkeley County, South Carolina, which includes the following components: approximately 1,300 acres of port terminal development at the south end of Daniel Island to include cargo marshaling areas, cargo processing areas, cargo-handling facilities, intermodal rail facilities, and related terminal operating facilities; approximately 7,000 feet of wharf and berthing area on the Cooper River and approximately 5,000 feet of wharf and berthing area of the Wando River; approximately 37 acres of dredged berthing area; associated improvements to the Wando River Federal Channel; approximately 2.5 miles of multi-lane roadway construction between the proposed terminal site and Interstate I-526; approximately 13 miles of rail connecting the proposed terminal facilities to the East Cooper and Berkeley Railroad; and a rail bridge and road bridge over Beresford Creek.

2. Alternatives

The following alternatives were evaluated in the DEIS: No Action; the Proposed Project; a combination of the Wando River side of Daniel Island and a portion of the former Naval Base; a combination of the Cooper River side of Daniel Island, a portion of the Naval Base, and the existing Columbus Street Terminal. Multiple alternative road and rail corridors to serve the alternative terminal locations were also evaluated, as were design alternatives for each of the facilities.

3. Scoping and Public Involvement Process

Two scoping meetings were held on June 24, 1997, in order to gather information on the subjects to be studied in detail in the DEIS, one specifically for the Federal and State agencies with regulatory responsibilities and one for the general public. Four public information meetings were held in order to provide an arena for the exchange of information regarding the proposed project and the EIS. These meetings were held in September 1997, December 1997, March 1998 and September 1998. Five community outreach meetings were held. These meetings were held at the request of the community to address specific issues and concerns.

4. Significant Issues

Issues associated with the proposed facilities which received a significant level of analysis in the DEIS include, but are not limited to, the potential impacts of the proposed dredging, placement of fill, construction and operation of the proposed terminal and surface transportation facilities, and of induced developments on: wetland resources; upland and aquatic biotic communities; water quality; fish and wildlife values including threatened and endangered species; noise and light levels in areas adjoining the proposed facilities; air quality; land forms and geologic resources; community cohesion; environmental justice; roadway traffic; socioeconomic environment; archaeological and cultural resources; recreation and recreational resources; Section 4(f) and Section 6(f) properties (parks and/or sites of cultural significance); public infrastructure and services; energy supply and natural resources; hazardous wastes and materials; land use; aesthetics; public health and safety; parklands; prime farmlands; ecologically critical areas; navigation;

flood plain values; shoreline erosion and accretion; Essential Fish Habitat; and the needs and welfare of the people.

5. Cooperating Agencies

The U.S. Forest Service, the U.S. Environmental Protection Agency, the Surface Transportation Board, and the U.S. Coast Guard were cooperating agencies in the development of the DEIS.

6. Additional Review and Consultation

Additional review and consultation which was incorporated into the DEIS includes: compliance with the South Carolina Coastal Zone Management Act; protection of cultural resources under Section 106 of the Historic Preservation Act; protection of water quality under Section 401 of the Clean Water Act; coordination under Section 103 of the Marine Protection, Resource, and Sanctuaries Act; and protection of endangered and threatened species under Section 7 of the Endangered Species Act.

7. Availability of the DEIS

The Draft Environmental Impact Statement will be available on September 17, 1999.

Mark S. Held,

Lieutenant Colonel, U.S. Army, District Engineer.

[FR Doc. 99–23933 Filed 9–13–99; 8:45 am]

BILLING CODE 3710–CH–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for Large Scale Developments in Coastal Mississippi

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Mobile District, U.S. Army Corps of Engineers (Corps), intends to prepare a Draft Environmental Impact Statement (DEIS) to address the potential impacts associated with the construction of large scale developments in sensitive areas of coastal Mississippi, including Harrison, Hancock, and a portion of Jackson Counties. The Corps will be evaluating permit applications for any proposed work in waters of the United States under the authority of Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. The EIS will be used as a basis for permit decisions and to ensure compliance with the National Environmental Policy Act (NEPA).

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the DEIS should be addressed to Mr. John McFadyen, Regulatory Branch, phone (334) 690–3261, or Dr. Susan Ivester Rees, Coastal Environment Team, phone (334) 694–4141, Mobile District, U.S. Army Corps of Engineers, P.O. Box 2288, Mobile, AL 36628.

SUPPLEMENTARY INFORMATION:

1. Development in coastal Mississippi has increased significantly since the approval of gaming activities in 1992. Initially this development was small scale and localized to the areas immediately adjacent to Mississippi Sound. Recently, however development activities in coastal Mississippi have taken on a much broader scope both geographically and spatially. To ensure adequate evaluation of the cumulative impacts of development, especially in those areas considered to be sensitive from an environmental standpoint, the Mobile District has decided to undertake a comprehensive environmental impact analysis of both past development activities and foreseeable future development activities. Sensitive areas are those designated for "General Use" and "Preservation" in the Mississippi Coastal Program, including the interior shoreline of the Bay of St. Louis, Back Bay of Biloxi, west of Interstate Highway 110, the marsh island east of this highway and Deer Island. The extent of geographical coverage will include those portions of Hancock and Harrison counties from approximately 1 mile north of Interstate Highway 10 south to the Mississippi Sound shoreline. The western portion of Jackson County, bordering on the Back Bay of Biloxi, will also be included. The analysis process will: evaluate impacts of identified projects, both those requiring U.S. Army Corps of Engineers permits and not requiring permits, constructed since 1992; identify project development trends and project these trends over the next 25 years; and evaluate the impact of likely future large development projects. Past projects which would be evaluated include: 12 operating casinos, 5 casinos permitted but not built, 2 large shopping centers, new subdivisions, large apartment complexes, a port expansion project, and wasterwater plant expansions. Future projects which may be included are Destination Broadwater, Deer Island and Biloxi Resorts, other proposed casino developments, Turkey Creek development, Greater Gulfport Properties development, proposed new subdivisions, and city master plan revisions.

2. Alternative scenarios which may be considered include random development (No action); clustered development; development based on local planning and economic forces.

3. Scoping:

a. The Corps invites full public participation to promote open communication on the issues surrounding the proposal. All Federal, State, and local agencies, and other persons or organizations that have an interest are urged to participate in the NEPA scoping process. Public meetings will be held to help identify significant issues and to receive public input and comment.

b. The DEIS will analyze the potential social, economic, and environmental impacts to the local area resulting from proposed future development. Specifically, the following major issues will be analyzed in depth in the DEIS: hydrologic and hydraulic regimes, threatened and endangered species, essential fish habitat and other marine habitat, air quality, cultural resources, wasterwater treatment capacities and discharges, transportation systems, alternatives, secondary and cumulative impacts, socioeconomic impacts, environmental justice (effect on minorities and low-income groups), and protection of children (Executive Order 13045).

c. The Corps will serve as the lead Federal agency in the preparation of the DEIS. It is anticipated that the following agencies will be invited and will accept cooperating agency status for the preparation of the DEIS: U.S. Environmental Protection Agency, U.S. Department of the Interior—Fish and Wildlife Service, U.S. Department of Commerce—National Marine Fisheries Service, U.S. Department of Transportation—Federal Highway Administration.

4. It is anticipated that the first scoping meeting will be held in the October time frame in the local area. Actual time and place for the meeting and subsequent meetings or workshops will be announced by the Mobile District by issuance of a Public Notice and/or local media.

5. It is anticipated that the DEIS will be made available for public review in May 2000.

John B. McFadyen,

Acting Chief, Regulatory Branch.

[FR Doc. 99–23935 Filed 9–13–99; 8:45 am]

BILLING CODE 3710–CR–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Joint Supplemental Environmental Impact Statement/ Supplemental Environmental impact Report (SEIS/SEIR) for the Port of Los Angeles Channel Deepening Project Feasibility Study; Los Angeles County, CA

AGENCY: U.S. Army Corps of Engineers (Corps), DOD.

ACTION: Notice of intent.

SUMMARY: The Corps and the Port of Los Angeles (POLA) propose to deepen the Main Channel of the Port of Los Angeles from −45′ Mean Lower Low Water (MLLW) to between −50′ MLLW and −55′ MLLW dredging and disposing of approximately 3.7 to 7.8 million cubic yards (mcy).

ADDRESSES: Commander, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL–PD–RN, P.O. Box 532711, Los Angeles, California, 90053–2325.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Larry Smith, phone (213) 452–3846; or E-mail: lsmith@spl.usace.army.mil.

SUPPLEMENTARY INFORMATION: .

1. *Authorization:* The study was authorized by the Water Resources Development Act of 1986 (P.L. 99–662) Section 203.

2. *Background:* The SEIS/SEIR supplements the Deep Draft Navigation Improvements, Los Angeles and Long Beach Harbors, San Pedro Bay, California Environmental Impact Statement/Environmental Impact Report (SEPT 1992) and the Channel Deepening Project Port of Los Angeles Environmental Impact Report (JAN 1998).

3. *Proposed Action:* The Corps and the POLA are proposing to deepen the main navigation channel into the Port of Los Angeles in order to accommodate the larger deeper draft generation of container ships now entering the shipping service. The proposed project would deepen the Main Channel from its current depth of −45′ MLLW to a propose depth of either −50′, −52′, or −55′ MLLW. This would require the dredging of between 3.7 to 7.8 mcy of harbor sediments. Disposal options include offshore, near/onshore and upland sites. Potential disposal sites being investigated are the Pier 300 Expansions Site, the Pier 400 Submerged Storage Site, the Pier 400 Upland Site, the Southwest Slip Fill Site, the Cabrillo Shallow Water Habitat Expansion Site, a local Upland Disposal site, and/or Ocean Disposal Sites LA–2 and/or LA–3.

4. *Alernatives:* Alternative depths being considered are −50′ MLLW, −52′ MLLW and −55′ MLLW. Alternative disposal sites are listed above. Each site will be evaluated for its full storage potential. A combination of sites will be selected based on the chosen channel depth alternative, and thus dredge disposal volume, and potential impacts from the use of each disposal site. The proposed plan, viable project alternatives, and the "no action" plan will be carried forward for detailed analysis pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, as amended) and the California Environmental Quality Act (CEQA) of 1970 (Public Resources Code, Sections 21000–21177).

5. *Scoping Process:* a. Potential impacts associated with the proposed action will be fully evaluated. Resource categories that will be analyzed are: biology, air quality, water quality, cultural resources, land use, geology, recreational, aesthetics, ground and vessel transportation, noise, public health and safety, and utilities.

b. The Corps and the POLA are preparing a joint Supplemental Environmental Impact Statement/Report (SEIS/SEIR) to address potential impacts associated with the proposed project. The Corps is the Lead Federal Agency for compliance with NEPA for the project, and the POLA is the Lead State Agency for compliance with the CEQA for the non-Federal aspects of the project. The Draft SEIS/SEIR (DSEIS/SEIR) document will incorporate public concerns in the analysis of impacts associated with the Proposed Action and associated project alternatives. The DSEIS/SEIR will be sent out for a 45-day public review period, during which time both written and verbal comments will be solicited on the adequacy of the document. The Final SEIS/SEIR (FSEIS/SEIR) will address the comments received on the DSEIS/SEIR during public review, and will be furnished to all who commented on the DSEIS/SEIR, and is made available to anyone that requests a copy during the 30-day public comment period. The final step involves, for the federal SEIS, preparing a Record of Decision (ROD) and, for the state SEIR, certifying the SEIR and adopting a Mitigation Monitoring and Reporting Plan. The ROD is a concise summary of the decisions made by the Corps from among the alternatives presented in the FSEIS/SEIR. The ROD can be published immediately after the FSEIS public comment period ends. A certified SEIR indicates that the environmental document adequately assesses the environmental impacts of the proposed project with respect to CEQA.

c. The public, as well as Federal, State, and local agencies are encouraged to participate in the scoping process by attending the scoping meeting and/or submitting data, information, and comments identifying relevant environmental and socioeconomic issues to be addressed in the environmental analysis. Useful information includes other environmental studies, published and unpublished data, historical photos of the area, alternatives that should be addressed in the analysis, and potential environmental enhancement and restoration opportunities that exist along the creek. Individuals and agencies may offer information or data relevant to the proposed study and provide comments by attending the public scoping meeting, or by mailing the information to Mr. Larry Smith before 15 September, 1999. Requests to be placed on the mailing list for announcements and the DSEIS/SEIR should also be sent to Mr. Larry Smith.

6. Location and time: A formal scoping meeting to solicit public comment and concerns on the proposed action and alternatives will be held on September 15, 1999 at 3:00 P.M., in the Port Plaza Building of the Port Los Angeles, 425 South Palos Verdes Street, San Pedro, California.

Dated: September 10, 1999.

John P. Carroll,

Colonel, Corps of Engineers District Engineer.

[FR Doc. 99–23936 Filed 9–13–99; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Public Hearing for the Draft Overseas Environmental Impact Statement/Draft Environmental Impact Statement (DOEIS/DEIS) for the Operational Employment of the Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency a DOEIS/DEIS for the operational employment of the SURTASS LFA sonar. Public hearings will be held for the purpose of receiving oral and written comments on the DOEIS/DEIS. Federal, state and local agencies, and

interested individuals are invited to be present or represented at the hearings.

DATES AND ADDRESSES: Hearing dates and locations are as follows:

1. September 29, 1999, 7:00 p.m., Nauticus–The National Maritime Center (Theater), 1 Waterside Drive, Norfolk, VA 23510.

2. October 12, 1999, 7:00 p.m., Marina Village Conference Center, 1960 Quivira Way, Building E, Suite 5, San Diego, CA 92109.

3. October 14, 1999, 7:00 p.m., University of Hawaii-Monoa Campus, Hawaii Imin International Conference Center Jefferson Hall, Keoni Room, 2600 Campus Road, Honolulu, HI.

FOR FURTHER INFORMATION CONTACT: Mr. Clayton H. Spikes, telephone (703) 465–8404.

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency a DOEIS/DEIS for the operational employment of the SURTASS LFA sonar.

A Notice of Intent for this EIS was published in the **Federal Register** on July 18, 1996. Public Scoping meetings were held in Norfolk, Virginia, on August 6, 1996; in San Diego, California, on August 8, 1996; and in Honolulu, Hawaii, on August 13, 1996.

The U.S. Navy proposes to operate up to four SURTASS LFA sonar systems worldwide. The SURTASS LFA sonar employs long-range sound propagation to detect return echoes from objects on and under the sea. The LFA system will provide the U.S. Navy an improved detection capability in support of its national defense mission. The Navy proposes to make the SURTASS LFA system available to Fleet Commanders for worldwide employment to enhance antisubmarine capabilities.

The U.S. Navy has analyzed the environmental effects resulting from the operational employment of up to four SURTASS LFA sonar systems worldwide. Alternatives developed and analyzed in the DOEIS/DEIS include: the No Action Alternative, in which no operational deployment of SURTASS LFA sonar would occur; Alternative 1, which provides for geographic restrictions and monitoring to prevent injury to potentially affected species; and Alternative 2, which provides for unrestricted operation of the system. The Navy currently prefers Alternative 1 because it best meets the program purpose and need and satisfies Navy operational requirements.

Environmental resource areas addressed in the DOEIS/DEIS include the acoustic environment, marine environment, and socioeconomic environment. Issue analysis includes an evaluation of the direct, indirect, short-term, and cumulative impacts; and irreversible and irretrievable commitment of resources associated with the proposed action.

No decision on the proposed action will be made until the National Environmental Policy Act process has been completed and the Secretary of the Navy, or a designated representative, releases the Record of Decision.

The DOEIS/DEIS has been distributed to various federal, state, and local agencies, elected officials, and special interest groups and public libraries. The DOEIS/DEIS is also available for public review at the following libraries:

—Los Angeles Library, 2801 Wabash Avenue, Los Angeles, CA.
—San Diego County Library, Building 15, 5555 Overland Avenue, San Diego, CA.
—San Diego Public Library, 820 E Street, San Diego, CA.
—San Diego Society of Natural History Library, P.O. Box 1390, San Diego, CA.
—California State Library Sutro Library, 480 Winston Drive, San Francisco, CA.
—San Francisco Public Library, Larkin and McAllister Streets, San Francisco, CA.
—Hawaii Documents Center Hawaii State Library, 478 South King Street, Honolulu, HI.
—Kaneohe Regional Library, 45–829 Kamehameha Highway, Kaneohe, HI.
—Hilo Regional Library, 300 Waianuenue, Hilo, HI.
—Wailuku Regional Library, 251 High Street, Wailuku, HI.
—Lihue Regional Library. 4344 Hardy Street, Lihue, HI.
—Boston Public Library, 700 Boylston Street, Boston, MA.
—Norfolk Public Library Kirn Memorial Library, 301 East City Hall Avenue, Norfolk, VA.
—Virginia Beach Public Library, 4100 Virginia Beach Boulevard, Virginia Beach, VA.
—Fred C. Schmidt Documents Dept-KS, The Libraries Colorado State University, Fort Collins, CO.
—Seattle Public Library, 1000 4th Avenue, Seattle, WA.
—Martin Luther King Memorial Library, 901 G Street NW, Floor 4, Washington, DC.

The Navy will conduct three public hearings to receive oral and written comments concerning the DOEIS/DEIS. A brief presentation will precede a request for public information and comments. Navy representatives will be available at each hearing to receive information and comments from agencies and the public regarding issues of concern. Federal, state, and local agencies, and interested parties are invited and urged to be present or represented at the hearings. Those who intend to speak will be asked to submit a speaker card (available at the door). Oral comments will be heard and transcribed by a stenographer.

To assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record in the study. Equal weight will be given to both oral and written comments. In the interest of available time, each speaker will be asked to limit oral comments to three minutes. Longer comments should be summarized at the public hearings and submitted in writing either at the hearing or mailed to the Office of the Chief of Naval Operations, Code N874, c/o Clayton H. Spikes (703) 465–8404, Marine Acoustics, Inc., Suite 708, 901 North Stuart Street, Arlington, Virginia 22203. Written comments are requested not later than Saturday, November 13, 1999.

Dated: September 9, 1999.

J. L. Roth,

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

[FR Doc. 99–23911 Filed 9–13–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government-Owned Invention

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

U.S. Patent Application Serial No. 09/313,577 entitled "Tissue Diagnostics Using Evanescent Spectroscopy" Navy Case No. 79,047.

ADDRESSES: Requests for copies of the patent application cited should be directed to the Naval Research Laboratory, Code 3008.2, 4555 Overlook Avenue, SW, Washington, DC 20375–

5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, telephone (202) 767–7230.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: September 1, 1999.

J. L. Roth,

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

[FR Doc. 99–23833 Filed 9–13–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Availability of Government-Owned Inventions for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Patent 5,840,572: BIOLUMINESCENT BIOASSAY SYSTEM; filed 29 July 1996; patented 24 November 1998.//Patent 5,840,592: METHOD OF IMPROVING THE SPECTRAL RESPONSE AND DARK CURRENT CHARACTERISTICS OF AN IMAGE GATHERING DETECTOR; filed 5 July 1994; patented 24 November 1998.//Patent 5,844,860: CONTINUOUS STRENGTH MEMBER; filed 23 May 1990; patented 1 December 1998.//Patent 5,846,889: INFRARED TRANSPARENT SELENIDE GLASSES; filed 14 March 1997; patented 8 December 1998.//Patent 5,855,179: MID SHIPS TOW POINT FOR SINGLE LINE AND MULTI LINE TOWED ARRAYS; filed 1 October 1997; patented 5 January 1999.//Patent 5,858,104: SYSTEM FOR FOCUSED GENERATION OF PRESSURE BY BUBBLE FORMATION AND COLLAPSE; filed 21 December 1995; patented 12 January 1999.//Patent 5,859,064: CHEMICAL WARFARE AGENT DECONTAMINATION SOLUTION; filed 11 December 1997; patented 12 January 1999.//Patent 5,859,535: SYSTEM FOR DETERMINING SIZE AND LOCATION OF DEFECTS IN MATERIAL BY USE OF MICROWAVE RADIATION; filed 12 February 1997; patented 12 January 1999.//Patent 5,859,812: SELF POWERED UNDERWATER ACOUSTIC ARRAY; filed 14 October 1997; patented 12 January 1999.//Patent 5,859,919: METHOD AND SYSTEM FOR MEASURING SURFACE ROUGHNESS USING FRACTAL DIMENSION VALUES; filed 12 August 1996; patented 12 January 1999.//Patent 5,862,262: METHOD OF ENCODING A DIGITAL IMAGE USING ADAPTIVE PARTITIONING IN AN INTEGRATED TRANSFORMATION SYSTEM; filed 30 March 1992; patented 19 January 1999.//Patent 5,864,166: BISTABLE PHOTOCONDUCTIVE SWITCHES PARTICULARLY SUITED FOR FREQUENCY-AGILE, RADIO-FREQUENCY SOURCES; filed 24 January 1997; patented 26 January 1999.//Patent 5,866,244: CERAMIC STRUCTURE WITH BACKFILLED CHANNELS; filed 20 December 1996; patented 2 February 1999.//Patent 5,867,329: MULTIPLE-PASS REFLECTION FILTER; filed 31 May 1996; patented 2 February 1999.//Patent 5,869,762: MONOLITHIC PIEZOELECTRIC ACCELEROMETER; filed 27 November 1996; patented 9 February 1999.//Patent 5,870,054: MOVING TARGET INDICATOR WITH NO BLIND SPEEDS; filed 10 December 1982; patented 9 February 1999.//Patent 5,872,318: METHOD AND APPARATUS FOR INDUCING FULLY-REVERSED THREE-DIMENSIONAL LOADING ON A NON-ROTATING BEAM; filed 14 March 1997; patented 16 February 1999.//Patent 5,872,324: TRIMODE FUZE; filed 7 July 1997; patented 16 February 1999.//Patent 5,872,368: METHOD OF CONTROLLING A SUPER CONDUCTOR; filed 30 November 1995; patented 16 February 1999.//Patent 5,873,262: DESALINATION THROUGH METHANE HYDRATE; filed 30 June 1997; patented 23 February 1999.//Patent 5,874,126: MAKING AGGREGATES AND ARTICLES MADE THEREFROM; filed 26 March 1997; patented 23 February 1999.//Patent 5,874,514: SILOXANE UNSATURATED HYDROCARBON BASED POLYMERS; filed 9 May 1995; patented 23 February 1999.//Patent 5,874,807: LARGE AREA PLASMA PROCESSING SYSTEM (LAPPS); filed 27 August 1997; patented 23 February 1999.//Patent 5,875,154: BARREL STAVE FLEXTENSIONAL PROJECTOR; filed 13 November 1997; patented 23 February 1999.//Patent 5,876,480: SYNTHESIS OF UNAGGLOMERATED METAL NANO-PARTICLES AT MEMBRANE INTERFACES; filed 20 February 1996; patented 2 March 1999.//Patent 5,876,682: NANOSTRUCTURED CERAMIC NITRIDE POWDERS AND A METHOD OF MAKING THE SAME; filed 25 February 1997; patented 2 March 1999.//Patent 5,877,392: PHOTON CONTROLLED DECOMPOSITION OF NONHYDROLYZABLE AMBIENTS; filed 7 June 1995; patented 2 March 1999.//Patent 5,877,612: AMPLIFICATION OF SIGNALS FROM HIGH IMPEDANCE SOURCES; filed 24 March 1997; patented 2 March 1999.//Patent 5,877,967: SITE AND WORKSPACES LAYOUT PROCESS EMPLOYING MDS AND A PDI FORMULA IN WHICH DENSITY IS CALCULATED USING A UNIT LATTICE SUPERPOSED OVER CIRCUMSCRIBING-CONVEX-HULLS; filed 28 March 1996; patented 2 March 1999.//Patent 5,877,998: RECURSIVE METHOD FOR TARGET MOTION ANALYSIS; filed 18 November 1996; patented 2 March 1999.//Patent 5,878,000: ISOLATED SENSING DEVICE HAVING AN ISOLATION HOUSING; filed 1 October 1997; patented 2 March 1999.//Patent 5,878,778: ELASTOMERIC CUT-OFF VALVE; filed 9 October 1997; patented 9 March 1999.//Patent 5,878,799: PENCIL DRAIN FIXTURE FOR AIRCRAFT DEFUELING; filed 15 September 1997; patented 9 March 1999.//Patent 5,879,426: PROCESS FOR MAKING OPTICAL FIBERS FROM CORE AND CLADDING GLASS RODS; filed 12 August 1996; patented 9 March 1999.//Patent 5,880,078: NON-SOLVENT, GENERAL USE EXTERIOR AIRCRAFT CLEANER; filed 4 September 1997; patented 9 March 1999.//Patent 5,880,552: DIAMOND OR DIAMOND LIKE CARBON COATED CHEMICAL SENSORS AND A METHOD OF MAKING SAME; filed 27 May 1997; patented 9 March 1999.//Patent 5,881,818: FOAM FREE TEST SYSTEM FOR USE WITH FIRE FIGHTING VEHICLES; filed 6 October 1997; patented 16 March 1999.//Patent 5,882,785: NONLINEAR OPTICAL FILMS FROM PAIR-WISE-DEPOSITED SEMI-IONOMERIC SYNDIOREGIC POLYMERS; filed 23 January 1997; patented 16 March 1999.//Patent 5,882,805: CHEMICAL VAPOR DEPOSITION OF II/VI SEMICONDUCTOR MATERIAL USING TRIISOPROPYLINDIUM AS A DOPANT; filed 18 May 1994; patented 16 March 1999.//Patent 5,883,548: DEMODULATION SYSTEM AND METHOD FOR RECOVERING A SIGNAL OF INTEREST FROM AN UNDERSAMPLED, MODULATED CARRIER; filed 10 November 1997; patented 16 March 1999.//Patent 5,884,650: SUPPRESSING CAVITATION IN A HYDRAULIC COMPONENT; filed 26 February 1997;

patented 23 March 1999.//Patent 5,884,872: OSCILLATING FLAP LIFT ENHANCEMENT DEVICE; filed 30 August 1995; patented 23 March 1999.//Patent 5,884,877: ROLLER EXCITATION DEVICE; filed 29 September 1997; patented 23 March 1999.//Patent 5,885,007: ADJUSTABLE BEARING SYSTEM WITH SELECTIVELY OPTIMIZED INSTALLATIONAL CLEARANCES; filed 30 June 1997; patented 23 March 1999.//Patent 5,885,086: INTERACTIVE VIDEO DELIVERY SYSTEM; filed 12 September 1990; patented 23 March 1999.//Patent 5,885,321: PREPARATION OF FINE ALUMINUM POWDERS BY SOLUTION METHODS; filed 22 July 1996; patented 23 March 1999.//Patent 5,885,367: RETRACTABLE THIN FILM SOLAR CONCENTRATOR FOR SPACECRAFT; filed 7 March 1997; patented 23 March 1999.//Patent 5,886,283: DESENSITIZED FIRING CIRCUIT; filed 25 May 1971; patented 23 March 1999.//Patent 5,886,284: MISSILE SAFETY SYSTEM FOR ASSURING MINIMUM SAFE DISTANCE; filed 28 December 1964; patented 23 March 1999.//Patent 5,886,285: VARIABLE RANGE TIMER IMPACT SAFETY SYSTEM; filed 28 December 1964; patented 23 March 1999.//Patent 5,886,286: MONITORING SAFETY SYSTEM; filed 26 July 1965; patented 23 March 1999.//Patent 5,886,287: GUIDANCE INFORMATION ANALYZER; filed 26 May 1965; patented 23 March 1999.//Patent 5,886,339: MISSILE ATTITUDE SAFING SYSTEM; filed 28 December 1964; patented 23 March 1999.//Patent 5,886,525: APPARATUS AND METHOD FOR PERFORMING NMR SPECTROSCOPY ON SOLID SAMPLE BY ROTATION; filed 17 March 1997; patented 23 March 1999.//Patent 5,886,661: SUBMERGED OBJECT DETECTION AND CLASSIFICATION SYSTEM ; filed 16 April 1993; patented 23 March 1999.//Patent 5,886,700: THREE-DIMENSIONAL VOLUME SELECTION TOOL; filed 24 July 1997; patented 23 March 1999.//Patent 5,886,951: METHOD FOR ENHANCING SIGNAL-TO-NOISE RATIO AND RESOLUTION OF AMPLITUDE STABLE SIGNALS; filed 27 August 1997; patented 23 March 1999.//Patent 5,887,198: PROGRAMMABLE STAND-ALONE DRIVE APPARATUS FOR INTERFACING A HOST COMPUTER WITH PCMCIA MEMORY CARDS HAVING MULTIPLE FORMATS; filed 7 April 1997; patented 23 March 1999.//Patent 5,887,983: BEARING ASSEMBLY FOR RADAR MAST; filed 19 December 1997; patented 30 March 1999.//Patent 5,889,289: HIGH TEMPERATURE SUPERCONDUCTOR/INSULATOR COMPOSITE THIN FILMS WITH JOSEPHSON COUPLED GRAINS; filed 28 August 1997; patented 30 March 1999.//Patent 5,889,871: SURFACE-LAMINATED PIEZOELECTRIC-FILM SOUND TRANSDUCER; filed 18 October 1993; patented 30 March 1999.//Patent 5,890,101: NEURAL NETWORK BASED METHOD FOR ESTIMATING HELICOPTER LOW AIRSPEED; filed 22 October 1997; patented 30 March 1999.//Patent application 09/034,771: AMPLIFIED SHEAR TRANSDUCER; filed 2 March 1998.//Patent application 09/114,250: BELLMOUTH EXIT ANGLE ADAPTER; filed 6 July 1998.//Patent application 09/137,869: filed 12 August 1998.//Patent application 09/152,465: AUTOMATIC MESSAGE FILING SYSTEM; filed 8 September 1998.//Patent application 09/152,466: APPARATUS FOR ACOUSTICALLY ISOLATING A HIGH PRESSURE STEAM PIPE IN A FLOODED STRUCTURE; filed 8 September 1998.//Patent application 09/152,467: ISOLATION SYSTEM FOR A HIGH PRESSURE STEAM PIPE IN A FLOODED STRUCTURE; filed 8 September 1998.//Patent application 09/152,468: TEST FIXTURE FOR SIMULTANEOUS EVALUATION OF STEAM PIPE HYDROSEALING METHODS; filed 8 September 1998.//Patent application 09/152,470: VELOCITY REDUCTION METHOD TO REDUCE THE FLOW-INDUCED NOISE OF TOWED SENSOR SYSTEMS; filed 9 September 1998.//Patent application 09/152,472: COUNTERMEASURE FLEXIBLE LINE ARRAY; filed 9 September 1998.//Patent application 09/152,473: MULTIPLE-FREQUENCY SONAR SYSTEM; filed 9 September 1998.//Patent application 09/152,474: DEPLOYABLE HULL ARRAY SYSTEM; filed 11 September 1998.//Patent application 09/152,476: RECONFIGURABLE MULTIPLE COMPONENT LOAD MEASURING DEVICE; filed 11 September 1998.//Patent application 09/154,475: ALIGNMENT LIFTING FIXTURE; filed 11 September 1998.//Patent application 09/173,610: WIDEBAND ANTENNA FOR TOWED LOW-PROFILE SUBMARINE BUOY; filed 8 October 1998.//Patent application 09/173,613: TORPEDO NOSE LIFT DEVICE: filed 13 October 1998.//Patent application 09/203,934: GEODETIC POSITION ESTIMATION FOR UNDERWATER ACOUSTIC SENSORS; filed 2 December 1998.//Patent application 09/206,939: AIR-SAFED UNDERWATER FUZE SYSTEM FOR LAUNCHED MUNITIONS; filed 8 December 1998.//Patent application 09/206,940: MECHANICAL WATER SENSOR; filed 8 December 1998.//Patent application 09/208,155: MOUNTING ASSEMBLY FOR RIGIDLY INTEGRATING A COMPONENT THEREWITH; filed 1 December 1998.//Patent application 09/211,002: BALL LOCK MECHANISM; filed 15 December 1998.//Patent application 09/252,592: BULK CUBIC GALLIUM NITRIDE; FILED 9 February 1999.//Patent application 09/272,733: METHOD FOR MEASURING INTRAMOLECULAR FORCES BY ATOMIC FORCE MICROSCOPY; filed 27 January 1999.//

ADDRESSES: Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $3.00 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, VA 22161, for $6.95 each ($10.95 outside North American Continent). Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the copies of patent applications sold to avoid premature disclosure.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Wynn, Staff Patent Attorney, Office of Naval Research (Code 00CC), Arlington, VA 22217–5660, telephone (703) 696–4004.

Authority: 35 U.S.C. 207; 37 CFR part 404.

Dated: September 1, 1999.

J.L. Roth,

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

[FR Doc. 99–23834 Filed 9–13–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 14, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs,

Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

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

Dated: September 8, 1999.

William E. Burrow,

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

Office of Elementary and Secondary Education

Title: Consolidated State Performance Report and State Self-Review Guide.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 53.

Burden Hours: 138,926.

Abstract: This information collection package contains two related parts: the Consolidated State Performance Report (CSPR) and the State Self-Review (SSR). The Elementary and Secondary Education Act (ESEA), in general, and its provision for submission of consolidated plans, in particular (see section 14301 of the ESEA), emphasize the importance of cross-program coordination and integration of federal programs into educational activities carried out with State and local funds. States would use both instruments for reporting on activities that occur during the 1999–2000 school year and, if the ESEA, when reauthorized, does not become effective for the 2000–2001 school year, for that year as well. The proposed CSPR requests essentially the same information as in 1999–2000, in a more concise and accessible format. The proposed SSR replaces informal data collections performed by each program review team in advance of site visits to states (approximately 14 each year), now conducted as integrated program reviews of all ESEA and Goals 2000 programs. This document and the associated visits promotes the Department's interests in (1) gathering essential information on how States have implemented their approved consolidated State plans and (2) identifying federal assistance to States on how to use federal funds most effectively. The State responses to the SSR will complement their responses to the CSPR by providing specific information on program implementation that is needed for an effective integrated review. When the ESEA is reauthorized the Department intends to work actively with the public to revise the content of these documents and develop an integrated information collection system that responds to the new law, uses new technologies, and better reflects how federal programs help to promote State and local reform efforts.

Written comments and requests for copies of this 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 OCIO__IMG__Issues@ed.gov, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Patrick Sherrill at 202–708–8196 or by e-mail at *PatSherrill@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Quarterly Cumulative Caseload Report.

Frequency: Quarterly.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 82.

Burden Hours: 328.

Abstract: State vocational rehabilitation (VR) agencies who administer vocational programs provide key caseload indicator data on this form, including numbers of persons who are applicants, determined eligible/ineligible, waiting for services, and also their program outcomes. This data is used for program planning, management, budgeting and general statistical purposes.

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 *OCIO__IMG__Issues@ed.gov* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287 or electronically mail her at internet address sheila__carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Office of Special Education and Rehabilitative Services (OSERS) Peer Review Qualifications Statement.

Frequency: Biennially.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 5,000.

Burden Hours: 1,250.

Abstract: In order for OSERS to conduct a review of its discretionary grant applications, it must be able to select qualified reviewers. This selection is based on the information from the OSERS Peer Reviewer Qualifications Statement that is entered into the OSERS Peer Review System. The potential peer reviewers come from the rehabilitation and special education fields.

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 OCIO__IMG__Issues@ed.gov or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287 or electronically mail her at internet address sheila_carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–23841 Filed 9–13–99; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.264A and 84.264B]

Rehabilitation Continuing Education Programs (RCEP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Program: To support training centers that serve either a Federal region or another geographical area and provide for a broad, integrated sequence of training activities throughout a multi-State geographical area.

Eligible Applicants: State and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

Deadline for Transmittal of Applications: November 12, 1999.

Deadline for Intergovernmental Review: January 11, 2000.

Applications Available: September 15, 1999.

Estimated Available Funds: $2,510,927.

Estimated Range of Awards: $499,801—$510,412.

Estimated Average Size of Awards:

CFDA No. 84.264A—$500,850
CFDA No. 84.264B—$500,000

Maximum Awards By Rehabilitation Services Administration (RSA) Region: In no case does the Secretary make an initial award greater than the amount listed for each of the following RSA regions for a single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this amount.

Maximum Level of Awards By RSA Region:

CFDA No. 84.264A
Region V—$500,850
CFDA No. 84.264B
Region I—$499,957
Region III—$499,801
Region VI—$510,412
Region VIII—$499,907

Estimated Number of Awards: CFDA No. 84.264A–1, CFDA No. 84.264B–4.

Note: Applications under CFDA No. 84.264A (General RCEP competition) are invited for the provision of training for Department of Education Region V only. Applications under CFDA No. 84.264B (Community Rehabilitation Program RCEP competition) are invited for the provision of training for Department of Education Regions I, III, VI, and VIII only. The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Page Limit: Part III of the application, the application narrative, is where you, the applicant, address the selection criteria used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than 45 pages, using the following standards:

(1) A page is 8.5 inches by 11 inches, on one side only with 1 inch margins at the top, bottom, and both sides.

(2) You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

If you use a proportional computer font, you may not use a font smaller than a 12-point font or an average character density greater than 18 characters per inch. If you use a nonproportional font or a typewriter, you may not use more than 12 characters per inch.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

If, in order to meet the page limit, you use print size, spacing, or margins smaller than the standards specified in this notice, we will not consider your application for funding.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 385 and 389.

Selection Criteria: In evaluating an application for a new grant under these competitions, the Secretary uses selection criteria chosen from the general selection criteria in 34 CFR 75.210 of EDGAR. The selection criteria to be used for these competitions will be provided in the application package for these competitions.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its web site (http://www.ed.gov/pubs/edpubs.html) or its E-mail address (edpubs@inet.ed.gov).

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

For Information Contact: Mary C. Lynch, U.S. Department of Education, 400 Maryland Avenue, SW., room 3322 Switzer Building, Washington, DC 20202–2649. Telephone: (202) 205–8291. 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.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use 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 a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 29 U.S.C. 771a.

Dated: September 9, 1999.

Katherine D. Seelman,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–23889 Filed 9–13–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4286–000]

Allegheny Power Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power); Notice of Filing

September 8, 1999.

Take notice that on August 27, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 40 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of July 30, 1999, to Electric Clearinghouse, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 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. 99–23862 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4288–000]

Allegheny Power Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power); Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Allegheny Power service Corporation on behalf of Monongahela Power Company, the Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 61 to add New Energy Partners, L.L.C., to Allegheny Power Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreement is August 27, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 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. 99–23863 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4289–000]

Allegheny Power Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power); Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 41 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirement to make service available as of July 31, 1999, to American Municipal Power-Ohio, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 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. 99–23864 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4293–000]

Allegheny Power Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power); Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 42 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of July 30, 1999, to Duquesne Light Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 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. 99–23868 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4282–000]

Athens Generating Company, L.P.; Notice of Filing

September 8, 1999.

Take notice that on August 27, 1999, Athens Generating Company, L.P. (Athens) tendered for filing, pursuant to Section 205 of the Federal power Act, and Part 35 of the Commission's Regulations, a Petition for authorization to make sales of capacity, energy, and certain Ancillary Services at market-based rates and to reassign transmission capacity. Athens is constructing a 1,080 MW natural gas-fired, combined cycle power plant located in the Town of Athens in Greene County, New York.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 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. 99–23861 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4258–000]

Avista Corp; Notice of Filing

September 8, 1999.

Take notice that on August 26, 1999, Avista Corp. (AVA), tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement for Short-Term Firm and Non-Firm Point-To-Point Transmission Service under AVA's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8, with Pend Oreille County.

AVA requests the Service Agreement be given the respective effective date of August 3, 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 September 17, 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. 99–23887 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL92–33–007]

Barton Village, Inc., et al. v. Citizens Utilities Company; Notice of Filing

September 8, 1999.

Take notice that on September 2, 1999, Citizens Utilities Company (Citizens) a compliance filing in accordance with the Commission's order issued on April 5, 1999 in the above-referenced docket.

Any person desiring to be heard or to protest such filing should file a motion

to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before October 4, 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. 99–23884 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4379–000]

Black Hills Corporation; Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Black Hills Corporation (Black Hills), tendered for filing a service agreement between Black Hills as the power sales provider and PacifiCorp Power Marketing, Inc., as the customer. The short-term service agreement (for transactions of one year or less) provides for Market-Based Rate Wholesale Power Sales under Black Hills' Market-Based Rate Wholesale Power Sales Tariff, FERC Electric Tariff, Original Volume No. 3 (the Market-Rate Tariff) Black Hills requests an effective date of August 12, 1999.

Black Hills Corporation states that copies of the filing have been served upon the affected customer.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 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. 99–23881 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4297–000]

Boston Edison Company; Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Boston Edison Company (Boston Edison) tendered for filing two service agreements between Boston Edison as the transmission provider and Entergy Power Marketing Corp. (Entergy) as the transmission customer. One service agreement provides for non-firm point-to-point transmission service; the other provides for firm point-to-point transmission service. Both services are to be provided under Boston Edison's Open-Access Transmission Tariff, FERC Volume No. 8.

Boston Edison requests an effective date of October 19, 1999.

Boston Edison states that copies of the filing have been served upon the affected customer and the Massachusetts Department of Telecommunications and Energy.

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 September 17, 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. 99–23872 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4281–000]

Central Vermont Public Service Corporation; Notice of Filing

September 8, 1999.

Take notice that on August 26, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Central Maine Power Company under its FERC Electric Tariff No. 8.

Central Vermont requests waiver of the Commission's regulations to permit the service agreement to become effective on August 26, 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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 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. 99–23886 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4290–000]

Commonwealth Edison Company; Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Commonwealth Edison Company

(ComEd), tendered for filing an unexecuted Service Agreement for Network Integration Transmission Service (Service Agreement) between ComEd and the City of Rochelle, Illinois (Rochelle), and an unexecuted Network Operating Agreement (Operating Agreement) between ComEd and Rochelle. These two agreements will govern ComEd's provision of network service to serve Rochelle under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of August 1, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on Rochelle.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 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. 99–23865 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4296–000]

Commwealth Edison Company; Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Commonwealth Edison Company (ComEd) tendered for filing a Short-Term Firm Service Agreement with Energy Power Marketing Corporation (EPMC) under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of August 16, 1999 for the service agreement, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on EPMC.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 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. 99–23871 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4299–000]

Consolidated Edison Company of New York, Inc; Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Public Service Electric & Gas Company (PSE&G).

Con Edison states that a copy of this filing has been served by mail upon PSE&G.

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 September 17, 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. 99–23874 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4300–000]

Consolidated Edison Company of New York, Inc.; Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Consolidated Edison Company of New York, Inc., (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Public Service Electric & Gas Company (PSE&G).

Con Edison states that a copy of this filng has been served by mail upon PSE&G.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 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. 99–23875 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4301–000]

Consolidated Edison Company of New York, Inc., Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Public Service Electric & Gas Company (PSE&G).

Con Edison states that a copy of this filing has been served by mail upon PSE&G.

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 September 17, 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. 99–23876 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4302–000]

Consolidated Edison Company of New York, Inc., Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Public Service Electric & Gas Company (PSE&G).

Con Edison states that a copy of this filing has been served by mail upon PSE&G.

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 September 17, 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. 99–23877 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4303–000]

Consolidated Edison Company of New York, Inc., Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the New York Power Authority (NYPA).

Con Edison states that a copy of this filing has been served by mail upon NYPA.

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 September 17, 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. 99–23878 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–499–000]

East Tennessee Natural Gas Company; Notice of Tariff Filing

September 8, 1999.

Take notice that on September 1, 1999, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, original and revised tariff sheets pertaining to its pro forma Electronic Data Interchange (EDI) Trading Partner Agreement (TPA).

East Tennessee States that this filing will remove its existing pro forma EDI TPA and instead incorporate the Model TPA of the Gas Industry Standards Board (GISB) which GISB filed with the Commission on November 3, 1998 (November 3, 1998 Model TPA). Additionally, the filing will modify East Tennessee's Agency Authorization Agreement for EDI to list the relevant data sets and include space for additional GISB data sets.

East Tennessee further states that the purpose of these changes is to reduce the number of material deviation filing that East Tennessee would be required to file under 18 CFR 154.1(d).

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).

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 99–23840 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4261–000]

Erie Boulevard Hydropower, L.P.; Notice of Filing

September 8, 1999.

Take notice that on August 26, 1999, Erie Boulevard Hydropower, L.P. (Applicant), with its principal office at c/o Orion Power Holdings, Inc., 7 E. Redwood Street, 10th Floor, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission (Commission) a long-term service agreement with Niagara Mohawk Power Corporation for the sale of energy and capacity under its market-based rate tariff, FERC Electric Rate Tariff, Original Volume No. 1.

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 September 17, 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. 99–23859 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2489–001]

Green Mountain.com; Notice of Filing

September 8, 1999.

Take notice that on August 31, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23883 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–463–001]

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

September 8, 1999.

Take notice that on September 2, 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 August 1, 1999.

Second Revised Sheet No. 170
Second Revised Sheet No. 171

HIOS states that such tariff sheets are being submitted to comply with the Office of Pipeline Regulation's August 26, 1999, Letter Order that accepted HIOS' tariff filing in compliance with Commission's Order No. 587–K in Docket No. RM96–1–011.

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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23839 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4305–000]

Illinois Power Company; Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Illinois Power Company (Illinois Power), 500 south 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which DukeSolutions, Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of September 1, 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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 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. 99–23879 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3206–000]

ISO New England Inc.; Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, ISO New England Inc., tendered for filing revisions to Appendix 6–A of Market Rule 6 in compliance with Commission's July 30, 1999 Order in the above-referenced docket.

Copies of said filing have been served upon all parties to this proceeding, and upon NEPOOL Participants, as well as upon the utility regulatory agencies of the six New England States.

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 September 17, 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. 99–23857 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4291–000]

Louisville Gas and Electric Company/ Kentucky Utilities Company; Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Louisville Gas and Electric Company/ Kentucky Utilities (LG&E/KU), tendered for filing unexecuted Netting Agreements between LG&E/KU and the following entities: Enron Power Marketing, Inc. and Western Resources, Inc.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 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. 99–23866 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4292–000]

Louisville Gas and Electric Company/ Kentucky Utilities Company; Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Louisville Gas and Electric Company/ Kentucky Utilities (LG&E/KU), tendered for filing unexecuted Netting Agreements between LG&E/KU and the following entities: AES Power, Inc., DTE Energy, El Paso Power Services Company and Rainbow Energy Marketing Corporation.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 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 202–208–222 for assistance).

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 99–23867 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4264–000]

Niagara Mohawk Power Corporation; Notice of Filing

September 8, 1999.

Take notice that on August 27, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed, amended transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant to a point where Niagara Mohawk's transmission system connects to its retail distribution system West of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission tariff and filed in Docket No. OA96–194–000.

Niagara Mohawk request an effective date of August 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown. Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

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 September 16, 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. 99–23860 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4322–000]

North American Electric Reliability Council; Notice of Filing

September 8, 1999.

Take notice that on August 27, 1999, North American Electric Reliability Council (NERC), tendered for filing notice of additional implementation procedures for market redispatch pilot program. NERC informs the Commission that these additional procedures are to be effective immediately.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 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. 99–23880 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3589–000]

Puget Sound Energy, Inc.; Notice of Filing

September 8, 1999.

Take notice that on August 26, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Notice of Cancellation of a Service Agreement filed under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Destec Power Services, Inc. (Destec).

PSE states that a copy of the filing was served upon Dynegy Marketing and Trade, as successor to Destec.

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 September 17, 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. 99–23858 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4259–000]

Puget Sound Energy, Inc., Notice of Filing

September 8, 1999.

Take notice that on August 26, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Dynegy Marketing and Trade (Dynegy).

A copy of the filing was served upon Dynegy.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 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. 99–23885 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4044–000]

Sandia Resources Corporation; Notice of Filing

September 8, 1999.

Take notice that on August 31, 1999, Sandia Resources Corporation (Sandia) tendered for filing an amendment to its petition of August 10, 1999 to the Commission for acceptance of Sandia Rate Schedule FERC No. 1, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Sandia intends to engage in wholesale electric power and energy purchases and sales as a marketer. Sandia is not in the business of generating or transmitting electric power. Sandia has no affiliates.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 20, 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. 99–23882 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP89–629–034]

Tennessee Gas Pipeline Company; Notice of Amendment

September 8, 1999.

Take notice that on August 26, 1999, Tennessee Gas Pipeline Company (Tennessee), filed in Docket No. CP89–629–034, an application pursuant to Section 7(c) of the Natural Gas Act for an amendment of the certificate issued in Docket Nos. CP89–629–000, *et al.*, on November 14, 1990,[1] and amended in an order issued on October 9, 1991.[2] Tennessee requests that the Commission authorize a reduction in the primary term of its Rate Schedule NET firm transportation agreement with Commonwealth Gas Company (Commonwealth) by 12 months so that the agreement expires on December 1, 2011. Tennessee also requests that, in the event that the Commission finds that such an amendment agreement would materially deviate from the *pro forma* NET firm transportation agreement, the Commission "pre-approve" the amended agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Tennesse states that Commonwealth has executed an agreement, for 4,500 Dth/d of firm transportation service under Tennessee's Rate Schedule NET, which has a primary term that expires on November 30, 2012. Tennessee indicates that Commonwealth has an agreement for upstream transportation with Iroquois Gas Transmission System, L.P. (Iroquois) that has a termination date of December 1, 2011. Tennessee states that Commonwealth has requested that Tennessee reduce the term of their agreement so that the termination date would coincide with the termination date of Commonwealth's agreement with Iroquois, and that Commonwealth, as consideration, has agreed to a long-term extension of a certain FT–A transportation agreement with Tennessee.

Tennessee requests that the Commission grant the requested authorizations by October 15, 1999, so that all issues related to Commonwealth's NET service can be resolved prior to the deadline by which Commonwealth must provide notice to Tennessee regarding its decision to extend or terminate certain transportation agreements.

Any question regarding this amendment should be directed to David E. Maranville, Counsel, Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252 at (713) 420–3525.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 29, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for. unless otherwise advised, it will be unnecessary for Tennessee to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23837 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

[1] 53 FERC ¶ 61,194 (1990).

[2] 57 FERC ¶ 61,047 (1991).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4294–000]

Virginia Electric and Power Company; Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with El Paso Power Services Company under the Company's Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide Firm Point-to-Point Transmission Service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of August 30, 1999, the date of filing of the Service Agreement

Copies of the filing were served upon El Paso Power Services Company, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 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. 99–23869 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4295–000]

Virginia Electric and Power Company; Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and ONEOK Power Marketing Company. Under the Service Agreement, Virginia Power will provide services to ONEOK Power Marketing Company under the terms of the Company's Revised Market-Based Rate Tariff designated as FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000.

Virginia Power requests an effective date of August 30, 1999.

Copies of the filing were served upon ONEOK Power Marketing Company, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 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 proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secreary.

[FR Doc. 99–23870 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4298–000]

Virginia Electric and Power Company; Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing an executed Service Agreement for Long Term Firm Point-to-Point Transmission Service with PECO Energy Company under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. The executed Service Agreement will supersede the unexecuted Service Agreement accepted in Docket No. ER99–1884–000 on June 2, 1999. Under the tendered Service Agreement, Virginia Power will provide Long Term Firm Point-to-Point Transmission Service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of January 1, 2000.

Copies of the filing were served upon PECO Energy Company, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

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 September 17, 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. 99–23873 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–67–000]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 8, 1999.

Take notice that on September 1, 1999, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fourth Revised Sheet No. 175, with an effective date of September 1, 1999.

Williston Basin states that the revised tariff sheet is being filed simply to reflect the deletion of Receipt Point ID No. 03120 (Garland (Voyager)) and Receipt Point ID No. 03130 (Garland (Texaco Plant)) from its list of pooling points.

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://wws.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23838 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4262–000, et al.]

EML Power, L.L.C., et al. Electric Rate and Corporate Regulation Filings

September 7, 1999.

Take notice that the following filings have been made with the Commission:

1. EML Power, L.L.C.

[Docket No. ER99–4262–000]

Take notice that on August 27, 1999, EML Power, L.L.C. (EML Power), tendered for filing an application with the Federal Energy Regulatory Commission (Commission) requesting acceptance of EML Power FERC Electric Rate Schedule No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations. EML Power is seeking authorization to sell electric energy and capacity at market-based rates to Florida Power Corporation under EML Power FERC Electric Rate Schedule No. 1.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Molinos de Viento del Arenal, S.A.

[Docket No. EG99–216–000]

Take notice that on August 26, 1999, Molinos de Viento del Arenal, S.A., a corporation (sociedad anónima) organized under the laws of Costa Rica (Applicant), with its principal place of business at Sabana oeste, 50m sur y 50 m oeste de Teletica Canal 7, Edificio Multicentro Sabana, 3er Piso, San Jose, Costa Rica, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant owns and operates an approximately 20 megawatt (net), wind powered electric power production facility located in north central Costa Rica.

Comment date: September 28, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. P.H. Don Pedro, S.A.

[Docket No. EG99–217–000]

Take notice that on August 26, 1999, P.H. Don Pedro, S.A., a corporation (sociedad anónima) organized under the laws of Costa Rica (Applicant), with its principal place of business at Sabana Oeste, 50m sur y 50m oeste de Teletica Canal 7, Edificio Multicentro Sabana, 3er Piso, San Jose, Costa Rica, filed with the Federal Energy Regulatory Commission an application for redetermination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant owns and operates an approximately 14 megawatt (net), hydroelectric power production facility located in the District of Sarapiquí, Canton of Alajuela, Province of Alajuela, Costa Rica.

Comment date: September 28, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. P.H. Río Volcán, S.A.

[Docket No. EG99–218–000]

Take notice that on August 26, 1999, P.H. Río Volcán, S.A., a corporation (sociedad anónima) organized under the laws of Costa Rica (Applicant), with its principal place of business at Sabana Oeste, 50m sur y 50m oeste de Teletica Canal 7, Edificio Multicentro Sabana, 3er Piso, San Jose, Costa Rica, filed with the Federal Energy Regulatory Commission an application for redetermination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant owns and operates an approximately 17 megawatt (net), hydroelectric power production facility located in the District of Sarapiquí, Canton of Alajuela, Province of Alajuela, and the District of La Virgen, Canton of Sarapiqui, Province of Heredia, Costa Rica.

Comment date: September 28, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Ohio Valley Electric Corporation and Indiana-Kentucky Electric Corporation

[Docket No. ER99–4280–000]

Take notice that on August 27, 1999, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC), tendered for filing a Service Agreement for Short-Term Firm Point-To-Point Transmission Service, dated August 12, 1999 (the Service Agreement) between American Electric Power Service Corporation (AEP) and OVEC. The Service Agreement provides for short-term firm transmission service by OVEC to AEP. In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Open Access Transmission Tariff.

OVEC proposes an effective date of August 12, 1999 and requests waiver of the Commission's notice requirement to allow the requested effective date.

Copies of this filing were served upon the Ohio Public Utilities Commission, Indiana Utility Regulatory Commission, Kentucky Public Service Commission, Michigan Public Service Commission, Tennessee Regulatory Authority, Virginia State Corporation Commission, West Virginia Public Service Commission and AEP.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. The Montana Power Company

[Docket No. ER99–4277–000]

Take notice that on August 27, 1999, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an unexecuted Firm and unexecuted Non-Firm Point-To-Point Transmission Service Agreements with Western Area Power Administration under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Western Area Power Administration.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Avista Corp.

[Docket No. ER99–4278–000]

Take notice that on August 27, 1999, Avista Corp., tendered for filing, pursuant to § 35.12 of the Commission's Regulations, 18 CFR 35.12, an executed service agreement with Sovereign Power, Inc., for Dynamic Capacity and Energy Service at cost-based rates under Avista Corp.'s FERC Electric Tariff, Original Volume No. 10.

Avista Corp. requests that the Commission waive its prior notice requirement, pursuant to Section 35.11 of the Commission's Regulations, 18 CFR 35.11, and accept the service agreement for filing effective August 1, 1999.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Idaho Power Company

[Docket No. ER99–4279–000]

Take notice that on August 27, 1999, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements for Non-Firm Point-to-Point Transmission Service and Firm Point-to-Point Transmission Service between Idaho Power Company and Entergy Power Marketing Corp.

IPC requests that the Commission accept these service agreements for filing, designate an effective date of August 27, 1999, and a rate schedule number.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4275–000]

Take notice that on August 27, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Con Edison Solutions (CES).

Con Edison states that a copy of this filing has been served by mail upon CES.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4274–000]

Take notice that on August 27, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to PG&E Energy Trading—Power, L.P. (PG&E).

Con Edison states that a copy of this filing has been served by mail upon PG&E.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4276–000]

Take notice that on August 27, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Con Edison Solutions (CES).

Con Edison states that a copy of this filing has been served by mail upon CES.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER99–4270–000]

Take notice that on August 27, 1999, Cinergy Services, Inc. (Cinergy) on behalf of its operating company, PSI Energy, Inc. (PSI), tendered for filing pursuant to the Service Agreement between Jackson County REMC and PSI a revised Exhibit "A" (Service Specifications).

Said Exhibit "A" provides for revised service characteristics at the REMC's delivery point(s).

Copies of the filing were served on Jackson County REMC and the Indiana Utility Regulatory Commission.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Duquesne Light Company

[Docket No. ER99–4273–000]

Take notice that on August 27, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000), executed Service Agreement at Market-Based Rates with Carolina Power & Light Company (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of August 25, 1999.

Copies of this filing were served upon Customer.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Minnesota Power, Inc.

[Docket No. ER99–4287–000]

Take notice that on August 27, 1999, Minnesota Power, Inc., tendered for filing a signed Service Agreement with Willmar Municipal Utilities Commission, Northern States Power Company, Northwestern Wisconsin Electric Company, and North Central Power Company, Inc., under its market-based Wholesale Coordination Sales Tariff (WCS–2) to satisfy its filing requirements under this tariff.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. California Independent System Operator Corporation

[Docket No. ER99–4267–000]

Take notice that on August 27, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and Strategic Energy, L.L.C. (Strategic Energy) for acceptance by the Commission.

The ISO states that this filing has been served on Strategic Energy and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of August 20, 1999.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Duquesne Light Company

[Docket No. ER99–4268–000]

Take notice that on August 27, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000), an executed Service Agreement at Market-Based Rates with Coral Power, L.L.C., (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of August 25, 1999.

Copies of this filing were served upon Customer.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Niagara Mohawk Power Corporation

[Docket No. ER99–4263–000]

Take notice that on August 27, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed, amended Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant, Bid Process Suppliers and Substitute Suppliers to the points where Niagara Mohawk's transmission system connects to its retail distribution system East of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of August 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Niagara Mohawk Power Corporation

[Docket No. ER99–4265–000]

Take notice that on August 27, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit

NYPA to deliver power and energy from NYPA's Bid Process Supplier to a point where Niagara Mohawk's transmission system connects to its retail distribution system West of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of August 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Monroe Power Company

[Docket No. ER99–4269–000]

Take notice that on August 27, 1999, Monroe Power Company (MPC), tendered for filing executed Service Agreements with The Energy Authority, Inc., and Southern Company Services, Inc., under the provisions of MPC's Market-Based Rates Tariff, FERC Electric Tariff No. 1.

MPC is requesting an effective date of August 2, 1999, for the agreement with The Energy Authority and an effective date of August 18, 1999, for the agreement with Southern Company Services, Inc.

Copies of the filing were served upon the North Carolina Utilities Commission, the South Carolina Public Service Commission and the Georgia Public Service Commission.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Maine Yankee Atomic Power Company

[Docket No. ER98–570–002]

Take notice that on August 27, 1999, Maine Yankee Atomic Power Company (Maine Yankee), tendered for filing a compliance filing pursuant to the Commission's letter order issued June 1, 1999, in Docket No. ER98–570–000. The compliance filing contains a report detailing the decommissioning refund amounts and calculations, including a summary of the refund amounts in total for the refund period, and revenue data to reflect prior, present and settlement rates in total and by individual customer. As required by the FERC order of June 1, 1999, the company has furnished copies of such report to the affected wholesale customers, and to each state commission within whose jurisdiction the wholesale customers distribute and sell electric energy at retail.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Cleco Utility Group, Inc.

[Docket No. ER99–4283–000]

Take notice that on August 27, 1999, Cleco Utility Group, Inc. (Cleco), tendered for filing a service agreement under which Cleco will make market based power sales under its MR–1 tariff with Associated Electric Cooperative, Inc.

Cleco states that a copy of the filing has been served on Associated Electric Cooperative, Inc.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Cleco Utility Group, Inc.

[Docket No. ER99–4284–000]

Take notice that on August 27, 1999, Cleco Utility Group, Inc. (Cleco), tendered for filing a service agreement under which Cleco will make market based power sales under its MR–1 tariff with Virginia Electric & Power Company.

Cleco states that a copy of the filing has been served on Virginia Electric & Power Company.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Cleco Utility Group, Inc.

[Docket No. ER99–4285–000]

Take notice that on August 27, 1999, Cleco Utility Group, Inc. (Cleco), tendered for filing a service agreement under which Cleco will make market based power sales under its MR–1 tariff with DTE Energy Trading, Inc.

Cleco states that a copy of the filing has been served on DTE Energy Trading, Inc.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

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

David P. Boergers,

Secretary.

[FR Doc. 99–23836 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6437–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, New Source Performance Standard (NSPS) for Surface Coating of Metal Coils

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: New Source Performance Standard (NSPS) for Surface Coating of Metal Coils, 40 CFR part 60, subpart TT, OMB Number 2060–0107, expiration 10/31/99. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 14, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0660.07.

SUPPLEMENTARY INFORMATION:

Title: New Source Performance Standard (NSPS) for Surface Coating of Metal Coils, 40 CFR part 60, subpart TT, OMB Number 2060–0107, EPA ICR Number 0660.07 expiration 10/31/99. This is a request for extension of a currently approved collection.

Abstract: The NSPS for Surface Coating of Metal Coils were proposed on January 5, 1981, and promulgated on November 1, 1982. These standards

apply to each metal coil surface coating operation in which organic coatings are applied that commenced construction, modification or reconstruction after January 5, 1981. Approximately 150 sources are currently subject to the standard, and it is estimated that 6 sources per year will become subject to the standard. Volatile Organic Compounds (VOCs) are the pollutants regulated under this subpart, and this information is being collected to assure compliance with 40 CFR part 60, subpart TT.

Owners or operators of the affected facilities described must make initial reports when a source becomes subject, conduct and report on a performance test, demonstrate and report on continuous monitor performance, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. Semiannual reports of excess emissions are required. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NSPS.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least 2 years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated State or Local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 4, 1999: no comments were received.

Burden Statement: The annual reporting and record keeping burden for this collection of information is estimated to average 26 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of Metal Coil Surface Coating Plants.

Estimated Number of Respondents: 156.

Frequency of Response: Initial, Quarterly, and Semiannual Reports.

Estimated Total Annual Hour Burden: 15,335 hours.

Estimated Total Annualized Capital, O & M Cost Burden: $398,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0660.07, and OMB Control No. 2060–0107 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503

Dated: September 7, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–23919 Filed 9–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[RK001; FRL–6435–9]

Prevention of Significant Deterioration Delegation of Authority to Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: The Regional Administrator for EPA Region 9 has delegated full authority to the Kern County Air Pollution Control District (KCAPCD) to implement and enforce the federal Prevention of Significant Deterioration (PSD) program.

EFFECTIVE DATE: The effective date of the delegation is August 12, 1999.

ADDRESSES: Kern County Air Pollution Control District, 2700 "M" St., Suite 302, Bakersfield, CA 93301–2370.

FOR FURTHER INFORMATION CONTACT: Roger Kohn, Permits Office [AIR–3], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Telephone: (415) 744–1238. E-mail: kohn.roger@epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to 40 CFR 52.21(u), "delegation of authority," the EPA has delegated authority to KCAPCD to implement and enforce the prevention of significant deterioration of air quality ("PSD") program. Sections 160–169 of the Clean Air Act, and 40 CFR 52.21. Under the PSD program, major stationary sources of air pollutants must apply for and receive a permit prior to construction of new facilities or certain modifications to existing facilities. EPA has reviewed KCAPCD's request for delegation and determined that KCAPCD has the necessary authority and resources to implement and enforce the program. While KCAPCD has been delegated the authority to implement and enforce the PSD program, nothing in the delegation agreement shall prohibit EPA from enforcing the PSD provisions of the Clean Air Act, the PSD regulations, or the conditions of any PSD permit issued by KCAPCD.

A copy of the delegation agreement between EPA and KCAPCD is available from Roger Kohn, Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Telephone: (415) 744–1238. E-mail: kohn.roger@epa.gov.

The PSD Delegation of Authority is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by [Insert date 60 days from date of publication in the **Federal Register**].

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: September 1, 1999.

David P. Howekamp,

Director, Air Division, Region IX.

[FR Doc. 99–23709 Filed 9–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6435–3]

Notice of Proposed Cashout Settlement Agreement Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. 9622(g)(4), Strother Field Industrial Park Superfund Site, Cowley County, Kansas, Docket No. CERCLA–7–99–0028

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Cashout Settlement Agreement, Strother Field Industrial Park Superfund Site, Cowley County, Kansas.

SUMMARY: Notice is hereby given that a proposed cashoout settlement agreement regarding the Strother Field Industrial Park Superfund Site, was signed by the United States Environmental Protection Agency (EPA) on July 26, 1999, and approved by the U.S. Department of Justice on August 5, 1999.

DATES: EPA will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed cashout settlement agreement.

ADDRESSES: Comments should be addressed to J.D. Stevens, Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101 and should refer to *Strother Field Industrial Park Superfund Site, Proposed Cashout Settlement Agreement, EPA Docket No. CERCLA–7–99–0028.*

The proposed agreement may be examined or obtained in person or by mail at the office of the United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, KS 66101, (913) 551–7322.

SUPPLEMENTARY INFORMATION: The proposed agreement concerns the Strother Field Industrial Park Superfund Site ("Site"), located in Cowley County, Kansas. The property leased by Energy Plus ("Settling Party") constitutes a portion of the property that was formerly occupied and operated by Struthers Thermo-Flood Corporation and is located within the Site boundaries. A Remedial Investigation ("RI") was completed for the Site and the report was issued in May of 1992. The RI concluded that two former drum storage areas and a drum loading area and a drum loading area at the former Strother Thermo-Flood Corporation property were source areas of hazardous substances released at the Site. The hazardous substances released at the former Struthers Thermo-Flood Corporation property include trichloroethene, dichlorothene and percholoroethene.

The cashout agreement provides for the payment of $10,000 to the Superfund by Settling Party. The $10,000 will be applied as reimbursement toward EPA's costs and will allow Settling Party to get a convenant not to sue from EPA and contribution protection. This agreement will constitute a final settlement of the case with respect to Settling Party absent misrepresentations made by Settling Party to EPA or the United States, noncompliance with the agreement, or as otherwise provided in the cashout agreement.

It is estimated that the total costs expended in connection with the Site by both EPA and the responsible parties (EPA will seek to recover from the responsible parties) will exceed $7.2 million. The estimated costs incurred by the responsible parties include the responsible parties' estimates of the respective amounts they had expended on site cleanup activities. The cleanup of the Site will continue with EPA's continuing enforcement activities against the PRP's that have not been cashed out.

Dated: August 19, 1999.

Dennis Grams,

Regional Administrator, Region VII.

[FR Doc. 99–23584 Filed 9–13–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6437–7]

Notice of Availability of Letters From EPA to the States of Indiana, Michigan and Ohio Pursuant to Section 118 of the Clean Water Act and the Water Quality Guidance for the Great Lakes System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Notice is hereby given of letters written from Region 5 of the Environmental Protection Agency (EPA) to the States of Indiana, Michigan and Ohio finding that certain provisions adopted as part of the States' water quality standards and National Pollutant Discharge Elimination System (NPDES) permits programs are inconsistent with section 118(c) of the Clean Water Act (CWA) and 40 CFR part 132. EPA's findings are described in letters dated June 30, 1999 and August 16, 1999 to Michigan and Ohio and in a letter dated August 16, 1999 to Indiana. EPA invites public comment on all aspects of those letters, particularly on the findings in the letters and on the course of action that EPA proposes to take if the States fail to adequately address EPA's findings.

DATES: Comments must be received in writing by October 29, 1999.

ADDRESSES: Written comments on EPA's findings as described in the June 30, 1999 and August 16, 1999 letters may be submitted to Joan M. Karnauskas, Chief, Standards and Applied Sciences Branch (WT–15J), Water Division, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. In the alternative, EPA will accept comments electronically. Comments should be sent to the following Internet E-mail address: karnauskas.joan@epamail.epa.gov. Electronic comments must be submitted in an ASCII file avoiding the use of special characters and any form of encryption. EPA will print electronic comments in hard-copy paper form for the official administrative record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Eastern time) October 29, 1999.

FOR FURTHER INFORMATION CONTACT: Joan M. Karnauskas, Standards and Applied Sciences Branch (WT–15J), Water Division, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, or telephone her at (312) 886–6090.

Copies of the June 30, 1999 and August 16, 1999 letters described above are available upon request by contacting Ms. Karnauskas. Those letters and materials submitted by the States in support of their submission that EPA relied upon in preparing those letters (i.e., the docket) are available for review by appointment at: EPA, Region 5, 77 W Jackson Boulevard, Chicago, Illinois (telephone 312–886–3717); the Indiana Department of Environmental Management, Indiana Government Center North, 100 N. Senate, Indianapolis, Indiana (telephone 317–233–8903); the Michigan Department of Environmental Quality, 300 S. Washington Square, Lansing, Michigan (telephone 517–335–4198); and, the Ohio Environmental Protection Agency, Lazarus Government Center, 122 S.

Front Street, Columbus, Ohio (telephone 614–644–3075). To access the docket material in Chicago, call Ms. Mery Willis at (312) 886–3717 between 8 a.m. and 4:30 p.m. (central time) (Monday–Friday); in Indiana, call Ms. Kari Simonelic at (317) 233–8903 between 8 a.m. and 4:30 p.m. (central time); in Michigan, call Ms. Brenda Sayles at (517) 335–4198 between 8 a.m. and 4:30 p.m. (eastern time); and, in Ohio, call Mr. Robert Heitzman at (614) 644–3075 between 8 a.m. and 4:30 p.m. (eastern time).

SUPPLEMENTARY INFORMATION: On March 23, 1995, EPA published the Final Water Quality Guidance for the Great Lakes System (Guidance) pursuant to section 118(c)(2) of the Clean Water Act, 33 U.S.C. 1268(c)(2). (March 23, 1995, 60 FR 15366). The Guidance, which was codified at 40 CFR part 132, requires the Great Lakes States to adopt and submit to EPA for approval water quality criteria, methodologies, policies and procedures that are consistent with the Guidance. 40 CFR 132.4 and 132.5. EPA is required to approve of the State's submission within 90 days or notify the State that EPA has determined that all or part of the submission is inconsistent with the Clean Water Act or the Guidance and identify any necessary changes to obtain EPA approval. If the State fails to make the necessary changes within 90 days, EPA must publish a document in the **Federal Register** identifying the approved and disapproved elements of the submission and a final rule identifying the provisions of part 132 that shall apply for discharges within the State.

EPA reviewed the submittals from Indiana, Michigan and Ohio for consistency with the Guidance in accordance with 40 CFR 131 and 132.5. EPA determined that certain parts of each submittal are inconsistent with the requirements of the CWA or 40 CFR part 132 and will be subject to EPA disapproval if not corrected. On June 30, 1999 and August 16, 1999, in letters from EPA Region 5 to the Indiana Department of Environmental Management, the Michigan Department of Environmental Quality and the Ohio Environmental Protection Agency, EPA described in detail those provisions determined to be inconsistent with the Guidance and subject to disapproval if not remedied by the State. The inconsistencies relate to the following components of the State's submittals in conformance with section 118(c) of the CWA and 40 CFR part 132: in Indiana, variances, the procedures for evaluating the need for permit limits on specific chemicals, and the procedures for evaluating the need for limits on whole effluent toxicity; in Michigan, the procedures for evaluating the need for limits on whole effluent toxicity; and, in Ohio, the biocriteria narrative provisions and the procedures for evaluating the need for limits on whole effluent toxicity. Based on our review to date, EPA believes that, with the above exceptions, the submissions by these States are consistent with the Guidance. Today, EPA is soliciting public comment regarding all aspects of those letters. In particular, EPA solicits comments on the provisions identified in the June 30, 1999 and August 16, 1999 letters as being inconsistent with the CWA and the Guidance, on EPA's proposed course of action if a State fails to remedy those inconsistencies, and on EPA's belief that the remainder of the States' submissions are consistent with the Guidance.

During the next 90 days, EPA intends to continue working with Indiana, Michigan and Ohio to address the inconsistencies identified in the June 30, 1999 and August 16, 1999 letters. If a State fails to remedy any of the inconsistencies identified in the letter, EPA will publish a notice in the **Federal Register** identifying the disapproved elements and the corresponding portions of part 132 that will apply to waters within the Great Lakes Basin in each of the States.

Dated: September 3, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 99–23916 Filed 9–13–99; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

September 8, 1999.

FCC TO HOLD OPEN COMMISSION MEETING: Wednesday, September 15, 1999.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, September 15, 1999, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, S. W., Washington, D.C.

Item No.	Bureau	Subject
1	Common Carrier	Title: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96–98). Summary: The Commission will consider a Memorandum Opinion and Order concerning unbundled network elements pursuant to Section 251(c)(3) of the Communications Act.
2	International	Title: Direct Access to the INTELSAT System (IB Docket No. 98–192, File No. 60–SAT–ISP–97). Summary: The Commission will consider a Report and Order concerning direct access to the INTELSAT system.
3	International	Title: Lockheed Martin Corporation Regulus, LLC and Comsat Corporation; Application for Transfer of Control of COMSAT Government Systems, Inc., Holder of an International Section 214 Authorization and Earth Station Licenses E960186 and E960187 (File Nos. SE5–T/C/–19981016–01388(2)ITC–T/C–19981016–00715); and Lockheed Martin Corporation/ Regulus, LLC; and Application for authority to Purchase and Hold Shares of Stock in COMSAT Corporation (File No. SAT–ISP–19981016–00072). Summary: The Commission will consider a Memorandum, Order and Authorization concerning applications for transfer of control of a subsidiary of Comsat Corporation to Lockheed Martin Corporation and for authority for Lockheed Martin Corporation to acquire up to 49 percent of Comsat's stock.

Item No.	Bureau	Subject
4	Wireless Tele-Communications	Title: 1998 Biennial Regulatory Review Spectrum Aggregation Limits for Wireless Tele-communications Carriers (WT Docket No. 98–205); Cellular Telecommunications Industry Association's Petition for Forbearance from the 45 MHz CMRS Spectrum Cap; Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and Commercial Mobile Radio Service Spectrum Cap (WT Docket No. 96–59); and Implementation of Sections 3(n) and 332 of the Communications Act and Regulatory Treatment of Mobile Services (GN Docket No. 93–252). Summary: The Commission will consider a Report and Order concerning the Commercial Mobile Radio Service spectrum cap and cellular cross-interest rules.
5	Wireless Tele-Communications	Title: Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems (CC Docket No. 94–102, RM–8143). Summary: The Commission will consider a Third Report and Order concerning its rules for the deployment by wireless carriers of Phase II Automatic Location Identification technologies.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its__inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection on a delayed basis. The meeting will be aired following the conclusion of the press conference. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–24015 Filed 9–10–99; 12:33 pm]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 28, 1999.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. BostonFed Bancorp, Inc., Burlington, Massachusetts; to acquire Diversified Ventures, Inc. (d/b/a Forward Financial Company), Northborough, Massachusetts, and thereby engage in the origination of consumer installment loans, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, September 8, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–23843 Filed 9–13–99; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Record of Decision; Volunteer Army Ammunition Plant (VAAP) Proposed Disposal; Chattanooga, TN

Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and GSA Order PBS P 1095.4E,F,2, PBS 1096.4C, ADM 1020.1, GSA has prepared an Environmental Impact Statement (EIS) for this Proposal Disposal Action. The purpose of the EIS was to:

Identify the alternatives considered including the Proposed Disposal Alternative;

Solicit public comments through scoping and incorporate comments into the analysis and decision process;

Identify potential impacts of the alternatives considered including direct, indirect and cumulative impacts;

Disclose all potential impacts resulting from the alternatives considered;

Identify measures to mitigate adverse impacts; and

Incorporate the impacts from the alternatives considered and mitigation into the decision process.

This Record of Decision (ROD) will communicate GSA's decision on implementing the Proposed Action, the basis for that decision, and identify mitigation measures to be implemented as part of the decision. The Draft and

Final EIS documents are incorporated into this ROD by reference, and are available upon request from GSA.

Action

This is the Record of Decision for the General Services Administration (GSA) Proposed Disposal of the 6,372-acre (approximate acreage) Volunteer Army Ammunition Plant (VAAP), also known as Volunteer, located in the City of Chattanooga, Tennessee. Special legislation will permit conveyance of 1033 acres directly to Hamilton County. GSA's action is the administrative act of transferring ownership of this property through one, or a combination of, disposal mechanisms. The Proposed Action does not include GSA control of the reuse of any property other than certain deed restrictions that GSA may record for the protection of human health and the environment or the protection of historical and archaeological resources. Some of the property may be transferred under early transfer authority and this would require approval from the Governor of Tennessee. Disposal mechanisms available to GSA include; transferring property to other Federal agencies; conveying property to state or local governments and institutions; and conveying the property to private entities.

Disposal of the property by GSA would remove the property from Federal ownership except for any parcel that may be transferred to another Federal Agency. The property after transfer becomes subject to the City of Chattanooga and Hamilton County land use plans and taxing authority. All future development after transfer will be subject to local land-use controls. GSA has evaluated two alternatives as part of the EIS including the No-Action Alternative, and the Disposal Alternative.

Purpose and Need

The purpose of the Proposed Action is to better utilize assets. The need for the Proposed Action is to eliminate Federal expenses on unneeded property, to free capital for higher priorities, and to return property to the private sector and the local taxing authority for beneficial reuse.

The Department of Defense (DOD) screened the property against the needs of other DOD agencies and has determined Volunteer to be excess to the Department's needs. Having been determined to be excess by the DOD, the Army executed a Memorandum of Agreement (MOA) with GSA for the disposal of VAAP in accordance with the Federal Property and Administrative Services Act of 1949. GSA has screened the property for use by Federal civilian agencies and determined that the property is surplus to the needs of the Federal government.

The property is currently underutilized, and under the Proposed Action, would become a productive asset for future growth and development within the local community. As part of the NEPA process, GSA consulted with the local community to promote a smooth transfer and productive reuse of the property.

GSA issued a Draft EIS in April with publication in the Federal Register, and provided a 45-day public comment period that began on April 15, 1999. A final Public Meeting was held in Chattanooga on April 29 soliciting comments on the Draft EIS.

The Final EIS addressed comments received on the Draft and was released on July 30 for final comment. This comment period closed on August 30. GSA provided written notices of availability of these documents in the Federal Register, the Chattanooga Free Press, and through local libraries. GSA distributed approximately 250 copies of the Draft and Final EIS to Federal agencies, state and local governments, elected officials, the business community, and to interested parties.

GSA made diligent efforts to solicit input from all potentially impacted parties, and GSA also made diligent efforts to keep the community fully informed during the NEPA process. This was accomplished using newspaper Public Notices, newsletter direct mailings, community meetings, written correspondence, Public Meetings, and through maintaining an open dialogue with representatives of the City of Chattanooga and Hamilton County. GSA communicated regularly and openly with the community to keep all parties fully informed during the process. The chronology of the scoping events is outlined in the Draft EIS I–C.

Alternatives Considered

No-Action Alternative

Under the No-action Alternative, the Federal Government would retain the property with continuing Federal ownership and maintenance responsibilities. However, because Volunteer is no longer operational or needed for its original purpose, this alternative would maintain the majority of the property as undeveloped. Existing leases would continue, and new leases would likely be negotiated. Tenant leases would remain in the industrial area of the site with access to the existing utility infrastructure and the transportation network. There are currently 21 tenant leases at Volunteer, which employ approximately 300 people. Federal responsibilities would include the provision of a caretaker and expenses of upkeep for grounds and building maintenance, security, and utility services. In the absence of a productive Federal use for the property, the costs for continuous upkeep would represent an expense to the taxpayer, although some of this cost would be offset by tenant rents. However, the local community would not realize the benefits of this property returning to the local taxing authority for beneficial reuse.

Disposal Alternative

General Considerations

The Disposal Alternative is the proposed action by the Federal Government. This is the GSA preferred alternative. The conveyance to local governments or institutions for reuse or sale would be accomplished in accordance with the Federal Property and Administrative Services Act. The Disposal Alternative would result in indirect and longer-term impacts that would occur over time. Indirect impacts are those that are "reasonably foreseeable" as long range consequences of the action. As defined in 40 CFR 1508.8, indirect impacts may include environmental impacts attributable to changes in population density and land uses that are induced by the Proposed Action.

Land use scenarios (A, B, C and D) were developed in the preparation of the Draft and Final EIS in partnership with the City and County to provide a mechanism by which potential impacts from future site reuse could be evaluated. GSA worked closely with stakeholders that included the City of Chattanooga, Hamilton County, the Regional Planning Agency, Tennessee Department of Transportation, (TDOT), Tennessee Wildlife Resources Agency (TWRA) and other interested agencies to assess potential uses for the site. Because the local community will ultimately determine the use of this property through zoning ordinance, their input was critical to this process. The City of Chattanooga annexed the entire Volunteer site in April 1998.

As part of GSA's analysis, land use scenarios were developed to provide likely combinations of land uses reflecting the needs of the community communicated during the NEPA scoping process. Land use Scenario D was developed for the Final EIS in response to both agency and public comments made on the Draft. Although

the analysis of direct impacts from the Disposal Alternative is relatively straightforward and consistent regardless of the potential land use scenarios, the analysis of indirect impacts requires consideration of each respective scenario.

Identifying and evaluating potential indirect impact for each scenario involves a certain amount of speculation and assumptions because type, timetable, and location of future development at Volunteer is not known. To conduct a thorough analysis of reasonably foreseeable impacts resulting from disposal and development, GSA established criteria to identify and evaluate potential impacts as discussed below.

It will take several decades for the entire property to achieve complete reuse, and it is not possible to evaluate impacts accurately over such a timeframe. GSA in consultation with the local governments determined that a five to fifteen-year timeframe was a "reasonably foreseeable" period within which impacts would be identified and assessed. This decision was based on reasonably foreseeable land uses that could be implemented near the latter part of this timeframe. For example, two of the development scenarios include a municipal landfill that would not be opened for 10 to 12 years.

The local governments will develop zoning for the Volunteer property and will be the legal authority for reviewing and approving plans for future development after Federal disposal. Therefore, the local and state governments were determined to be the guiding source for data and assumptions related to potential future activity during the five to fifteen-year time frame.

It is important to note that GSA's role in the disposal process is strictly to conduct the real estate transaction(s) and perform the various related functions required under Federal law. The GSA has no financial, material, or other interest in the future use of the land after disposal. More expressly, GSA is not advocating any particular conceptual or proposed reuse options for Volunteer. GSA analyzed competing land use proposals and the issues associated with these potential uses through the development of potential land use scenarios.

Key Land Use Proposals

The VAAP property consists of two dissimilar halves. The western half is a broad valley where the bulk of the former TNT manufacturing facilities was located. The eastern half of the property is primarily undeveloped with the exception of earthen covered ammunition bunkers dispersed throughout the hilly terrain. Due to the constraints imposed on future uses of the western half and existing contamination in this area, all three potential land use scenarios proposed by the local community generally include the same set of compatible uses (primarily industrial) for the western half. Potential land use scenarios for the eastern half of VAAP offer greater diversity in future uses.

The three initial land use scenarios are summarized in Chapter II Section 3 of the DEIS. Scenario D is summarized in Appendix F–3 of the Final. Each of the scenarios calls for a particular mix of future land uses. However, because of specific expressions of interest by the local Cooperating Agencies, key features have been identified which are included in one or more of the potential scenarios developed. These key features, or proposed uses, include the following: a large premiere industrial site; industrial development areas; a new I–75 interchange and access roads; mixed use sites; educational facilities; Army Reserve facilities; Police/Fire Training Center; a solid waste municipal landfill; residential areas; active recreation areas; an Equestrian Center; opportunity sites; open spaces; passive recreation; wildlife habitat; and public use areas. These key features are summarized in Chapter II Section B.2. of the DEIS and Appendices F–3 and F–4.

Four Potential Land Use Scenarios Developed

Three potential land use scenarios (A, B, and C) are illustrated in Exhibits II–2 through II–4 of the Draft EIS, with the legend for all three in Exhibit II–1 of the Draft. Scenario D was developed for the Final and is discussed in text and tables. Exhibit E–2 of the Final summarizes the acreage allocated to proposed uses for each scenario, and the percentage of the site devoted to each land use.

In order to evaluate traffic impacts and the need for transportation improvements, a phasing plan was developed for 5, 10, and 15 year planning horizons for each land use scenario. In general, the four scenarios are illustrated in the Draft and Final EIS with key features are summarized as follows:

Scenario A

Scenario A does not include residential development areas or the Equestrian Center. It provides a 490-acre site for a proposed sanitary landfill. It also provides the second largest amount of acreage for open space and passive recreation in the eastern half of VAAP among the four scenarios.

Scenario B

Scenario B does not include the landfill, the Police/Fire Training Center, the Equestrian Center, or the opportunity sites. It provides the largest amount of space for residential development located in the eastern half of the site.

Scenario C

Scenario C includes a 490-acre landfill site, the Police/Fire Training Center, the Equestrian Center, with only about half the acreage for residential development compared to Scenario B.

Scenario D

Scenario D does not include residential use areas, the landfill, opportunity sites, the Police/Fire Training Center, or the Equestrian Center. It provides the largest amount of open space for passive recreation among the four scenarios, retaining the entire eastern half of VAAP in its current state.

Scenarios A, B, and C assume that a new I–75 interchange would be constructed to serve VAAP and as a connector to State Route 58. Scenario D does not include the interchange and therefore development opportunities for the site are severely limited. This is clearly demonstrated by the tables in Appendix F–4 of the Final, which show that the absorption rates for the industrial land are less than 40% for Scenario D, as compared to Scenarios A, B, and C. Scenario D is very similar to the No Action Alternative because of the limitations to potential reuse if additional access to I–75 is not provided.

Environmental Consequences and Mitigation

Based on the analysis contained in the EIS, there were no potentially significant environmental impacts identified from either the Proposed Action or the No Action except for those discussed in this ROD. The primary mitigation measures for the impacts from this action were identified during the scoping process and the preparation of the EIS. The partnership formed between the City and County governments and GSA during the planning for this disposal provided ongoing input for the preparation of the EIS. This EIS process solicited ideas from the community for the property's reuse and facilitated the development of combinations of proposed uses from which to analyze potential impacts. The result was the development of four basic land use plans that will provide the

local community a long-range planning tool for use as it develops its reuse strategy.

Three additional site considerations and potential impacts will be mitigated through processes required as discussed below. First, the entire Volunteer property is listed as a State of Tennessee Superfund Site. The Army is currently investigating and cleaning the contaminated areas as part of their legal responsibility under the Installation Restoration (IR) program and under RCRA as described in Chapter III.B.7 in the Draft. This process requires close coordination with regulatory agencies and with the public. A Restoration Advisory Board has been established and is holding regular meetings that are open to the public. GSA's proposed disposal would have no effect on the status of the site investigation and cleanup efforts being conducted under the IR and RCRA programs. Some of this property may be transferred under early transfer authority and would require approval of the Governor. This process is explained in detail in the Draft EIS pages 1–11 to 1–12.

Secondly, two of the proposed scenarios include a 490-acre site for a sanitary landfill. Should the local community elect to proceed with this option, an extensive permitting process and public notification process would be mandatory. This would require extensive engineering and design studies, a closure plan, and permitting under Tennessee Rule 1200–1–7 Solid Waste Processing and Disposal Facilities. This required process would solicit additional community participation and the permitting requirements would serve to mitigate potential adverse impacts to the natural and human environment.

Third, three of the scenarios developed propose a new I–75 traffic interchange at VAAP. An Interchange Justification Report for this interchange would be required pursuant to Federal Highway Administration (FHA) regulations. This report would be prepared by Tennessee Department of Transportation (TDOT) and submitted to FHA for approval. An environmental assessment would be required along with site-specific studies and public involvement, which would serve to mitigate impacts from the development of a new interchange at VAAP.

The NEPA process itself and the joint development of a series of land use scenarios became the major mitigation measure that will serve to minimize the impacts to the natural and human environment. GSA consulted with other State and Federal Agencies to identify impacts and develop mitigation measures. Neither the disposal alternative nor the no-action alternative was considered to be environmentally preferred over the other. Potential impacts to the natural and human environment were found to be not significant after mitigation. This is documented in both the Draft and the Final EIS by reference, and a summary of mitigation by the Agency is attached as part of this ROD.

Rationale for Decision

1. As part of GSA's environmental review, GSA conducted extensive public scoping with the local community to identify potential impacts and concerns that would result from proceeding with the proposed disposal action.

2. Issues that were identified by the community through Public Meetings and correspondence and were addressed in both the Draft and the Final Environmental Impact Statements released for public comment and review. Issues were addressed in the NEPA documents and all comments and GSA responses are incorporated into the documents as part of the official record.

3. GSA consulted with other government agencies including local, State, and Federal Agencies, to solicit their input on the proposed disposal. All issues identified and responses provided are presented in the Draft and Final documents.

4. The development of proposed reuses for the Volunteers property enabled potential uses to be identified and impacts to be analyzed. The EIS process provided a tool by which potential impacts were identified and mitigation measures developed. No significant impacts to the natural or human environment were identified from this proposed disposal action.

5. Potential impacts have been identified and mitigation measures selected that will minimize the impacts from this disposal action. GSA has consulted with other Agencies in the development of mitigation measures. GSA will institute the identified mitigation measures and will consult with other Agencies to insure that mitigation measures are implemented.

6. Should potentially significant impacts be later identified that may reach significant levels, GSA will prepare supplementary documentation as mitigation as required by the National Environmental Policy Act.

Therefore, having given consideration to all of the factors discovered during the 12 month environmental review process, it is GSA's decision to proceed with the Proposed Action: Disposal of the Volunteer Army Ammunition Plant based on the Federal Property and Administrative Services Act of 1949 as amended.

Dated: August 30, 1999.

Phil Youngberg,

Regional Environmental Manager, Southeast Sunbelt Region, General Services Administration.

[FR Doc. 99–23808 Filed 9–13–99; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Grant to Allegheny County Department of Human Services

AGENCY: Office of Planning, Research and Evaluation, ACF, DHHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that a noncompetitive grant award is being made to the Allegheny County Department of Human Services Under the title "Allegheny County Family Support System Expansion Project," the project proposes to expand family support center activities to two additional sites in Allegheny County: Mon View Heights and Lincoln Park. Based on the results learned from their Data Integration Project in 25 existing family support centers in Allegheny County, the proposed project will address significant service gaps in providing services to members of these communities

This project is being funded noncompetitively. The project will expand the existing network of family support centers, and will contribute to the estalishment of greater access to county services in a concentrated neighborhood environment. Funding in the amount of $200,000 is being awarded for a 12-month project period, beginning October 1, 1999 and ending September 30, 2000.

FOR FURTHER INFORMATION CONTACT: K.A. Jagannathan, Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW, Washington, D.C. 20447, Phone: 202–205–4829.

Dated: September 7, 1999.

Howard Rolston,

Director, Office of Planning, Research and Evaluation.

[FR Doc. 99–23810 Filed 9–13–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93612–002]

Cancel Availability of Financial Assistance for the Mitigation of Environmental Impacts to Indian Lands Due to Department of Defense (DOD) Activities

AGENCY: Administration for Native Americans (ANA), ACF, DHHS.

ACTION: Cancel grant program announcement, remaining application deadlines and competitions to assist on environmental problems and impacts from DOD activities to Indian Lands. Additional information to follow.

SUMMARY: On January 22, 1999, in Vol. 64, No. 14 of the **Federal Register**, pages 3594 to 3601, the Administration for Native Americans announced the "Availability of Finance Assistance for the Mitigation of Environmental Impacts to Indian Lands due to Department of Defense Activities". Indian land was defined as all lands used by American Indian tribes and Alaska Native villages. Three deadline dates for submission of applications were published in that announcement: March 12, 1999, November 5, 1999 and November 4, 2000. This notice cancels the two remaining competitions under the program announcement; i.e., November 5, 1999 and November 4, 2000 deadlines are canceled. The Administration for Native Americans will publish additional information on the grant program as soon as possible.

Dated: August 31, 1999.

Gary N. Kimble,

Commissioner, Administration for Native Americans.

[FR Doc. 99–23899 Filed 9–13–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Privacy Act of 1974; Amended Systems of Records Notice

AGENCY: Office of Child Support Enforcement (OCSE), ACF, DHHS.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Child Support Enforcement (OCSE) is publishing an advisement concerning its system of records entitled "The Location and Collection System", DHHS/OCSE No. 09–90–0074.

The purpose of this notice is to advise the public about a pilot that OCSE and the Social Security Administration (SSA) will be conducting to determine the benefits and risks of allowing SSA to use a real time read only query to read limited information in the National Directory of New Hires (NDNH) for the purposes of verifying eligibility and/or payment amounts under the Supplemental Security Income (SSI) program. The query gives SSA read only ability to look at limited wage, new hire and unemployment information ONLY to those social security numbers that have a payment or entitlement issue under the SSI program. No decision on whether to implement the proposed pilot on a permanent basis will be made until completion of the pilot and data analysis.

The goals of the pilot are to enable SSA to access which factors are most important for determining a SSI applicant's eligibility and payment amount on a pre-allowance (decisional) basis. Current means of verification are done on a post-entitlement basis, after individuals are in pay status. Pre-decisional information about entitlement and eligibility is expected to improve payment accuracy for SSA, reducing both overpayments and underpayments to beneficiaries and reduce the number of overpayment recovery activities SSA must take. The pilot will demonstrate the extent to which these expectations are realized, and provide a basis for deciding which data is most useful for improving payment accuracy.

DATES: The amendments described in this notice are effective September 14, 1999.

FOR FURTHER INFORMATION CONTACT: Donna Bonar, Director, Division of Program Operations, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW, 4th Floor East, Washington, DC 20447, (202) 401–4963.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Office of Child Support Enforcement (OCSE) is amending one of its System of Records, "The Location and Collection System," DHHS/OCSE No. 09–90–0074, last published at 64 FR 11015 on March 8, 1999. This amendment will allow the Social Security Administration (SSA) to use its Real-time Query Access (RQA) process to obtain information contained in the National Directory of New Hires (NDNH) for the purposes of verifying eligibility and/or payment amounts under the Supplemental Security Income (SSI) program. Section 453(j)(4) of the Social Security Act (the Act) authorized OCSE to provide SSA with information in the NDNH. The NDNH contains new hire, quarterly wage, and unemployment insurance information provided pursuant to sections 453(n), 453A(b) and 453A(g)(2) by the 50 States, the District of Columbia, U.S. territories and possessions, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and Federal agencies and instrumentalities. This amendment will allow SSA to have limited RQA to information in the NDNH database for the purpose of establishing or verifying eligibility and/or payment amounts under the Supplemental Security Income (SSI) Program. Specifically, data elements to be used from the Quarterly Wage portions of the NDNH database are: For employees—SSN, SSN verification indicator and any corrected SSN, first name, middle name, last name, wage amount, quarter paid, and reporting period; for employers—name of employer, Federal (or optional State if no Federal) Employer Identification Number or Federal Information Processing System Code, address(es), State or Federal agency reporting the data; date the report was processed. Data elements to be used from the New Hire portions of the NDNH database are: For employees—employees' SSN, SSN verification indicator and any corrected SSN; employees' first name, middle name, last name, address(es), date of birth (optional), date of hire (optional), State of hire (optional); for employers—name of employer, Federal (or optional State if no Federal) Employer Identification Number or Federal Information Processing System Code, address of employer. Data elements to be used from the Unemployment Insurance portions of the NDNH database are: Unemployment insurance record identifier, SSN, SSN verification indicator and any corrected SSN; employee's first name, middle name, last name, address, unemployment insurance benefit amount, reporting period, quarter paid, payer State, date report processed. SSA anticipates that RQA access to the NDNH will facilitate earlier overpayment detection, reduce the number of incorrect entitlements, and reduce the number of overpayment recovery actions. Fifty field offices within the SSA will participate in a pilot program during which they will utilize RQA data retrieval. If the pilot is determined to be successful, a national rollout will follow.

Privacy Safeguards:

OCSE and SSA have taken steps to ensure that the read only query will sustain the protections provided in all statues relating to agency use, collection and disclosure of personal information. These include: (1) Notice to applicants and beneficiaries. SSA routinely advises SSI applicants and beneficiaries that SSA verifies eligibility. This is done via the application process, publications and letters to beneficiaries; (2) Query Is Informational Only. SSA will not take any action to reduce, suspend, or terminate an individual's SSI payment based on data read from the query; (3) Independent Verification. SSA will independently verify information read from the query, as required by Federal statue; (4) Limited Information. The pilot gives SSA the ability to read limited information on a restricted basis. The query can only read records that have a payment or entitlement issue under the SSI program; (5) Read Only. The information the query can read in the NDNH is the same information SSA currently obtains on a post-entitlement, paper based process; (6) Authorized Users. The pilot is limited in the number of field offices participating and the number of employees with read only query ability which is restricted to certain recognizable job classifications within SSA; (7) Anti-browsing Technology. SSA can only read information for those social security numbers that have a payment or entitlement issue under the SSI program; (8) Anomaly Detection and Audit Trails. SSA will monitor use of the query; and (9) Training and Sanctions for Misuse. SSA employees have been trained to work with sensitive information and routinely do so. Sanctions for misuse are found in 5 U.S.C. 552a(i) and Part 401 CFR, Privacy and Disclosure of Official Records and Information, and appendix A to part 401, Employee Standards of Conduct.

Dated: September 7, 1999.

David Gray Ross,

Commissioner, Office of Child Support Enforcement.

OCSE's Location and Collection System is hereby amended to read as follows:

09–90–0074

SYSTEM NAME:

Location and Collection System (LCS), HHS, OCSE.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Child Support Enforcement, 370 L'Enfant Promenade, SW, 4th Floor East, Washington, DC 20447;

Social Security Administration, 6200 Security Boulevard, Baltimore, Maryland 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records will be maintained to locate individuals for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, or enforcing child custody or visitation orders and may include (1) information on, or facilitate the discovery of, or the location of any individuals: (a) Who are under an obligation to pay child support or provide child custody or visitation rights; (b) against whom such an obligation is sought; (c) to whom such an obligation is owed including the individual's social security number (or numbers), most recent address, and the name, address, and employer identification number of the individual's employer; and (d) who have or may have parental rights with respect to a child; (2) information on the individual's wages (or other income) from, and benefits of, employment (including rights to enrollment in group health care coverage); (3) information on the type, status, and amount of any assets or debts owed to or by such an individual; and (4) information on certain Federal disbursements payable to a delinquent obligor which may be offset for the purpose of collecting past-due child support.

CATEGORIES OF RECORDS IN THE SYSTEM:

Specific records retained in the LCS system are: the name of noncustodial or custodial parent or child, Social Security number (when available), date of birth, place of birth, sex code, State case identification number, local identification number (State use only), State or locality originating request, date of origination, type of case (TANF, non-TANF full-service, non-TANF locate only, parental kidnapping); home address, mailing address, type of employment, work location, annual salary, pay rate, quarterly wages, medical coverage, benefit amounts, type of military service (Army, Navy, Marines, Air Force, not in service), retired military (yes or no), Federal employee (yes or no), recent employer's address, known alias (last name only), date requests sent to Federal agencies or departments (SSA, Treasury, DoD/OPM, VA, USPS, FBI, and SESAs), dates of Federal agencies' or departments' responses, date of death, record identifier; employee's SSN, SSN verification indicator and any corrected SSN, employee first name, middle name, last name, employee address(es), date of birth (optional), employee date of hire (optional), employee State of hire, wage amount, quarter paid, reporting period; employer name, Federal Employer Identification Number or Federal Information Processing System Code, State Employee Identification Number of Federal Information Processing System Code, employer address, employer foreign address, employer optional address, and employer optional foreign address; multistate employer name, address and Federal Identification Number; employee SSN, employee first name, middle name, last name, employee address(es), date of birth (optional), data of hire (optional), State of hire (optional), employee wage amount, quarter paid, reporting period; unemployment insurance record identifier, claimant SSN, SSN verification indicator and any corrected SSN; claimant first name, middle name, claimant address, SSA/VA benefit amount, unemployment insurance benefits amount, reporting period, quarter paid, payer State, date report processed; State code, local code, case number, arrearage amount, collection amount, adjustment amount, return indicator, transfer State, street address, city and State, zip code, zip code 4, total debt, number of adjustments, number of collections, net amount, adjustment year, tax period for offset, type of offset, offset amount, submitting State FIPS, locate code, case ID number, case type, and court/administrative order indicator. Records used to aid State Child Support Enforcement Agencies in obtaining information from multistate financial institutions may include institution name(s), name control, Taxpayer Identification Number(s), year, month, service bureau indicator, transfer agent indicator, foreign corporation indicator, reporting agent/transmitter, address(es), file indicator, record type, payee last name control, SSN(s), payee account number, account full legal title (optional), payee foreign country indicator (optional), payee names, addresses, account balances (optional), trust fund indicator, account balance indicator (optional), account update indicator, account type, date of birth.

Individuals will be fully informed of the uses and disclosures of their records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Legal authority for maintenance of the system is contained in sections 452 and

453 of the Social Security Act that requires the Secretary of the Department of Health and Human Services to establish and conduct the Federal Parent Locator Service, a computerized national location network which provides address and social security number information to authorized persons, primarily for the purposes of establishing and collecting child support obligation.

PURPOSE(S):

The primary purpose of the Location and Collection System is to improve State's abilities to locate parents and collect child support.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The routine uses of records maintained in the LCS are as follows: (1) Request the most recent home and employment addresses and SSN of the noncustodial or custodial parents from any State or Federal government department, agency or instrumentality which might have such information in its records; (2) provide the most recent home and employment addresses and SSN to State Child Support Enforcement (CSE) agencies under agreements covered by section 463 of the Social Act (42 U.S.C. 663) for the purpose of locating noncustodial parents or children in connection with activities by State courts and Federal attorneys and agents charged with making or enforcing child custody determinations or conducting investigations, enforcement proceedings or prosecutions concerning the unlawful taking or restraint of children; (3) provide the most recent home and employment addresses and SSN to agents and attorneys of the United States, involved in activities in States which do not have agreements under section 463 of the Act for purposes of locating noncustodial parents or children in connection with Federal investigations, enforcement proceedings or prosecutions involving the unlawful taking or restraint of children; (4) provide to the State Department the name and SSN of noncustodial parents in international child support cases, and in cases involving the Hague Convention on the Civil Aspects of International Child Abduction; (5) provide to State agencies data in the NDNH portion of this system for the purpose of administering the Child Support Enforcement Program and the Temporary Assistance for Needy Families (TANF) program; (6) provide to the Commissioner of Social Security information for the purposes of verifying reported SSNs, verifying eligibility and/or payment amounts under the Supplemental Security Income (SSI) program, and for other purposes; (7) provide to the Secretary of the Treasury information in the NDNH portion of this system for purposes of administering advance payments of the earned income tax credit and verifying a claim with respect to employment in a tax return; (8) provide to researchers new hire data for research efforts that would contribute to the TANF and CSE programs. Information disclosed may not contain personal identifiers; (9) provide to State CSE agencies, or any agent of an agency that is under contract with the State CSE agency, information which will assist in locating individuals for the purposes of establishing paternity and for establishing, modifying, and enforcing child support obligations; (10) disclose to authorized persons as defined in section 453(c) of the Act (42 U.S.C. 653(c)) records for the purpose of locating individuals and enforcing child custody and visitation orders; (11) disclose to the State agency administering the Medicaid, Unemployment Compensation, Food Stamp, SSI and territorial cash assistance programs new hire information for income eligibility verification; (12) disclose to State agencies administering unemployment and worker's compensation programs new hire information to assist in determining the allowability of claims; (13) disclose information to the Treasury Department in order to collection past due child support obligation via offset of tax refunds and certain Federal payments such as: Federal salary, wage and retirement payments; vendor payments; expense reimbursement payments, and travel payments; (14) disclose to the Secretary of State information necessary to revoke, restrict, or deny a passport to any person certified by State CSE agencies as owing a child support arrearage greater than $5,000; and (15) disclose to States information pertaining to multistate financial institutions which has been provided by such institutions in order to aid State Child Support Enforcement Agencies.

DISCLOSURE TO CONSUMER REPORTING AGENCIES: None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Location and Collection System records are maintained on disc and computer tape, and hard copy.

RETRIEVABILITY:

SSA will access and use the information obtained by the real time query access only for the period of time required for any processing related to the access program.

SAFEGUARDS:

1. *Authorized users:* Access to the records accessed and to any records created by the Real Time Query Access (RQA) will be restricted to only those authorized employees who need it to perform their official duties in connection with the use of the information. All personnel who have access to the NDNH records accessed or the records created by the RQA will be: (1) Advised of the confidential nature of the information, (2) advised of the safeguards required to protect the information; and (3) advised of the civil and criminal sanctions for noncompliance contained in the applicable Federal laws.

2. *Physical safeguards:* The records accessed and any records created by the RQA will be handled and stored in an area that is physically safe from access by unauthorized persons at all times. The records accessed will be transported under appropriate safeguards.

3. *Procedural and technical safeguards:* The records accessed and the data created by the RQA will be processed under the immediate supervision and control of authorized personnel in a manner that will protect the confidentiality of the records. System security measures will be implemented that will protect records in such a way that unauthorized persons cannot retrieve any such records by means of computer, remote terminal, or any other means.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, " Safeguarding Records Contained in Systems of Records," and the Department's Automated Information System Security Program Handbook.

RETENTION AND DISPOSAL:

SSA will retain identifiable records received from the NDNH database only for the period of time required for any processing related to the RQA and will destroy the records. Electronic files will be erased.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Program Operations, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., 4th Floor East, Washington, DC 20447.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the Systems Manager at the address listed above. The Privacy Act provides that, except under certain conditions specified in the law, only the subject of the records may have access to them. All requests must be submitted in the following manner: identify the system of records you wish to have searched, have your request notarized to verify your identify, indicate that you are aware that the knowing and willful request for or acquisition of a Privacy Act record under false pretenses is a criminal offense subject to a $5,000 fine. Your letter must also provide sufficient particulars to enable OCSE to distinguish between records on subject individuals with the same name.

RECORD ACCESS PROCEDURES:

Write to the Systems Manager specified above to attain access to records. Requesters should provide a detailed description of the records contents they are seeking.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under System Manager above, and identify the record and specify the information to be contested and corrective action sought with supporting justification to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information is obtained from departments, agencies, or instrumentalities of the United States or any State and from multi-state financial institutions.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 99–23809 Filed 9–13–99; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0572]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Collection of Letters of Interest and Food Safety Data in a Voluntary Pilot Program Using HACCP Principles for Retail Food Operations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by October 14, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Collection of Letters of Interest and Food Safety Data in a Voluntary Pilot Program Using HACCP Principles for Retail Food Operations

Section 402 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342) enables FDA to regulate the safety of foods in interstate commerce. In addition, under authority granted in the Public Health Service Act (the PHS Act) (42 U.S.C. 241, 243, and 264), the agency engages in a range of activities intended to ensure the safety of the nation's food supply, from regulating food when it can be a vector of disease to assisting, and cooperating with, the States to ensure effective State and local food safety programs. FDA endeavors to assist the more than 3,000 Federal, tribal, State, and local regulatory agencies that have primary responsibility for monitoring retail food establishments to ensure that consumers are protected.

FDA is proposing to collect information, through a voluntary pilot program, on how hazard analysis critical control points (HACCP) principles might be implemented in the retail food industry. The pilot program is designed to provide insight into the problems, costs, and benefits of developing and implementing HACCP principles for food service, retail food stores, and other retail food establishments, in order to improve and provide direct guidance to both the retail industry and regulatory authorities for the implementation of HACCP principles in the retail food sector. FDA will select candidates with a goal of ensuring that the participants in the program cross the spectrum of retail activities, have a range of scientific capabilities, have facilities of varying sizes, and have a range of HACCP experience. FDA has been approached by State and local governments to provide guidance for applying HACCP principles at retail; therefore, the agency intends to collect information through the pilot program to develop and enhance guidance. The agency intends to make a summary of the results of the retail pilot program publicly available.

The agency will request retail food establishments and regulatory agencies interested in participating in the pilot program to send to FDA a letter of interest. Letters from regulatory agencies need only state an interest in participating. FDA requests that the letters of interest from retail food establishments describe their menu, the location and size of their facility, the type of techniques they use to prepare their products, and the extent to which, and how, they employ HACCP; identify area government officials with whom they have worked to implement or reinforce the system; identify which State, local, and/or tribal government officials they would like to work with in the pilot program; and identify trade associations they would like to work with in the pilot. FDA will review the letters of interest from retail applicants and identify a limited number of individual establishments that represent a broad spectrum of the retail food industry and that, in the judgment of the agency, are best suited to participate in the pilot program. The retail pilot participants will maintain a food safety program based upon HACCP principles for the duration of the pilot. FDA will study the information and data the pilot participants use to maintain their food safety programs.

In the **Federal Register** of July 30, 1998 (63 FR 40716), the agency requested comments on the proposed collection of information. The agency received one comment from a trade association that represents one segment of the retail food industry. The comment recommended that FDA not pursue the pilot program as currently planned. Instead, the comments suggested that the agency solicit industry and academic input into the development of a "new, more inclusive" HACCP pilot program. The comment's recommendation was based on several concerns.

First, the comment expressed concern that a mandatory information collection regulation may mark the end of cooperative industry development of HACCP programs.

The voluntary retail HACCP pilot program is neither mandatory, nor is it a regulation. The purpose of the pilot program is to enhance understanding and implementation of HACCP principles through cooperation among industry, FDA, and participating State and local regulatory authorities. Any participant may leave the program at any time. The agency hopes that the pilot will promote rather than curtail the cooperative efforts toward building HACCP into retail. The agency agrees with the statement in the comment that "There are many problems to overcome before HACCP can be fully implemented in the retail industry and clearly cooperation and inclusion will provide the answers to those problems." This is exactly why industry is being invited to participate; the agency recognizes that industry involvement is critical to furthering a cooperative relationship.

Second, the comment expressed concern about the disclosure of proprietary information and cautioned that access to voluntary HACCP plans, including records and customer complaints, must be restricted. The comment also stressed that the records must remain the property of the establishment.

The information collected at individual establishments will be held as proprietary, and contracts are to be signed by all parties involved limiting the use of the proprietary information. The agency intends to review the systems implemented by the retail establishment, including records, in order to document how the system works, but the records will remain the property of the establishment. After the pilot, the data collected at individual establishments will be generalized, and a collective retail HACCP pilot report will be publicly disseminated. The names and locations of the participating firms will be held as proprietary unless authorized for release by the participant.

Third, the comment raised several issues relating to consultation, participation, and fairness. The comment expressed concern that FDA is duplicating efforts by the restaurant industry and asserted that FDA has not consulted with developers of existing HACCP programs or evaluated these ongoing programs. The comment also charged that FDA intends to exclude universities and trade associations from direct participation in the pilot to prevent them from having input into any final recommendations resulting from the pilot. More generally, the comment expressed the view that FDA lacks the knowledge and detachment to select participants in the pilot on an objective basis.

The agency believes these concerns are unfounded. FDA intends to build on retail industry efforts through the retail HACCP pilot program by studying ongoing HACCP systems and documenting activities used by the retail industry to fully implement a HACCP system. During the design of the program, industry representatives shared their views on how an effective pilot program should proceed and provided feedback and guidance on this effort of collecting information. This information was used in designing the retail HACCP pilot program.

With regard to selection of participants, the design and intent of the pilot is inclusive, not exclusionary. The pilot seeks to include establishments that represent a broad spectrum of retail activities, geographic locations, sizes, and levels of experience with HACCP. Since each participant has the right, within the limits of the law, to control access to its proprietary information, each participant has the right to invite entities such as State, local, and tribal regulatory agencies, universities, and trade associations to work with it during the pilot, and it also has the right not to work with any such entities (although participants will, of course continue to be subject to applicable food safety laws and regulations in all jurisdictions during the pilot).

FDA will involve the pilot participants in the summary of results and formation of conclusions at the end of the pilot program, and will make the summary report publicly available. The pilot is designed to encourage voluntary evolution of retail HACCP plans with the involvement of all stakeholders: Government, industry, academia, and trade associations.

Fourth, the comment expressed doubts about the need for the pilot program. The comment stated that the retail food industry has used HACCP for many years with great success. According to the comment, FDA should remain only an evaluator of the success of HACCP programs, and should not attempt to institute or mandate such programs.

FDA disagrees with the comment. The PHS Act provides that the agency shall assist States and political subdivisions in the prevention and suppression of communicable diseases, and with respect to other public health matters, shall cooperate with and aid State and local authorities in the enforcement of their health regulations, and shall advise the States on matters relating to the preservation and improvement of the public health. FDA is also entrusted with regulating food safety under the act. Therefore, the agency is responsible for carrying out these functions and intends to do so. The retail HACCP pilot program is one of many elements necessary to enable FDA to perform these statutory responsibilities.

Fifth, the comment expressed concern about the recordkeeping burdens that the retail HACCP pilot program would create for participants. The comment asserted that massive recordkeeping paperwork for the hundreds of items on restaurant menus would be required. The comment expressed hope that the pilot does not move to apply a single, "one-size-fits-all" FDA recordkeeping system.

The agency is seeking information through the pilot program on the amount and extent of recordkeeping that retail establishments have determined necessary to effectively implement and manage their HACCP systems. To be part of the voluntary pilot, the only recordkeeping requirement is a letter to FDA expressing interest to participate in the pilot program. The agency will not determine the amount or type of records needed during the pilot; rather, each industry participant will determine the amount and type of records it needs to effectively verify that its system is working. Thus, the pilot program will not create an undue burden and will not impose a single recordkeeping system on all establishments.

The comment also expressed the belief that FDA's burden estimate did not account for all the time that would be required by the smallest participants in this program to learn about and institute a HACCP program. The comment further stated that FDA has not shown a willingness to encourage or assist vital small restaurant operator participation in this pilot.

The agency will select candidates with a goal of ensuring that the participants in the program cross the spectrum of retail activities, have a range of scientific capabilities, have facilities of varying sizes, and have a range of HACCP experience. The pilot program will encompass the challenges unique to the retail environment, such as multiple menu items, size of the facility, and employee turnover. The agency intends to work with establishments with preexisting HACCP programs and those establishments intending to start designing their HACCP systems. The agency is seeking information that will document the costs and time necessary for developing and implementing a HACCP system.

FDA will also provide guidance and counseling upon request to those participating establishments that are in the process of developing HACCP systems, although the agency will not write HACCP plans.

Finally, the comment expressed concern that agencies could make use of prior establishment records as the basis for enforcement action.

In order to deal with this concern, the agency intends to provide clear direction to the pilot site teams to separate HACCP activities, such as the establishment's performance of corrective action, from system failures when risk factors are uncontrolled and enforcement action may be necessary. FDA has initiated and intends to further train the pilot site teams on how to evaluate a HACCP system and identify items that are important. The establishment has the primary responsibility to ensure the food is safe by fully implementing its HACCP system, and the pilot site teams will evaluate the effectiveness of that program.

FDA estimates the burdens of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Letters of interest from State/local/tribal authorities [2]	50	1	50	1	50
Letters from interested retail firms [2]	50	1	50	1	50
Total					100

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] One time activity.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
Plan development	40	1	40	100	4,000
Plan implementation documents	40	7,000	280,000	.05	14,000
Implementation review	40	4	160	4	640
Total					18,640

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on FDA's experience with other pilot programs and on comments received through the Conference for Food Protection, public meetings, and through retail industry advice. This information was utilized to design the pilot program with the least amount of burden to the retail industry.

Because only one letter of interest need be submitted per prospective participant in the pilot, submitting the letter will create only a minimal one time burden. Once the pilot program begins, FDA estimates that the burden of collecting and maintaining food safety information based upon HACCP principles will vary considerably across the wide spectrum of retail activities and establishments, the types, and numbers of products involved, and the nature of the equipment or instruments required by the retail establishment for monitoring. The recordkeeping burden to each retail participant would involve maintaining a food safety plan based upon HACCP principles, generating the necessary records to implement that plan, and checking the records to verify implementation. Those participants who do not already have a HACCP plan in place would also have to develop such a plan.

Since the publication of the July 1998 **Federal Register** notice seeking comment on the pilot program, FDA has learned from conversations with potential participants that approximately 20 percent of these potential participants are already using HACCP plans in the normal course of their business activities. The PRA regulations (5 CFR 1320.3(b)(2)) provide that the time, effort, and financial resources that would be incurred by persons in the normal course of usual and customary activities are excluded from the burden of a collection of information. Therefore, the agency has revised its estimates to reflect the fact that the pilot program would impose no additional recordkeeping burden on the establishments that are already using HACCP.

Dated: September 8, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–23811 Filed 9–13–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Data Collection; Comment Request; American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) Final Evaluation: "Tobacco Use Supplement to the 1998–2000 Current Population Survey"

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) Final Evaluation: "Tobacco Use Supplement to the 1998–2000 Current Population Survey". *Type of Information Request:* OMB #0925–0368, Exp. 12/31/99, REVISION. *Need and Use of Information Collection:* The "Tobacco Use" supplement to the Current Population Survey conducted

by the Bureau of the Census collected data in September 1998 and January and May 1999 from the civilian non-institutionalized population on tobacco use and smoking prevalence, smoking intervention dissemination of workplace smoking policies and cessation programs as well as medical and dental advice to stop smoking, and changes in smoking norms and attitudes. Due to an administrative error, in January and May 1999 data collection included a small set of incorrect questions which does not permit an accurate estimate of total tobacco use. The proposed information collection will ask the correct set of questions (comparable to the correctly fielded set in September 1998) for other tobacco usage (cigars, pipes, chewing tobacco and snuff), along with the standard cigarette smoking prevalence questions in order to estimate total tobacco usage. This survey will provide valuable information to Government agencies and to the general public necessary for tobacco control research. The data will be used by the National Cancer Institute to evaluate the effectiveness of the American Stop Smoking Intervention Study for Cancer Prevention (ASSIST), a large scale 17 state demonstration project. The survey will allow state specific estimates to be made. Data will be collected in January 2000 and May 2000 from approximately 170,000 respondents. *Frequency of Response:* One-time study. *Affected Public:* Individuals or households. *Type of Respondents:* Persons 15 yrs. of age or older. The annual reporting burden is as follows: *Estimated Number of Respondents:* 170,000; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response:* 0.0113; and *Estimated Total Annual Burden Hours Requested:* 1921. The annualized cost to respondents is estimated at: $19,210. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of 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 enhance the quality, utility and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms on 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 Anne Hartman, Health Statistician, National Cancer Institute, Executive Plaza North, Room 313, Bethesda, Maryland 20892–7344, or call non-toll free number (301) 496–4970, or FAX your request to (301) 435–3710, or E-mail your request, including your address, to *ah42t@nih.gov* or Anne_Hartman@nih.gov.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before November 15, 1999.

Date: September 7, 1999.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 99–23844 Filed 9–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closing 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 section 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 Diabetes and Digestive and Kidney Diseases Initial Review Group Diabetes, Endocrinology and Metabolic Diseases B Subcommittee.

Date: October 29, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Ned Feder, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Building 45, Room 6AS25S, 9000 Rockville Pike, Bethesda, MD 20892.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group Digestive Diseases and Nutrition C Subcommittee.

Date: October 29, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Dan Matsumoto, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group Kidney, Urologic and Hematologic Diseases D Subcommittee.

Date: October 29, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Ann A. Hagan, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Building 45, Bethesda, MD 20892, (301) 594–8886.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 3, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–23846 Filed 9–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 Deafness and Other Communications Disorders Special Emphasis Panel.

Date: October 5, 1999.

Time: 10:30 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza South, Room 400C, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Melissa Stick, PHD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 3, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–23847 Filed 9–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 Aging Special Emphasis Panel Alzheimer's Disease Core Centers.

Date: October 4–6, 1999.

Time: 6:00 pm to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda. MD 20814.

Contact Person: Jeffrey M. Chernak, Gateway Building, 7201 Wisconsin Avenue/ Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 3, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–23848 Filed 9–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of 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 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 Library of Medicine Special Emphasis Panel, RFA: LM–99–001; Internet Connection for Health Institutions.

Date: September 23–24, 1999.

Time: September 23, 1999, 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Time: September 24, 1999, 8:30 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Frances E. Johnson, Program Officer, Office of Extramural Programs, National Library of Medicine, Rockledge One, Suite 301, 6705 Rockledge Drive, Bethesda, MD 20892.

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 Programs Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: September 3, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–23845 Filed 9–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4446–N–06]

Notice of Proposed Information Collection: Comment Request; Annual Progress Report (APR) for Competitive Homeless Assistance Programs

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 15, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Shelia E. Jones, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 7232, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: John Garrity (202) 708–4300 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are responding; including

through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposals: Annual Progress Report for Competitive Homeless Assistance Programs (APR).

OMB Control Number, if applicable: 2506–0145.

Description of the need for the information and proposed use: The APR provides information to HUD necessary for program monitoring and evaluation.

Agency form numbers, if applicable: HUD–40118.

Members of affected public: Grantees that have received HUD funding from 1987 to the present.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents; frequency of response, and hours of response:

Activity	Number of respondents	Frequency of response (annually)	Response hours	Burden hours
Record-keeping	4,000	1	40	160,000
Report preparation	4,000	1	10	40,000
				200,000

Status of the proposed information collection: Information is currently being collected.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 27, 1999.

Joseph D'Agosta,

General Deputy, Assistant Secretary for Community Planning and Development.

[FR Doc. 99–23923 Filed 9–13–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4456–N–05]

Privacy Act of 1974; Notice of Planned Large-Scale Implementation of Computer Matching Program: Matching Tenant Data in Assisted Housing Programs

AGENCY: The Real Estate Assessment Center, HUD.

ACTION: Notice.

SUMMARY: During the fourth quarter of calendar year 1999, the Real Estate Assessment Center (REAC) plans to implement the computer matching program, Privacy Act of 1974; Notice of Matching Program: Matching Tenant Data in Assisted Housing Programs, published in the **Federal Register** on December 9, 1998, for all tenants included in HUD's tenant databases. This computer matching program primarily involves identifying potential income discrepancies, i.e., income that tenants did not report as required when applying for initial or continued rental assistance. Further, the program involves initiating administrative or legal actions to resolve income discrepancies and any excess rental assistance tenants received. The Secretary of HUD has assigned the REAC with responsibility for the computer matching program and the related income verification program.

FOR FURTHER INFORMATION CONTACT: Additional information regarding the large-scale computer matching and income verification program can be obtained from David L. Decker, U.S. Department of Housing and Urban Development, Real Estate Assessment Center, 451 Seventh Street, SW., Room 5156, Washington, DC 20410–5000.

SUPPLEMENTARY INFORMATION: Since 1996 HUD has used Federal tax return data received from the Social Security Administration and the Internal Revenue Service to conduct various computer matching and income verification projects. Those projects identified income discrepancies, i.e., income that tenants did not report as required when applying for initial or continued rental assistance. Further, the projects involve initiating administrative or legal actions to resolve income discrepancies. The most recent computer matching notice, Privacy Act of 1974; Notice of Matching Program: Matching Tenant Data in Assisted Housing Programs, published in the **Federal Register** on December 9, 1998, describes techniques used. The matching program covers rental assistance programs of HUD's Office of Housing and Office of Public and Indian Housing. To date, HUD has limited the computer matching to random samples of selected households and to 100 percent matching to tenants receiving rental assistance from specific public housing agencies.

To detect and deter abuses so that resources may be used to serve needy families, HUD plans to implement the computer matching nationwide during the fourth quarter of calendar year 1999. Computer matching results will be sent to tenants with potentially significant income discrepancies. Letters sent to tenants will request the tenants to disclose income data shown in the letter to their local rental assistance program administrators. A list of households with income discrepancies will be sent to the local administrators. HUD is precluded by law from disclosing the Federal tax return data to anyone other than the tenant. The REAC plans to publish instructions for administrators of HUD's rental assistance programs. The instructions will describe the processes to be used in resolving income discrepancies noted in the computer matching, and reporting on the same. HUD published a notice of proposed information collection on July 27, 1999.

Dated: August 9, 1999.

Barbara L. Burkhalter,

Deputy Director, Real Estate Assessment Center.

[FR Doc. 99–23922 Filed 9–13–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permits Issued

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of permits issued for the months of August 1998–August 1999.

Notice is hereby given that the U.S. Fish and Wildlife Service, Region 3, has taken the following action with regard to permit applications duly received in accordance with section 10 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1539, *et seq.*). Each permit listed as issued was granted only after it was determined that it was applied for in good faith, that by

granting the permit it will not be to the disadvantage of the endangered species, and that it will be consistent with the purposes and policy set forth in the Endangered Species Act of 1973, as amended.

Name	Permit number	Date issued
Stacey Halpern	TE 011591	7/15/99
Hey and Associates	TE 011563	6/18/99
Hey and Associates	TE 011563–1**	7/15/99
WDH Ecological Services	TE 011301	7/6/99
Missouri Department of Conservation	TE 010442	8/11/99
Amy Arnett & Svata Louda	TE 009673	5/20/99
Leon Hinz, Jr.	TE 009168	5/28/99
The Raptor Resource Project	TE 009163	5/18/99
The Nature Conservancy—MI Chapter	TE 007350–1*	4/27/99
The Nature Conservancy—MI Chapter	TE 007350–2**	6/8/99
The Nature Conservancy—MI Chapter	TE 007350–3**	7/28/99
The Nature Conservancy—MI Chapter	TE 007350–4**	8/26/99
Wolf Timbers	TE 007824	5/6/99
Steven Taylor	TE 006012	3/11/99
Steven Taylor	TE 006010	3/11/99
Julian Lewis	TE 006007	3/11/99
Timothy Krynak	TE 004812	3/9/99
Corps of Engineers—Rock Island Dist	TE 003872	2/16/99
Corps of Engineers—St. Paul Dist	TE 003379–1	2/26/99
Voyageurs National Park	TE 002722	1/22/99
Davey Resource Group	PRT 842849	8/12/98
Davey Resource Group	TE 842849–1**	5/6/99
Davey Resource Group	TE 842849–2**	7/8/99
The Organization for Bat Conservation	TE 842503*	8/7/98
The Organization for Bat Conservation	TE 842503–1**	3/26/99
Richard ffrench-Constant	PRT 842392–1**	3/26/99
The Raptor Resource Project	TE 842366–1**	5/3/99
The Raptor Resource Project	TE 842366–2**	5/19/99
Mark McGimsey	PRT 842312	8/7/98
Mark O'Brien	PRT 842309	8/4/98
Lynn W. Robbins	TE 840524–1*	3/4/99
Don R. Helms	PRT 839777–1**	9/10/98
Don R. Helms	TE 839777–2**	6/4/99
Don R. Helms	TE 839777–3**	8/10/99
John Schwegman	TE 839764–1**	3/24/99
John Whitaker	TE 839763–1*	5/17/99
John Whitaker	TE 839763–2**	7/19/99
Zambrana Engineering	PRT 838713	8/4/98
Ecological Specialists	PRT 838055–1**	9/8/98
Ecological Specialists	PRT 838055–2**	2/25/99
Ecological Specialists	TE 838055–3**	5/20/99
Ecological Specialists	TE 838055–4**	7/8/99
BHE Environmental, Inc	TE 834596–1*	5/6/99
R.D. Zande & Associates	TE 834589–1*	5/10/99
R.D. Zande & Associates	TE 834589–2**	7/22/99
Herbert M. Jones	TE 831781*	5/20/99
Cynthia Rebar	PRT 825177–1*	8/25/98
Daniel Hornbach	TE 811008–2*	5/7/99
Francesca Cuthbert	TE 810834–2**	5/19/99
Francesca Cuthbert	TE 810834–3**	7/22/99
The Raptor Center	PRT 810396–2*	2/16/99
BHE Environmental, Inc	PRT 809227–10**	8/4/98
BHE Environmental, Inc	TE 809227–11**	5/17/99
BHE Environmental, Inc	TE 809227–12**	7/7/99
Daniel Soluk	PRT 805269–3**	9/1/98
Daniel Soluk	TE 805269–4**	6/16/99
Malacological Consultants	PRT 801471–8**	10/29/98
Malacological Consultants	TE 801471–9*	7/15/99

*Indicates permit renewal and amendment.
**Indicates permit amendment.

Additional information on these permit actions may be requested by contacting the U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, telephone 612/713–5343, during normal business hours (7:30am–4:00pm) weekdays.

Dated: September 8, 1999.

T.J. Miller,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 99–23958 Filed 9–13–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection for Part 13, Tribal Reassumption of Jurisdiction Over Child Custody Proceedings

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of emergency clearance and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) this notice announces that the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs approved an information collection request for emergency clearance under 5 CFR 1320.13. The information collection, Tribal Reassumption of Jurisdiction over Child Custody Proceedings, is cleared under OMB Control Number 1076–0112 through December 31, 1999. We are seeking comments from interested parties to renew the clearance.

DATES: Written comments must be submitted on or before November 15, 1999.

ADDRESSES: Comments should be sent to the Bureau of Indian Affairs, Division of Social Services, 1849 C Street, NW, MS–4660–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain copies of the information collection requests without charge by contacting Mr. Larry Blair, (202) 208–2479, Facsimile number (202) 208–5113.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Department has issued regulations prescribing procedures by which an Indian tribe may reassume jurisdiction over Indian child proceedings when a state asserts any jurisdiction. Tribes have the right to pursue this alternative because this action is authorized by the Indian Child Welfare Act, Public Law 95–608, 92 Stat. 3069, 25 U.S.C. 1918.

II. Request for Comments

The Department invites comments on:

(1) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility;

(2) The accuracy of the Bureau's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and,

(4) Ways to minimize the burden of the information collection on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other collection techniques or forms of information technology. Please note that your comments must include your name and address. The list of commentors will be available upon request in compliance with the Freedom of Information Act. If you wish this information withheld you must state it prominently at the beginning of your comments. We will protect your privacy to the extent regulations allow.

III. Data

(1) *Title of the Information Collection:* Tribal Reassumption of Jurisdiction Over Child Custody Proceedings.

(2) *Summary of Collection of Information:* The collection of information will ensure that the provisions of Pub. L. 95–608 are met.

(3) *Affected Entities:* Federally recognized tribes who submit tribal reassumption petitions for review and approval by the Secretary of the Interior.

(4) *Frequency of Response:* Annually.

(5) *Estimated Number of Annual Responses:* 2.

(6) *Estimated Time Per Application:* 8 hours.

(7) *Estimated Total Annual Burden Hours:* 16 hours.

Dated: August 30, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–23898 Filed 9–13–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming Certain Lands as Reservation for the Pueblo of Nambe Indians in New Mexico

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of reservation proclamation.

SUMMARY: The Assistant Secretary—Indian Affairs proclaimed approximately 44.00 acres, more or less, as an addition to the reservation of the Pueblo of Nambe Indians on September 3, 1999. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

FOR FURTHER INFORMATION CONTACT: Larry E. Scrivner, Bureau of Indian Affairs, Chief, Division of Real Estate Services, MS–4510/MIB/Code 220, 1849 C Street, NW, Washington, D.C. 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for the tract of land described below. The land was proclaimed to be an addition to and part of the reservation of the Pueblo of Nambe Indians for the exclusive use of Indians on that reservation who are entitled to reside at the reservation by enrollment or tribal membership.

Reservation of the Pueblo of Nambe Indians

Santa Fe County, New Mexico

All that part of the Cuyamungue Grant, projected Section 28, Township 19 North, Range 9 East, New Mexico Principal Meridian, Santa Fe County, New Mexico, which said part may be more particularly described as follows:

Beginning at a Brass Cap marking the Southwest corner of the Nambe Pueblo Grant, thence S. 50° 34′ 12″ W., 227.01 feet; thence, N. 26° 41′ 45″ W., 193.88 feet; thence, N. 23° 44′ 43″ W., 24.76 feet; thence, S. 58° 47′ 12″ W., 375.86 feet; thence, N. 19° 19′ 05″ W., 285.97 feet; thence, N. 70° 52′ 46″ E., 162.97 feet; thence, N. 18° 54′ 09″ W., 300.75 feet; thence, N. 54° 26′ 16″ W., 232.13 feet; thence, N. 63° 23′ 49″ W., 330.82 feet; thence, N. 19° 18′ 16″ W., 136.88 feet; thence, N. 76° 23′ 41″ E., 5.56 feet; thence, N. 52° 18′ 37″ W., 4.58 feet; thence, N. 50° 36′ 13″ W., 269.58 feet; thence, N. 73° 06′ 30″ W., 137.86 feet; thence, N. 19° 07′ 33″ W., 551.44 feet; thence, N. 70° 52′ 26″ E., 30.00 feet; thence, N. 19° 07′ 33″ W., 200.00 feet; thence, S. 70° 52′ 26″ W., 30.00 feet; thence, N. 19° 07′ 33″ W., 484.80 feet; thence, N. 84° 40′ 48″ E., 331.86 feet; thence, S. 30° 42′ 08″ E., 232.84 feet; thence, S. 35° 15′ 06″ E., 437.54 feet; thence, S. 71° 49′ 06″ E., 243.61 feet; thence, S. 89° 54′ 06″ E., 90.32 feet; thence, N. 86° 12′ 19″ E., 221.26 feet; thence, S. 00° 01′ 55″ E., 107.03 feet; thence, S. 89° 41′ 25″ E., 660.00 feet; thence, S. 00° 03′ 00″ W., 903.88 feet; thence, S. 00° 08′ 40″ E., 657.55 feet to the point and place of beginning. Being and intended to be "Tract 1" as shown on plat of survey entitled "Lot Line Adjustment Plat Prepared for Pueblo of Pojoaque Showing Lands within the Cuyamungue Grant, Projected Section 28, T19N, R9E, N.M.P.M. Santa Fe County, New Mexico," prepared by Edward M. Trujillo, N.M.P.L.S. #12352, dated 15 February 1996, as File #2843/DIV2, and recorded as Document No. 935,672 in Plat Book 327, Page 033, records of Santa Fe County, New Mexico. Containing 44 acres, more or less.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads and highways, for public utilities and for railroads and pipelines and any other rights-of-way or reservations of record.

Dated: September 3. 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–23896 Filed 9–13–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–160–7122–00–7509; COC–63008]

Notice of Realty Action; Non-Competitive Sale of Lands

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice: designation of public lands located in Gunnison County, Colorado as suitable for disposal.

SUMMARY: Approximately .4 acres of public land located in Gunnison County, Colorado have been determined to be suitable for disposal by sale utilizing noncompetitive procedures, at not less than the fair market value. Fair market value is to be determined by an appraisal completed by a Federal or independent appraiser using the principals contained in the "Uniform Appraisal Standards for Federal Land Acquisitions". Authority for the sale is Section 203 and Section 209 of Public Law 94–579, the Federal Land Policy and Management Act of 1976.

FOR FURTHER INFORMATION: Additional information about this sale is available for review at the Bureau of Land management, Gunnison Field Office, 216 North Colorado, Gunnison, Colorado 81230, and attention: Barry Tollefson. Comments shall be submitted by October 30, 1999 to the Gunnison Field Office Manager. The Field Office Manager will review any adverse comments, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: The following described land has been determined to be suitable for disposal by sale utilizing non-competitive procedures.

New Mexico Principal Meridian, Colorado

T. 46 N., R. 2 W.,
Sec. 23, Lot 2

Containing approximately .40 acres more or less.

This land is being offered as a direct non-competitive sale to Mr. and Mrs. J.M. Schoenmakers, as private individuals. The Bureau of Land Management has determined a direct sale is necessary as the Schoenmakers own adjoining private property. Because of an error in a private survey conducted over 25 years ago, the Schoenmakers house is located on the adjoining public lands that have been surveyed to create the above described Lot 2. The direct sale will resolve this inadvertent unauthorized occupancy of said land. The land will not be offered for sale until at least 60 days after the publication of this notice in the **Federal Register**.

In the event of a sale, the mineral interest shall be conveyed simultaneously with the surface interest. The mineral interest being offered for conveyance has no known mineral value. Upon acceptance of a direct sale offer, the purchaser shall be required to make application for conveyance of those mineral interests. Upon publication of this notice in the **Federal Register**, the land will be segregated from all forms of appropriation under the public land laws, including the general mining laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication.

The patent, when issued would contain a reservation of a right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945. Any patent would also be subject to an existing overhead power line right-of-way authorization, COC–39175, currently held by Gunnison County Electric Association, a buried telephone cable right-of-way authorization, COC–48606, currently held by U.S. West and a second buried telephone cable right-of-way authorization, COC–54329 currently held by U.S. West.

Signed: September 3, 1999.

Barry A. Tollefson,

Gunnison Field Manager.

[FR Doc. 99–23832 Filed 9–13–99; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Environmental Impact Statement, Tonto National Monument, Arizona

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the General Management Plan, Tonto National Monument.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for the General Management Plan for Tonto National Monument. This statement will be approved by the Regional Director, Intermountain Region.

The plan is needed to guide the protection and preservation of the natural and cultural environments considering a variety of interpretive and recreational visitor experiences that enhance the enjoyment and understanding of the park resources.

The effort will result in a comprehensive general management plan that encompasses preservation of natural and cultural resources, visitor use and interpretation, roads, and facilities. In cooperation with local and national interests, attention will also be given to resources outside the boundaries that affect the integrity of park resources. Alternatives to be considered include a no-action and alternatives addressing the following:

To clearly describe specific resource conditions and visitor experiences in various management units throughout the park and To identify the kinds of management, use, and development that will be appropriate to achieving and maintaining those conditions.

A scoping brochure has been prepared outlining the issues identified to date. After, September 30, 1998, copies of that information can be obtained at the general management plan website: *http://www.nps.gov/planning/tont* or from, Superintendent, Tonto National Monument, HC02, Box 4602, Roosevelt, AZ 85545. Public workshop information is also available on the website. Comments on this notice must be received by October 30, 1999.

FOR FURTHER INFORMATION CONTACT: Contact Superintendent Lee Baiza, Tonto National Monument, HC02, Box 4602, Roosevelt, AZ 85545 520–467–2241.

Dated: September 3, 1999.

John A. King,

Act. Director, Intermountain Region.

[FR Doc. 99–23956 Filed 9–13–99; 8:45 am]

BILLING CODE 4310–70–P

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 its intention to renew authority for the collection of information under 30 CFR part 800, Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs. The collection described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

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 October 14, 1999, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, 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 part 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 a request to OMB to renew approval of the collection of information in 30 CFR part 800, Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs. OSM is requesting a 3-year term of approval for this information collection activity.

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 number for this collection of information is 1029–0043, and is identified in 30 CFR 800.10.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on June 23, 1999 (64 FR 33505). 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: Bond and Insurance Requirements for surface Coal Mining and Reclamation Operations Under Regulatory Programs—30 CFR 800.

OMB Control Number: 1029–0043.

Summary: The regulations at 30 CFR part 800 primarily implement section 509 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act0, which requires that persons planning to conduct surface coal mining operations first post a performance bond to guarantee fulfillment of all reclamation obligations under the approved permit. The regulations also establish bond release requirements and procedures consistent with section 519 of the Act, liability insurance requirements pursuant to section 507(f) of the Act, and procedures for bond forfeiture should the permittee default on reclamation obligations.

Bureau Form Number: None.

Frequency of Collection: On Occasion.

Description of Respondents: Surface coal mining and reclamation permittees and State regulatory authorities.

Total Annual Responses: 16,974.

Total Annual Burden Hours: 188,736 hours.

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 OMB control number 1029–0043 in all correspondence.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

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. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington, DC 20240, or electronically to jtreleas@osmre.gov.

Dated: September 9, 1999.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 99–23856 Filed 9–13–99; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: September 15, 1999 at 2:00 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–857–858 (Preliminary) (Certain Paintbrushes from China and Indonesia)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on September 16, 1999.)
5. Inv. Nos. 104–TAA–7; AA1921–198–200; and 731–TA–3 (Review) (Sugar from the European Union; Sugar from Belgium, France, and Germany; and Sugar and Syrups from Canada)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on September 27, 1999.)
6. Outstanding action jackets: 1. Document No. EC–99–015: Approval of final report in Inv. No. 332–406 (Overview and Analysis of the Economic Impact of U.S. Sanctions with Respect to India and Pakistan).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: September 8, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–24037 Filed 9–10–99; 1:06 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–19]

William D. Levitt, D.O.; Revocation of Registration

On February 10, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to William D. Levitt, D.O. (Respondent) of Albuquerque, New Mexico. The Order to Show Cause notified Respondent of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BL1242750 pursuant to 21 U.S.C. 824(a)(2), 824(a)(3), and 824(a)(4), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that he has been convicted of a felony involving controlled substances, he is not authorized to handle controlled substances in New Mexico, and his continued registration is inconsistent with the public interest.

By letter dated March 26, 1999, Respondent, through counsel, filed a request for a hearing and the matter was docketed before Administrative Law Judge Gail A. Randall. On March 31, 1999, Judge Randall issued an Order for Prehearing Statements. In lieu of filing a prehearing statement, the Government filed a Motion for Summary Disposition on April 8, 1999, and on April 26, 1999, Respondent filed his response to the Government's motion.

On May 3, 1999, Judge Randall issued her Opinion and Recommended Decision, finding that Respondent lacks authorization to handle controlled substances in the State of New Mexico; granting the Government's Motion for Summary Disposition; and recommending that Respondent's DEA Certificate of Registration should be revoked if DEA precedent remains viable under the circumstances of this case. Neither party filed exceptions to her opinion, and on June 15, 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 finds that the Government alleged in its Motion for Summary Disposition that Respondent is currently registered with DEA to handle controlled substances in the State of New Mexico, however he is currently without state authority to handle controlled substances in that state. According to the Government, Respondent's New Mexico controlled substance registration expired on March 31, 1998, and has not been renewed. As a result, the Government contended that DEA cannot maintain Respondent's DEA registration in New Mexico.

In its response to Government's motion, Respondent argued that although his New Mexico controlled substance registration has expired, he has filed a renewal application, but the New Mexico Board has failed to Act upon the application. Respondent asserted that he has filed a civil action in a New Mexico court requesting that the court order the New Mexico Board to act upon his application. Accordingly, Respondent argued that this administrative proceeding should be stayed pending the outcome of the state proceedings. However, Respondent did not deny that he was not currently authorized to handle controlled substances in New Mexico.

As Judge Randall noted, DEA has consistently held that it does not have the statutory authority under the Controlled Substances Act to issue a registration for a practitioner unless that practitioner is authorized by the state in which it practices to handle controlled substances. Pursuant to 21 U.S.C. 823(f), DEA is authorized to register a practitioner to dispense controlled substances only if the applicant is authorized to dispense controlled substances under the laws of the state in which it conducts business. Further, pursuant to 21 U.S.C. 802(21), a practitioner is defined as "a physician * * * or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices * * * to distribute, [or] dispense * * *. controlled substance[s] in the course of professional practice."

Judge Randall further noted that DEA has also consistently held that a DEA registration may not be maintained if the applicant or registration lacks state authority to dispense controlled substances, even if such lack of state authorization was a result of the expiration of his/her state registration without further action by the state. See, e.g., Mark L. Beck, D.D.S., 64 FR 40899 (1999); Gary D. Benke, M.D., 58 FR 65734 (1993); Carlyle Balgobin, D.D.S., 58 FR 46992 (1993); Charles H. Ryan, M.D., 58 FR 14430 (1993); James H. Nickens, M.D., 57 FR 59847 (1992).

However, Judge Randall expressed concern regarding the Government's reliance on 21 U.S.C. 824(a)(3) to support the summary revocation of a registration if the registrant's state authorization has expired. This section states that:

> A registration pursuant to section 823 of this title to * * * dispense a controlled substance * * * may be suspended or revoked * * * upon a finding that the registration (3) has had his State License or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the * * * dispensing of controlled substances * * * or has had the suspension, revocation, or denial of his registration recommended by competent State authority.

21 U.S.C. 824(a)(3).

As Judge Randall noted, New Mexico has not suspended, revoked, or denied Respondent's state authority to handle controlled substances, nor is there any evidence that a competent state authority has recommended that such action be taken against Respondent's state authorization. Rather, Respondent's state controlled substance registration has expired, and the state has failed to act upon his renewal application. Judge Randall concluded that "under these circumstances, the statutory provisions do not seem to be met."

Therefore, Judge Randall stated that:

> [A]lthough contrary to current DEA precedent, I have difficulty concluding that the Government has triggered section 824(a)(3) under these circumstances. Consistent with the plain language of the statute, the more viable resolution would be to deny the Government's motion due to the state's failure to act in this case, and to order the reinstatement of the Order for Prehearing Statements. In that way, this case would continue to hearing on all alleged bases for revocation. However, such a resolution would be contrary to current DEA precedent. Accordingly, the Deputy Administrator would need to intervene and order such an outcome here.

As a result, Judge Randall found that consistent with DEA precedent, the only relevant issue is whether Respondent is authorized to handle controlled substances in New Mexico; that it is undisputed that Respondent is not currently authorized to handle controlled substances in New Mexico; and that as a result, a Motion for Summary Disposition is properly granted.

It is well settled that where there is no material question of fact involved, or when the facts are agreed upon, there is no need for a plenary, administrative hearing. Congress did not intend for administrative agencies to perform meaningless tasks. See Gilbert Ross, M.D., 61 FR 8664 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Philip E. Kirk, M.D., 48 FR 32887 (1983), aff'd

sub nom Kirk v. Mullen, 749 F.2d 297 (6th Cir. 1984).

Consequently, Judge Randall recommended that if the Deputy Administrator determines that the DEA precedent remains viable, Respondent's DEA Certificate of Registration should be revoked.

The Deputy Administrator agrees with Judge Randall that the plain language of U.S.C. 824(a)(3) states that a DEA registration may be revoked if a registrant's state authorization is revoked, suspended, or denied by competent state authority. However, this leaves DEA in a dilemma since pursuant to 21 U.S.C. 823(f), DEA can only register a practitioner if he is authorized by the state to handle controlled substances, and there is no provision in the statute to deal with situations where a practitioner is no longer authorized by the state, yet his state registration was not revoked, suspended, or denied.

Since state authorization was clearly intended to be a prerequisite to DEA registration, Congress could not have intended for DEA to maintain a registration if a registrant is no longer authorized by the state in which he practices to handle controlled substances due to the expiration of his state license. Therefore, it is reasonable for DEA to interpret that 21 U.S.C. 824(a)(3) would allow for the revocation of a DEA Certificate of Registration where, as here, a registrant's state authorization has expired.

Therefore, the Deputy Administrator concludes that Respondent is not currently authorized to handle controlled substances in New Mexico, and that consistent with DEA precedent, DEA cannot maintain his registration in that state.

Since DEA does not have the authority to maintain Respondent's DEA registration because he is not currently authorized to handle controlled substances in New Mexico, the Deputy Administrator concludes that it is unnecessary to determine whether Respondent's DEA registration should be revoked based upon the other grounds alleged in the Order to Show Cause.

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 DEA Certificate of Registration BL 1242750, previously issued to William D. Levitt, D.O., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective October 14, 1999.

Dated: August 24, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–23668 Filed 9–13–99; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 2:30 p.m., Thursday, September 16, 1999.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed Amendment to IRPS 99–1: Establishing Low-Income Member Service Requirement.
2. Two (2) Requests from Federal Credit Unions to Convert to Community Charters.
3. Request from a Corporate Federal Credit Union for a National Field of Membership Amendment.
4. Request for a Merger of Two Corporate Federal Credit Unions.
5. Proposed Rule: Amendment to Part 701, NCUA's Rules and Regulations, Share Overdraft Accounts.
6. Proposed Rule: Amendments to Parts 724 and 745, NCUA's Rules and Regulations, Individual Retirement Accounts in Puerto Rico Federal Credit Unions.
7. Board Resolution to Clarify Board Policy and Agency Procedures on Community Charter Conversions as per IRPS 99–1.

RECESS: 3:45 p.m.

TIME AND DATE: 4:00 p.m., Thursday, September 16, 1999.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).
2. Two (2) Personnel Matters. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–24036 Filed 9–10–99; 1:01 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–7580]

Notice of Consideration of Amendment Request for Construction of a Containment Cell at Fansteel Facility in Muskogee, Oklahoma and Opportunity for Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of amendment request for construction of a containment cell at Fansteel Facility in Muskogee, Oklahoma and opportunity for hearing.

The U.S. Nuclear Regulatory Commission (the NRC) is considering an amendment to Source Material License No. SMB–911, issued to Fansteel, Inc. (the licensee), for construction of a low-level, radioactive waste (LLW) disposal cell (containment cell) onsite at Fansteel's facility in Muskogee, Oklahoma. The containment cell would be used for permanent disposal of Fansteel's own LLW, i.e., contaminated soil and soil-like materials, generated from past and current metal recovery operations at the Muskogee, Oklahoma facility. The licensee requested the amendment in a letter dated August 13, 1999.

The Fansteel site is in active operation for the recovery of tantalum, niobium, scandium, uranium, thorium, and other metals of commercial value from process waste residues. Process waste residues and contaminated soil at the Fansteel site are the result of past operations involving acid digestion of foreign and domestic ores and slags containing natural uranium and thorium. The licensee is not scheduled to terminate License SMB–911 until after 10 to 12 years of additional waste residue reprocessing.

The contaminated soil onsite consists of over 0.68 million cubic feet of soil and soil-like material, e.g., building rubble, that are contaminated with natural uranium and thorium. Metal recovery operations are not feasible on this large volume of dilute, contaminated soil; therefore, these materials require disposal at an appropriate LLW disposal facility. The licensee has proposed to construct a containment cell, located at the southwest of the Fansteel property for disposal of its LLW. In accordance with the NRC's criteria for license termination (10 CFR 20.1403), the containment cell area would, after completion of disposal, be released for restricted use and be subject to long-

term monitoring, maintenance, and surveillance.

The proposed containment cell is to be buried beneath the surface and is comprised of a monolith and an engineered cover. The monolith consists of solidified, contaminated soil and rubble. The solidification process involves mixing the contaminated materials with cement and hydrated calcium chloride, forming a solid, concrete-like monolith. The monolith is to be protected from the surface environment by means of an engineered cover, comprising layers of sand, gravel, riprap (crushed stone), and soil.

Approval of the proposed action would permit Fansteel to excavate the cell area, create the waste monolith, cover the monolith, and release the site area for restricted use under 10 CFR 20.1403.

Prior to the issuance of the proposed action, the NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and the NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment or Environmental Impact Statement (if necesssary). If the proposed action is approved, it will be documented in an amendment to SMB–911.

The NRC hereby provides that this is a proceeding on an application for amendment of a license falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of the **Federal Register** notice.

The request for a hearing must be filed with the Office of Secretary either:

1. By delivery to the Docketing and Service Branch of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45am and 4:15pm, federal workdays; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemaking and Adjudication Staff.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How the interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h).

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail to:

1. The applicant, Fansteel, Inc., Number Ten Tantalum Place, Muskogee, OK, 74403–9296; Attention: Mr. John J. Hunter; and

2. The NRC staff, by delivering to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Questions with respect to this action should be referred to NRC's project manager for Fansteel, Inc., Michael Adjodha, at (301) 415–8147 or by electronic mail at mea1@nrc.gov.

For further details with respect to this action, the application for amendment request is available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 8th day of September, 1999.

Theodore S. Sherr,

Chief, Licensing and International Safeguards Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 99–23905 Filed 9–13–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Applications for Licenses To Export Nuclear Material

Pursuant to 10 CFR 110.70 (b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. Copies of the application are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW, Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the applications for licenses to export nuclear grade graphite and heavy water as defined in 10 CFR part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning the application follows.

NRC EXPORT LICENSE APPLICATION

Name of Applicant, date of application, date received, application no.	Description of items to be exported	Country of destination
Cambridge Isotope Laboratories, Inc., 08/30/99, 08/31/99, XMAT0398.	Heavy Water to Canada for upgrading.	Canada.

Dated this 8th day of September 1999, at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Janice Dunn Lee,

Director, Office of International Programs.

[FR Doc. 99–23904 Filed 9–13–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

[Docket No. C99–4; Order No. 1260]

Complaint Concerning Bulk Parcel Return Service Fee

AGENCY: Postal Rate Commission.

ACTION: Notice of a new complaint docket.

SUMMARY: The Commission is instituting a docket to consider a complaint regarding the consistency of the $1.75 fee for Bulk Parcel Return Service (BPRS) fee with postal law and policies. It is also authorizing settlement discussions and discovery. These steps will foster expeditious consideration of issues raised in the complaint.

DATES: Participants may explore the potential for settlement until September

17, 1999. If settlement discussions are not productive, complainant shall file, on or about September 17, 1999, an estimate of time needed to prepare its case. Discovery may be initiated through September 17, 1999.

ADDRESSES: Send comments regarding this document to the attention of Margaret P. Crenshaw, Secretary, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001, 202–789–6824.

SUPPLEMENTARY INFORMATION: In order no. 1260, issued September 3, 1999, the Commission denied the motion of the United States Postal Service to dismiss a complaint and instituted formal proceedings. The complaint had been filed June 9, 1999, by the Continuity Shippers Association (CSA) against the Postal Service pursuant to 39 U.S.C. 3662. *See* Complaint Concerning Charges and Practices Applied to Ancillary Services for Standard (A) Merchandise Mail (Complaint). The complaint contends that the rate charged for undeliverable merchandise returned to the sender under Bulk Parcel Return Service (BPRS) is excessive and inconsistent with the cost and non-cost criteria of the Postal Reorganization Act (Act). Id. at 1. The complaint further maintains that BPRS offered to Standard (A) mailers does not conform to title 39 policies. Ibid.

In response, the Postal Service argues that the attributable costs and mark-up for BPRS accurately reflect both the underlying costs and the special service provided to mailers by BPRS. Answer of United States Postal Service (Answer), July 9, 1999, at 4–5. The Service suggests that the complainant has reached erroneous conclusions based in part on a misunderstanding of the cost methodology of a BPRS cost study. Id. at 4. Accordingly, the Postal Service requests that the Commission dismiss the complaint. Id. at 5. Although the Postal Service has not filed a formal motion to dismiss the complaint, it does request dismissal of the complaint in its answer, primarily based on the argument that complainant's allegations of discrimination and other violations of the Act are unsupported. Answer at 5. As such, the Commission construes the Postal Service's answer as effectively a motion to dismiss the complaint. For the reasons discussed herein, the Commission denies the Service's motion and initiates formal proceedings to consider the complaint.

Background

Under the Domestic Mail Classification Schedule (DMCS), the Postal Service will return to the sender properly endorsed merchandise which has been ordered by consumers but is undeliverable as addressed. For merchandise mail pieces weighing less than one pound that are mailed at bulk Standard (A) rates, qualifying senders may choose to have the merchandise returned via Bulk Parcel Return Service (BPRS). Prior to institution of BPRS, senders could have Standard (A) merchandise returned at the Standard (A) single piece rate. BPRS was implemented on October 12, 1997, and charges the flat fee of $1.75 for each eligible Standard (A) parcel.

Substance of the Complaint

This complaint concerns the Postal Service's return service for merchandise mailed at the bulk Standard (A) rates and electing to use BPRS at the rate of $1.75 per piece. Complainant CSA alleges that the BPRS rate is excessive and in contravention of the Act. Complaint at 1. (CSA states that it is an interested party representing Standard (A) mailers who use BPRS. Complaint at 2. In its answer, the Postal Service characterizes the complainant as "one of a small subset of Standard (A) mailers with particular types of mail, mailing practices, business needs, and experience with the Postal Service, which may differ from those of other Standard (A) mailers." Answer at 2.) CSA bases its allegations in substantial part on a comparison of the BPRS rate (and cost coverage) with the generally lower Special Standard (B) rates. According to CSA, this comparison is valid as: (1) Special Standard (B) and Standard (A) parcels share several significant characteristics, including the manner in which the Postal Service processes, transports and delivers these mail pieces; (2) certain mail pieces which are eligible for the BPRS rate also are eligible to be returned to sender at the lower Special Standard (B) rates; and (3) the Special Standard (B) attributable cost was used by the Postal Service as a proxy for the BPRS attributable cost in setting the BPRS rate. Id. at 2–3. (Special Standard (B) mail need not weigh more than 16 ounces. CSA claims that many parcels that weigh less than one pound and are eligible for Special Standard (B) rates are mailed initially at bulk Standard (A) rates, but are returned to the sender under the lower, single-piece Special Standard (B) rates.) Complaint at 2.

In support of its claim that the rates charged by BPRS are not "fair and equitable" and therefore contravene 39 U.S.C. 3622(b)(1) and 3623(c)(1), CSA cites the October 1998 Postal Service cost study on BPRS. Id. at 4–5. That study, which was completed as a requirement of the original BPRS classification case (docket no. MC97–4) indicated a BPRS attributable cost of $0.93 per piece. Id. at 4. With a per piece rate of $1.75 and a per piece attributable cost of $0.93, the mark-up for BPRS would be $0.82 or 188 percent cost coverage, which CSA argues is unjustifiably higher than the current cost coverage of 106 percent for Special Standard (B) mail. Id. at 4–5.

Note: CSA alleges that, on or around January 1999, the Postal Service announced that the BPRS cost study was flawed, as the attributable cost had been determined using an incorrect methodology. Complaint at 4, n. 1. The Service further stated that application of the correct methodology yields an attributable cost of $1.07 for BPRS mail pieces. Ibid. CSA maintains that this revised attributable cost figure, which remains undocumented despite requests, is the same as that calculated for Special Standard (B) in the Docket No. R97–1 rate case, and results in a BPRS cost coverage of 164 percent. Ibid. CSA argues that the widely divergent rates imposed for the BPRS and Special Standard (B) when the costs are the same are in contravention of 39 U.S.C. 3622(b)(3), which requires that each mail type bear only its direct and indirect attributable costs, plus a reasonable allocation of institutional costs. Complaint at 5.

As relief, CSA requests that the Commission institute proceedings to review the adequacy and accuracy of the cost studies underlying the BPRS rate and to consider whether the BPRS rate properly reflects the service's costs and its value to the sender and recipient. Id. at 5–6; CSA's Request for Permission to File a Response Opposing the Postal Service's Suggestion Not to Hold Hearings on the Complaint Regarding the Charges for the BPRS (CSA Opposition), August 18, 1999, at 2.

Postal Service Answer and Motion To Dismiss

The Postal Service's answer denies complainant's allegations that the BPRS rate violates the Act, and also disputes the legitimacy of CSA's comparison of BPRS and Special Standard (B) services. Answer of United States Postal Service (Answer) at 1–4. The answer further asserts that the complaint should be dismissed as complainant: (1) Misunderstands the original BPRS cost study's methodology, which ultimately results in the erroneous conclusion that the costs of the two subclasses are the same; (2) makes the incorrect assumption that BPRS and Special Standard (B) cost coverages should be

equivalent, which ignores the differences between the two mail types and the correct application of the non-cost factors of the Act; and (3) fails to consider "the import of differences between the Postal Service's volume variable analysis and the Commission's attributable cost methodology with respect to the BPRS fee," where a recalculation of the October cost study using Commission R97–1 methodology results in a cost coverage very close to the Commission's original recommended figure (163.5 versus 156 percent). Id. at 4–5.

The answer presents arguments against the validity of complainant's claim, and requests that the Commission dismiss the complaint. The Commission construes the answer to include a Postal Service motion to dismiss the Complaint, and accepts the responsive CSA Opposition.

Statutory Authority To Consider Complaint and Procedural Process

Section 3662 of title 39 of the United States Code provides in relevant part:

> Interested parties who believe the Postal Service is charging rates which do not conform to the policies set out in this title * * * may lodge a complaint with the Postal Rate Commission in such form and in such manner as it may prescribe. The Commission may in its discretion hold hearings on such complaint.

Section 3001.82 of the Commission's regulations, which addresses the scope and nature of complaints, indicates that the Commission shall entertain complaints which clearly raise an issue concerning whether or not rates or services contravene the policies of the Postal Reorganization Act.

In the instant docket, CSA has filed a complaint alleging that the current BPRS rate contravenes title 39 policies. While the Postal Service offers varying explanations for why complainant is mistaken in its assertion, the Service has failed to provide adequate justification for dismissal of the complaint without hearings. Accordingly, the Commission will consider the complaint, although it notes that the recent establishment of the BPRS rate through a settlement agreed to by CSA, and the expectation that an omnibus rate request will be submitted in the near future, would seem to provide a situation where it may be possible for the parties to pursue resolution and settlement of the complaint through informal procedures, as provided for in rule 85 of the Commission's rules of practice.

The Commission will allow until September 17, 1999 for participants to explore the potential for settlement. Discovery may be initiated during this period. If settlement discussions are not productive, complainant is directed to provide a statement, on or about September 17, 1999, estimating the amount of time it will require to develop and file a case-in-chief. A procedural schedule and special rules of practice, if any, will be considered after this estimate has been submitted.

Directives

Accordingly, the Commission orders that proceedings in conformity with 39 U.S.C. 3624 shall be held in this matter. It also denies the Service's suggestion (included within the answer of United States Postal Service, filed on July 9, 1999) that the complaint should be dismissed. The Commission will sit *en banc* in this proceeding. Ted P. Gerarden, director of the Commission's office of the consumer advocate, is designated to represent the interests of the general public in docket no. C99–4. Mr. Gerarden is also charged with acting as settlement coordinator, and in this capacity shall encourage parties to reach settlement on this complaint, as provided for under rule 85 of the Commission's rules of practice and procedure. Complainant shall provide a statement, on or about September 17, 1999, estimating the amount of time it will require to develop and file a direct case in this proceeding. The Commission also directs the Secretary of the Commission to arrange for publication of this notice and order in the **Federal Register** in a manner consistent with applicable requirements.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 99–23674 Filed 9–13–99; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Pension Plan Reports.

(2) *Form(s) submitted:* G–88p, G–88r, G–88r.1.

(3) *OMB Number:* 3220–0089.

(4) *Expiration date of current OMB clearance:* 11/30/1999.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Business or other-for-profit.

(7) *Estimated annual number of respondents:* 500.

(8) *Total annual responses:* 2,240.

(9) *Total annual reporting hours:* 300.

(10) *Collection description:* The Railroad Retirement Act provides for payment of a supplemental annuity to a qualified railroad retirement annuitant. The collection obtains information from the annuitant's employer to determine (a) the existence of a railroad employer pension plans and whether such plans, if they exist, require a reduction to supplemental annuities paid to the employer's former employees and (b) the amount of supplemental annuities due railroad employees.

Additional Information or Comments

Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Laurie Schack (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–23835 Filed 9–13–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41838; File No. ATS–EXEMPT–99–01]

Notice of Order Granting BondNet an Exemption From Compliance With Regulation ATS Until October 21, 1999

September 7, 1999.

On May 7, 1999 the Commission issued an Order granting BondNet, an alternative trading system operated as a division of the Bank of New York, an exemption from Regulation ATS until October 21, 1999 pursuant to Rule 301(a)(5) of the Securities Exchange Act

of 1934. The Order is attached as Exhibit A.

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

SECURITIES AND EXCHANGE COMMISSION

[File No. ATS–EXEMPT–99–01]

May 7, 1999.

Order Granting BondNet an Exemption From Compliance With Regulation ATS Until October 21, 1999

BondNet, an alternative trading system operated as a division of the Bank of New York, filed an application for a temporary exemption from Regulations ATS pursuant to Rule 301(a)(5) of the Securities Exchange Act of 1934 ("Exchange Act").

Under the new regulatory framework applicable to exchanges and alternative trading systems, BondNet is required to register as an exchange, or register as a broker-dealer and comply with Regulation ATS. The Commission notes that the Bank of New York is currently operating subject solely to regulation by banking authorities, and consequently, BondNet must undertake the registration process with the Commission and the National Association of Securities Dealers, Inc. to comply with Regulation ATS. Under Rule 301(a)(5) of the Exchange Act, the Commission may, by order, grant an exemption from the requirements of Regulation ATS after determining that such an order is consistent with the public interest, the protection of investors, and the removal impediments to, and perfection of the mechanisms of, a national market system.

The Commission has reviewed BondNet's application for a temporary exemption from Regulation ATS to allow it time to fully comply with that rule's requirements. The Commission finds that such an exemption is consistent with the public interest, the protection of investors, and the removal of impediments to, and perfection of the mechanisms of, a national market system and has determined to grant BondNet an exemption from Regulation ATS until October 21, 1999.

The Commission finds good cause to grant BondNet's request for confidential treatment for 120 days from the date of issuance of this Order.

It is therefore ordered, pursuant to Rule 301(a)(5) of the Exchange Act, that BondNet's exemption from Regulation ATS until October 21, 1999, be granted.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–23826 Filed 9–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23998; No. 812–11512]

Ohio National Life Insurance Company, et al.; Notice of Application

September 8, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicants seek an order approving the substitution of: (a) Shares of Small Cap Growth Portfolio of Ohio National Fund, Inc. ("ON Small Cap Growth Portfolio") for shares of Montgomery Variable Series: Small Cap Opportunities Fund ("Montgomery Small Cap Fund"); and (b) shares of Lazard Retirement Emerging Markets Portfolio ("Lazard Emerging Markets Portfolio") for shares of Montgomery Variable Series: Emerging Markets Fund ("Montgomery Emerging Markets Fund").

APPLICANTS: The Ohio National Life Insurance Company ("Ohio National"), Ohio National Variable Account A ("Variable Account A"), Ohio National Life Assurance Corporation ("ONLAC"), and Ohio National Variable Account R ("Variable Account R").

FILING DATES: The application was filed on February 17, 1999, and amended and restated on July 26, 1999, and August 27, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission no later then 5:30 p.m. on September 29, 1999, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Ohio National Life Insurance Company, One Financial Way, Cincinnati, Ohio 45242.

FOR FURTHER INFORMATION CONTACT: Paul G. Cellupica, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel (202) 942–8090).

Applicants' Representations

1. Ohio National was organized as a stock company under the laws of Ohio in 1909. It issues annuities in 47 states, the District of Columbia and Puerto Rico. ONLAC, a wholly-owned subsidiary of Ohio National, is a stock life insurance company organized under the laws of Ohio in 1979.

2. Variable Account A was established in 1969 by Ohio National as a separate account under Ohio law for the purpose of funding variable annuity contracts issued by Ohio National. Five of the variable annuity contracts are affected by the application ("VA Contracts"). Variable Account R was established in 1985 for the purpose of funding variable life insurance contracts issued by ONLAC. One of the variable life insurance contracts is affected by this application ("VLI Contract," collectively with the VA Contracts, the "Contracts"). Variable Account A and Variable Account R are registered as unit investment trusts under the Act.

3. Purchase payments for the Contracts are allocated to one or more subaccounts of Variable Account A or Variable Account R ("Subaccounts"). The Contracts permit allocations of accumulation value to up to 10 of the available Subaccounts that invest in specific investment portfolios ("Portfolios") of Underlying mutual funds ("Underlying Funds").

4. The Contracts permit transfers of accumulation value from one Subaccount to another at any time prior to annuitization. No sales charge applies to a transfer of accumulation value among the Subaccounts. For three of the VA Contracts, the first transfer in any calendar month is free; each additional transfer in a calendar month is subject to a $10 charge. For the two remaining VA Contracts and the VLI Contract, the first four transfers during each contract year are free; each additional transfer is subject to a $3 charge. Although there currently is no limit on the number of transfers that may be made, the Contracts permit Ohio National or ONLAC, as applicable, to limit the number, frequency, method or amount of transfers. Transfers from any Subaccount on any one day may be

limited to 1% of the previous day's total net assets of the Portfolio if Ohio National, ONLAC or the Underlying Fund believe that the Portfolio might otherwise be damaged.

5. Applicants propose the following substitutions: (a) The substitution of shares of ON Small Cap Growth Portfolio for shares of Montgomery Small Cap Fund and (b) the substitution of shares of Lazard Emerging Markets Portfolio for shares of Montgomery Emerging Markets Fund.

6. Montgomery Small Cap Fund is a separate investment portfolio of The Montgomery Funds III ("Montgomery Funds"), an open-end management investment company registered under the Act, and is currently an investment option under three of the VA Contracts. Montgomery Small Cap Fund is managed by Montgomery Asset Management, LLC ("Montgomery"), a subsidiary of Commerzbank AG.

7. Montgomery Small Cap Fund's investment objective is to seek capital appreciation by investing primarily in equity securities, usually common stock, of domestic companies having market capitalizations of less than $1 billion. The expense ratio of Montgomery Small Cap Fund for 1998 was 1.50%. Absent voluntary fee waivers by Montgomery, that expense ratio would have been 3.71%. Absent voluntary fee waivers by Montgomery, that expense ratio would have been 3.71%. The total return of Montgomery Small Cap Fund (exclusive of Contract or Subaccount charges) was −7.20% for the period since its inception on May 1, 1998, through December 31, 1998.

8. Montgomery and Montgomery Funds intend to cease offering shares of Montgomery Small Cap Fund due to the small amount of assets and the corresponding absence of economies of scale. Montgomery has indicated that the small size of Montgomery Small Cap Fund makes it difficult to manage successfully and makes it difficult to comply with diversification requirements applicable to variable insurance products under the Internal Revenue Code of 1986, as amended, and to mutual funds under the Act. On May 1, 1999, Ohio National and ONLAC ceased permitting allocations by new contractowners of accumulation value to the Subaccounts that invest in Montgomery Small Cap Fund.

9. ON Small Cap Growth Portfolio is another investment option currently available under the VA Contracts which also offer Montgomery Small Cap Fund. The investment adviser of ON Small Cap Growth Portfolio is Ohio National Investments, Inc. The sub-adviser that manages the investments of ON Small Cap Growth Portfolio is Robertson Stephens Investment Management, L.P.

10. The investment objective of ON Small Cap Growth Portfolio is capital appreciation. ON Small Cap Growth Portfolio invests in an actively managed portfolio of equity securities, principally common stocks, of companies that in the opinion of its sub-adviser have the potential, based on superior products or services, operating characteristics, and financing capabilities, for more rapid growth than the over-all economy. Up to 30% of its assets may be invested in foreign securities. The expense ratio of ON Small Cap Growth Portfolio for 1998 was 1.30%. The total return of ON Small Cap Growth Portfolio (exclusive of Contract or Subaccount charges) was 4.62% for the period since its inception on May 1, 1998, through December 31, 1998.

11. Montgomery Emerging Markets Fund (collectively with Montgomery Small Cap Fund, the "Eliminated Portfolios") is a separate investment portfolio of Montgomery Funds and is currently an investment option under the Contracts. Montgomery Emerging Markets Fund is managed by Montgomery.

12. Montgomery Emerging Markets Fund's investment objective is to seek capital appreciation by investing primarily in equity securities of companies in countries having economies and markets generally considered by the World Bank or the United Nations to be emerging or developing. The expense ratio of Montgomery Emerging Markets Fund for 1998 was 1.75%. Absent voluntary deferral of fees and absorption of expenses by Montgomery, that expense ratio would have been 1.80%. The total return of Montgomery Emerging Markets Fund (exclusive of Contract or Subaccount charges) was −37.53% for the year ended December 31, 1998, and the average annual total return since its inception on February 2, 1996, through December 31, 1998, was −13.15%.

13. On May 1, 1999, Ohio National and ONLAC ceased permitting allocations by new contractowners of accumulation value to the Subaccounts that invest in Montgomery Emerging Markets Fund.

14. Lazard Emerging Markets Portfolio (collectively with ON Small Cap Growth Portfolio, the "Substitute Portfolios") is a separate investment portfolio of Lazard Retirement Series, Inc., an open-end management investment company registered under the Act. The Lazard Emerging Markets Portfolio has been available under the Contracts since May 1, 1999. Lazard Emerging Markets Portfolio is managed by Lazard Asset Management ("Lazard"), a division of Lazard Freres & Co. LLC.

15. Lazard Emerging Market Portfolio's investment objective is to seek capital appreciation. It invests primarily in equity securities of non-United States issuers located, or doing significant business, in emerging market countries that Lazard considers inexpensively priced relative to the return on total capital or equity. The expense ratio of Lazard Emerging Markets Portfolio for 1998 was 1.80%. Absent voluntary expense reductions, that expense ratio would have been 14.37%. The total return of Lazard Emerging Markets Portfolio for the year ended December 31, 1998 was −22.85%. Its average annual total return since its inception on November 4, 1997, through December 31, 1998, was −26.48%.

16. Applicants represent that each substitution will take place at the relative asset values determined on the date of the substitution in accordance with Section 22 of the Act and Rule 22c–1 thereunder. There will be no financial impact to any contractowner. Each substitution will be effected by having each Subaccount that invests in the Eliminated Portfolio redeem its shares of the Eliminated Portfolio at the net asset value calculated on the date of the substitutions and purchase shares of the substitute Portfolio at net asset value on the same date.

17. Immediately following the substitutions, Ohio National and ONLAC will combine: (a) The Montgomery Small Cap and ON Small Cap Growth Subaccounts that each hold shares of the ON Small Cap Growth Portfolio after the substitution; and (b) the Montgomery Emerging Markets and Lazard Emerging Markets Subaccounts that each hold shares of the Lazard Emerging Markets Portfolios after the substitution. Ohio National and ONLAC will reflect this treatment in disclosure documents for Variable Account A and Variable Account R, respectively, and in the financial statements and Form N–SAR annual report filed by Variable Account A and Variable Account R.

18. Applicants represent that the proposed substitutions were described in supplements to the prospectus for the Contracts ("Stickers") filed with the Commission and mailed to contractowners. The Stickers gave contractowners notice of the substitutions and describe the reasons for engaging in the substitutions. The Stickers also informed contractowners that no additional amounts may be allocated to the Subaccounts that invest in the Eliminated Portfolios on or after the date of substitution. In addition, the

Stickers informed affected contractowners that they will have one opportunity to reallocate accumulation value:

(a) Prior to the substitutions, from the Subaccounts investing in the Eliminated Portfolios; or

(b) For 30 days after the substitutions, from the Subaccounts investing in the Substitute Funds, to Subaccounts investing in other Portfolios available under the Contracts, without the imposition of any transfer charge or limitation.

19. A transfer out of the Subaccounts investing in the Eliminated Portfolios from the date of the notice through the date of the substitutions will not: (a) Be assessed a transfer fee; (b) count as a free transfer; or (c) be subject to any limitation relating to transfers that result in more than a reduction of an Underlying Fund's assets by 1% or more.

20. Similarly, for a period of 30 days after the substitutions, a transfer out of a Subaccount that invests in a Substitute Portfolio of accumulation value moved to that Subaccount as a result of the substitutions will not: (a) Be assessed a transfer fee; (b) count as a free transfer; or (c) be subject to any limitation relating to transfers that result in more than a reduction of an Underlying Fund's assets by 1% or more.

21. Applicants represent that the prospectuses for the Contracts reflect the substitutions. Each contractowner will have been provided prospectuses for the Substitute Portfolios before the substitutions. Within five days after the substitutions, Ohio National and ONLAC will send to contractowners written confirmation that the substitutions have occurred.

22. Applicants represent that Ohio National and ONLAC will pay all fees and expenses of the substitutions, including legal, accounting, brokerage commissions and other fees and expenses; none will be borne by contractowners. Affected contractowners will not incur any fees or charges as a result of the substitutions, nor will their rights or the obligations of Ohio National or ONLAC under the Contracts be altered in any way. The proposed substitutions will not cause the fees and charges under the Contracts currently being paid by contractowners to be greater after the substitutions than before the substitutions.

23. Applicants state that their request satisfies the standards for relief of Section 26(b) because:

(a) The substitutions involve Portfolios with substantially similar investment objectives;

(b) After each substitution, affected contractowners will be invested in a Portfolio whose performance has been better on a historical basis; and

(c) After each substitution affected contractowners will be invested in a Portfolio whose expenses have been less on a historical basis.

Applicants' Legal Analysis

1. Applicants request an order pursuant to Section 26(b) of the Act approving the substitutions. Section 26(b) of the Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission will approve such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants assert that the purposes, terms and conditions of the substitutions are consistent with the principles and purposes of section 26(b) and do not entail any of the abuses that section 26(b) is designed to prevent. Applicants represent that substitution is an appropriate solution to the unfavorable relative performance and higher relative expenses of the Portfolios to be eliminated. Applicants believe that each Substitute Portfolio will better serve contractowner interests because its performance has been significantly better than the performance of, and its expenses have been lower than the expenses of, the corresponding Eliminated Portfolio. Moreover, Ohio National and ONLAC have each reserved this right in the Contracts and disclosed this reserved right in the prospectuses for the Contracts.

3. Applicants represent that the substitutions will not result in the type of costly forced redemption that section 26(b) was intended to guard against and, for the following reasons, are consistent with the protection of investors and the purposes fairly intended by the Act:

(a) Each Substitute Portfolio has investment objectives, policies and restrictions substantially similar to those of the corresponding Eliminated Portfolio, and permits contractowners continuity of their investment objectives and expectations.

(b) The costs of the substitutions will be borne by Ohio National and ONLAC and will not be borne by contractowners. No charges will be assessed to effect the substitutions.

(c) The substitutions will, in all cases, be at net asset values of the respective shares, without the imposition of any transfer or similar charge and with no change in the amount of any contractowner's accumulation value.

(d) The substitutions will not cause the fees and charges under the Contracts currently being paid by contractowners to be greater after the substitutions than before the substitutions.

(e) The contractowners will be given notice prior to the substitutions and will have an opportunity to reallocate accumulation value among other available Subaccounts without the imposition of any transfer charge or limitation. No transfer:

(i) From a Subaccount investing in an Eliminated Portfolio from the date of the notice through the date of the substitutions, or

(ii) For 30 days after the substitutions, of accumulation value that had been transferred to a Subaccount that invests in a Substitute Portfolio as a result of the substitutions, will count as one of the limited number of transfers permitted in a contract year free of charge.

(f) Within five days after the substitutions, Ohio National and ONLAC will send to contractowners written confirmation that the substitutions have occurred.

(g) The substitutions will in no way alter the insurance benefits to contractowners or the contractual obligations of Ohio National or ONLAC.

(h) The substitutions will in no way alter the tax benefits to contractowners.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the substitutions should be granted.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23888 Filed 9–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24003; No. 812–11688]

Select Ten Plus Fund, LLC

September 9, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicant seeks an order pursuant to Section 6(c) of the Act exempting Applicant from the provisions of Section 12(d)(3) of the Act to the extent necessary to permit Applicant's portfolios to invest up to 10% of their total assets in securities of issuers that derive more than 15% of their gross revenues from securities related activities.

APPLICANT: Select Ten Plus Fund, LLC.

FILING DATE: The application was filed on July 12, 1999, and amended on September 9, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicant with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on September 29, 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 requester'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 Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicant, 515 West Market Street, Louisville, Kentucky 40202–3319.

FOR FURTHER INFORMATION CONTACT: Ann L. Vlcek, Senior Counsel, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0102, (202) 942–8090.

Applicant's Representations

1. Applicant is a registered, open-end management investment company (File No. 811–09179). It consists of four non-diversified investment portfolios, Select Ten Plus Portfolio—March, Select Ten Plus Portfolio—June, Select Ten Plus Portfolio—September, and Select Ten Plus Portfolio—December (the "Portfolios"). Applicant was organized under the laws of Delaware as a limited liability company on September 30, 1998. Under Delaware law, a limited liability company does not issue shares of stock. Instead, ownership rights are contained in membership interests. Each membership interest of Applicant ("Interest") represents an undivided interest in the stocks held in one of the Portfolios.

2. The Interests are not offered directly to the public. The only direct owner of the Interests is National Integrity Life Insurance Company ("National Integrity") through its separate accounts. Those of National Integrity's variable annuity owners who have contract values allocated to any of the Portfolios have indirect beneficial rights in the Interests and have the right to instruct National Integrity with regard to how it votes the Interests that it holds in its separate accounts.

3. Integrity Capital Advisors, Inc. (the "Adviser"), a wholly owned subsidiary of ARM Financial Group, Inc., is Applicant's investment adviser. National Asset Management Corporation ("National Asset") serves as sub-adviser to each Portfolio.

4. Applicant states that each of the Portfolios invests contributions on the last business day of the month for which the Portfolio is named (the "Investment Date"). Applicant states that each Portfolio invests approximately 10% of its assets in the common stock of each of the ten companies in the Dow Jones Industrial Average (the "DJIA") having the highest dividend yield as of the close of business on the business day prior to the Investment Date. These ten companies are popularly known as the "Dogs of the Dow."

5. The DJIA consists of 30 stocks selected by Dow Jones & Company, Inc. as representative of the New York Stock Exchange and of American industry. Applicant states that Dow Jones & Company Inc. is not affiliated with Applicant and has not participated, and will not participate, in any way in the creation or management of the Portfolios or the selection of the stocks included in the Portfolios.

6. Applicant states that the Portfolios seek total return by investing in shares of the ten highest dividend yielding common stocks in the DJIA in equal weights and holding them for twelve months. The Portfolios may or may not achieve that objective. At the end of a Portfolio's twelve-month period, the Portfolio will restructure its investment portfolio to invest in the ten stocks with the highest current dividend yield in the DJIA for another twelve months. The dividend yield for each stock is calculated by annualizing the last quarterly or semi-annual ordinary dividend distributed on that stock and dividing the result by the market value of that stock as of the close of the New York Stock Exchange on the business day prior to the Investment Date. This yield is historical and there is no assurance that any dividends will be declared or paid in the future on the stocks in the Portfolios.

7. Applicant states that Interests may be purchased by separate accounts of National Integrity on the Investment Date. Applicant states that the weights of the individual stock positions are not rebalanced during a Portfolio's twelve-month holding period nor are additional contributions accepted. On the day a dividend from a stock in a Portfolio's investment portfolio is received it is reinvested in the form of additional shares of the stock. Interests may be redeemed at any time. Upon receipt of a redemption request, approximately equal dollar amounts of shares of each of the ten stocks are sold, such that the total dollar amount sold equals the amount of the redemption. Applicant states that the ten stocks held in a Portfolio are not expected to reflect the entire index nor are the prices of Interests intended to parallel or correlate with movements in the DJIA.

8. Applicant states that the Adviser and National Asset will try, to the extent practicable, to maintain a minimum cash position at all times. Applicant represents that normally the only cash items held will represent amounts expected to be deducted as charges and amounts too small to purchase additional proportionate round lots of the ten stocks.

9. Applicant states that it is not a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended (the "Code"). However, as a limited liability company whose interests are sold only to National Integrity, Applicant states that it is disregarded as an entity for purposes of federal income taxation. Applicant states that it does not pay federal income tax on its interest income, dividend income or capital gains. Applicant represents that instead, National Integrity, through its separate accounts, is treated as owning the assets of Applicant directly and its tax obligations thereon are computed pursuant to Subchapter L of the Code (which governs the taxation of insurance companies). Applicant states that, under current tax law, interest income, dividend income and capital gains of Applicant are not currently taxable to National Integrity or to contract owners when left to accumulate within a variable annuity contract.

10. Section 817(h) of the Code provides that in order for a variable contract that is based on a segregated asset account to qualify as an annuity contract under the Code, the investments made by that account must

be "adequately diversified" in accordance with Treasury regulations.

11. Applicant states that each Portfolio must comply with the Section 817(h) diversification requirements. Therefore, Applicant states that the Adviser and National Asset may depart from the Portfolios' investment strategy, if necessary, in order to satisfy these Section 817(h) diversification requirements. Applicant represents that, under all circumstances, except in order to meet Section 817(h) diversification requirements, the common stocks purchased for each Portfolio are chosen solely according to the formula described above and are not based on the research opinions or buy or sell recommendations of the Adviser or National Asset. Applicant asserts that neither the Adviser nor National Asset has any discretion as to which common stocks are purchased. Applicant states that securities purchased for each Portfolio may include securities of issuers in the DJIA that derived more than 15% of their gross revenues in their most recent fiscal year from securities related activities.

Applicant's Legal Analysis

1. Section 12(d)(3) of the Act prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter or investment adviser, with exceptions not relevant here. Rule 12d3–1 under the Act exempts from Section 12(d)(3) purchases by an investment company of securities of an issuer, except its own investment adviser, promoter or principal underwriter or their affiliates, that derived more than 15% of its gross revenues in its most recent fiscal year from securities related activities, provided that, among other things, immediately after any such acquisition the acquiring company has invested not more than 5% of the value of its total assets in the securities of the issuer. Applicant represents that each of the Portfolios undertakes to comply with all of the requirements of Rule 12d3–1, except the condition in subparagraph (b)(3) prohibiting an investment company from investing more than 5% of the value of its total assets in securities of a securities related issuer.

2. Section 6(c) of the Act provides that the Commission by order upon application may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes thereof, from any provision of the Act or any rule or regulation thereunder, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicant states that Section 12(d)(3) was intended (i) to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses, (ii) to prevent potential conflicts of interest, (iii) to eliminate certain reciprocal practices between investment companies and securities related businesses, and (iv) to ensure that investment companies maintain adequate liquidity in their portfolios.

4. Applicant states that a potential conflict could occur, for example, if an investment company purchased securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit. Applicant argues that this concern does not arise in this situation. Applicant represents that, generally, none of Applicant, the Adviser or National Asset has discretion in choosing the common stock or amount purchased. Applicant states that the stock must first be included in the DJIA (which is unaffiliated with Applicant, the Adviser or National Asset), and must also qualify as that of one of the ten companies in the DJIA that have the highest dividend yield as of the close of business on the business day prior to the Investment Date.

5. Applicant states that identical exemptive relief from Section 12(d)(3) has been granted to open-end management investment companies with the same limited liability company structure as Applicant. Applicant also asserts that identical exemptive relief from Section 12(d)(3) has been granted to management investment companies with a different structure that also involves investment options underlying variable annuities. In addition, Applicant states that Section 12(d)(3) relief has been granted to unit investment trusts with no discretion to choose the portfolio securities or the amount purchased, but with discretion to sell portfolio securities to the extent necessary to meet redemptions.

6. Applicant states that the Adviser and National Asset are obligated to follow the investment formula described above as nearly as practicable. Applicant represents that, like prior applicants for Section 12(d)(3) relief, securities purchased for each Portfolio are chosen with respect to the specified formula. Applicant states that the only time any deviation from the formula would be permitted would be where circumstances were such that the investments of a particular Portfolio would fail to be "adequately diversified" under the Section 817(h) diversification requirements, and would thus cause the annuity contracts to fail to qualify as an annuity contract under the Code. Applicant argues that the likelihood of this exception arising is extremely remote. In such a situation, Applicant states that it must be permitted to deviate from the investment strategy in order to meet the Section 817(h) diversification requirements and then only to the extent necessary to do so. Applicant asserts that this limited discretion does not raise the concerns that Section 12(d)(3) is aimed at since it does not give rise to the potential conflicts of interest or to the possible reciprocal practices between investment companies and securities related businesses that Section 12(d)(3) is designed to prevent.

7. Applicant states that the liquidity of a Portfolio is not a concern here since each common stock selected is a component of the DJIA, listed on the New York Stock Exchange, and among the most actively traded securities in the United States.

8. In addition, Applicant asserts that the effect of a Portfolio's purchase of the stock of parents of broker-dealers would be de minimis. Applicant states that the common stocks of securities related issuers represented in the DJIA are widely held and have active markets. Applicant states that potential purchases by a Portfolio represent an insignificant amount of the outstanding common stock and trading volume of any of these issuers. Therefore, Applicant argues that it is almost inconceivable that these purchases would have any significant effect on the market value of any of these securities related issuers.

9. Applicant states that another possible conflict of interest is where broker-dealers may be influenced to recommend certain investment company funds which invest in the stock of the broker-dealer or any of its affiliates. Applicant represents that, because of the large market capitalization of the DJIA issuers and the small portion of these issuers' common stock and trading volume that are purchased by a Portfolio, it is extremely unlikely that any advice offered by a broker-dealer to a customer as to which investment company to invest in would be influenced by the possibility that a Portfolio is invested in the broker-dealer or a parent thereof.

10. Finally, Applicant states that another potential conflict of interest could occur if an investment company directed brokerage to an affiliated broker-dealer in which the company has invested to enhance the broker-dealer's

profitability or to assist it during financial difficulty, even though the broker-dealer may not offer the best price and execution. To preclude this type of conflict, Applicant agrees, as a condition of this application, that no company whose stock is held in any Portfolio, nor any affiliate of such a company, will act as broker or dealer for any Portfolio in the purchase or sale of any security.

11. Applicant represents that the relief requested is substantially the same as that previously granted in other applications. Applicant represents that the relief requested is consistent with the standards set forth in Section 6(c) of the Act.

Applicant's Conditions

Applicant agrees that any order granting the requested relief from Section 12(d)(3) of the Act shall be subject to the following conditions:

1. The common stock is included in the DJIA as of the business day prior to the investment Date;

2. The common stock represents one of the ten companies in the DJIA that have the highest dividend yield as of the close of business on the business day prior to the Investment Date;

3. As of the Investment Date, the value of the common stock of each securities related issuer represents approximately 10% of the value of any Portfolio's total assets, but in no event more than 10.5% of the value of the Portfolio's total assets; and

4. No company whose stock is held in any Portfolio, nor any affiliate thereof, will act as broker or dealer for any Portfolio in the purchase or sale of any security for that Portfolio.

Conclusion

For the reasons summarized above, Applicant asserts that granting the requested relief is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23953 Filed 9–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of September 13, 1999.

A closed meeting will be held on Thursday, September 16, 1999, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, September 16, 1999, at 11:00 a.m. will be:

Institution and settlement of injunctive actions

Institution and settlement of administrative proceedings of an enforcement nature

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: September 9, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–24016 Filed 9–10–99; 12:30 pm]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegation of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Chapter S2 covers the Deputy Commissioner, Operations (DCO). Notice is hereby given that Chapter S2, The Office of the Deputy Commissioner, Operations and Subchapter S2D, the Office of the Regional Commissioner, and Subchapter S2R, Office of Central Operations are being amended to reflect responsibility for assisting the Office of Hearings and Appeals in providing support in processing backlogged cases. This revision also reflects responsibility for assisting State Disability Determination Services in providing support regarding disability claims backlogs. The changes are as follows:

Section S2.00 The Office of the Deputy Commissioner, Operations—(Mission)

Amend as follows:

The Office of the Deputy Commissioner, Operations (ODCO) directs and manages central office and geographically dispersed operations installations. It oversees regional operating program, technical, assessment and program management activities. It directs studies and actions to improve the operational effectiveness and efficiency of its components. It promotes systems and operational integration and defines user needs in the strategic planning process. It determines automation support needs for Operations components. This Office defines user concerns in the development of operational and programmatic specifications for new and modified systems, including the evaluation and implementation phases. When mutually agreed, provides support to the Office of Hearings and Appeals and/or specific State Disability Determination Services.

Section S2.20 The Office of the Deputy Commissioner, Operations—(Functions)

Amend as follows:

D. The Office of Central Operations (OCO) (S2R) provides executive direction and leadership for the nationwide establishment and maintenance of basic records supporting Social Security programs, foreign claims operations and OCO disability operations. It manages centralized records operations and a stand alone data operations center (DOC). The Office receives and processes Social Security earnings reports from private and governmental employers and adjustments or corrections to posted earnings. The Office maintains Social Security enumeration and earnings records in various media and conducts an ongoing data exchange with the Treasury Department to compile and verify individual earnings data. It directs the OCO processing of claims under disability benefits programs and maintains beneficiary rolls. It directs the OCO initial adjudication and reconsideration of disability claims excluded from State agency jurisdiction and directs the OCO authorization of disability and auxiliary claims not authorized by Field Offices (FOs) at the initial, reconsideration and appeal

levels. It determines whether and when eligibility or payments should be terminated, suspended, continued, increased or reduced in amount. It recovers or waives recovery of amounts incorrectly paid to beneficiaries. It directs the development, adjudication and authorization of payments or disallowance of claims for Retirement, Survivors and Disability Insurance (RSDI) benefits filed by person in foreign countries; determines eligibility for Medicare on related claims; and determines entitlement to benefits based on international Social Security agreements. It serves as liaison on operational issues which affect the administration of the United States Social Security program abroad, with the Department of State, other Federal agencies, agencies of foreign governments and private organizations. When arranged by mutual agreement, assists the Office of Hearings and appeals in processing case backlogs including writing draft decisions on cases decided by Administrative Law Judges. Also, assists State Disability Determination Services by developing and adjudicating backlogged disability claims as arranged by mutual agreement.

Section S2D.00 The Office of the Regional Commissioner—(Mission)

Amend as follows:

The Office of the Regional Commissioner (ORC) serves as the principal SSA component at the regional level and assures effective SSA interaction with other Federal agencies in the regions; State welfare agencies; State Disability Determination Services (DDSs); and other regional and local organizations. The office provides leadership for regional planning, implementation and evaluation of Agency goals and objectives and is accountable for the delivery of service in the administration of SSA's Retirement, Survivors and Disability (RSDI) programs, the Black Lung Benefits program and the Supplemental Security Income (SSI) program. It issues regional operating policy and procedures for these programs and evaluates program effectiveness. It implements national operational and management plans for providing SSA service to the public and directs a region-wide network of field offices (FOs), Teleservice Centers (TSCs) and where present, Processing Centers (PCs). It facilitates integration and coordination of SSA programs with other Federal and State programs in the region. It provides overall management direction for the provision of personnel services and administrative priorities and issues policy directives consistent with national program objectives, operational requirements and systems and implements a regional SSA public affairs program. The office maintains a broad overview of administrative operations of the regional offices (ROs) of SSA's Office of Hearings and Appeals and a data operations center to ensure effective coordination of SSA activities at the regional level. When mutually agreed, provides support to the Office of Hearings and Appeals and/or specific State Disability Determination Services.

Section S2D.20 The Office of the Regional Commissioner—(Functions)

G. The Office of the Assistant Regional Commissioner for Processing Center Operations (S2D25,35,45,55,75,95) (located in the six regions containing PCs)

Add:

8. When arranged by mutual agreement, assists the Office of Hearings and Appeals in processing case backlogs including writing draft decisions for cases decided by Administrative Law Judges. Also, assists State Disability Determination Services by developing and adjudicating backlogged disability claims as arranged by mutual agreement.

Section S2R.00 Office of Central Operations—(Mission)

Amend as follows:

The Office of Central Operations (OCO) (S2R) provides executive direction and leadership for: the nationwide establishment and maintenance of basic records supporting Social Security programs, foreign claims operations and OCO disability operations. It manages centralized record operations and a stand alone DOC. The office receives and processes Social Security earnings reports from private and governmental employers and adjustments or corrections to posted earnings. The Office maintains Social Security enumeration and earnings records in various media and conducts an ongoing data exchange with the Treasury Department to compile and verify individual earnings data. It directs the OCO processing of claims under disability benefits programs and maintains beneficiary rolls. It directs the OCO initial adjudication and reconsideration of disability claims excluded from State agency jurisdiction and directs the OCO authorization of disability and auxiliary claims not authorized by FOs at the initial, reconsideration and appeal levels. It determines whether and when eligibility should be terminated, suspended or continued; or payments increased or reduced in amount. It recovers or waives recovery of amounts incorrectly paid to beneficiaries. It directs the development, adjudication and authorization of payment or disallowance of claims for RSDI benefits filed by persons in foreign countries; determines eligibility for Medicare on related claims; and determines entitlement to benefits abased on international Social Security agreements. It serves as liaison on operational issues which affect the administration of the United States Social Security program abroad, with the Department of State, other Federal agencies, agencies of foreign governments and private organizations. When mutually agreed, provides support to the Office of Hearings and Appeals and/or specific State Disability Determination Services.

Section S2R.20 Office of Central Operations—(Functions)

C. The Immediate Office of the Associate Commissioner, OCO (S2R) provides internal operations and management support and assistance to the Associate Commissioner and all OCO components.

Amend as follows:

1. The Assistant Associate Commissioner for Disability Operations (S2RA) is responsible for planning and directing a major portion of the operations administered by OCO. He/she is responsible for the planning and direction of four divisions which review, adjudicate and reconsider claims for Social Security disability and auxiliary benefits, and a fifth division, which provides OCO service to the public by telephone and applies and evaluates proposed alternative ways of performing OCO functions. When mutually agreed, provides support to the Office of Hearings and Appeals and/or specific State Disability Determination Services.

b. The Division of Direct Service Operations (S2RA5):

Amend as follows:

1. When arranged by mutual agreement, assists the Office of Hearings and Appeals in processing case backlogs including writing draft decisions for cases decided by Administrative Law Judges. Also assists State Disability Determination Services by developing and adjudicating backlogged disability claims as arranged by mutual agreement.

Dated: August 31, 1999.

Kenneth S. Apfel,

Commissioner of Social Security.

[FR Doc. 99–23807 Filed 9–13–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice 3121]

Notice of a Public Meeting Regarding Government Activities on International Harmonization of Chemical Classification and Labeling Systems

AGENCY: Bureau of Oceans and International Environmental and Scientific Affairs (OES).

SUMMARY: This public meeting will provide an update on current activities related to international harmonization since the previous public meeting, conducted May 27, 1999 (See Department of State Public Notice 3024 on page 17435 of the **Federal Register** of April 9, 1999.) The meeting will also offer interested organizations and individuals the opportunity to provide information and views for consideration in the development of United States Government policy positions. For more complete information on the harmonization process, please refer to State Department Public Notice 2526, pages 15951–15957 of the **Federal Register** of April 3, 1997.

The meeting will take place from 1:00–3:00 pm on Wednesday, October 6, 1999, in Room N 4437 C–D, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC. Attendees should use the entrance at C and Third Streets NW. To facilitate entry, please have a picture ID available and/or a U.S. Government building pass if applicable. No advance registration is necessary.

FOR FURTHER INFORMATION CONTACT: For further information or to submit written comments or information, please contact Eunice Mourning, U.S. Department of State, OES/ENV, Room 4325, 2201 C Street NW, Washington, DC 20520, telephone (202) 647–9266, fax (202) 647–5947. A public docket is also available for review at the Department of Labor (OSHA docket H–022H).

SUPPLEMENTARY INFORMATION: The Department of State is announcing a public meeting of the interagency committee concerned with the international harmonization of chemical hazard classification and labeling systems (an effort referred to as the "globally harmonized system" or GHS). The purpose of the meeting is to provide interested groups and individuals with an update on activities since the May 27, 1999, public meeting, a preview of upcoming international meetings, and an opportunity to submit additional information and comments for consideration in developing U.S. Government positions. Representatives of the following agencies participate in the interagency group: the Department of State, the Environmental Protection Agency, the Department of Transportation, the Occupational Safety and Health Administration, the Consumer Product Safety Commission, the Food and Drug Administration, the Department of Commerce, the Department of Agriculture, the Office of the U.S. Trade Representative, and the National Institute of Environmental Health Sciences.

The Agenda of the public meeting will include:

1. Introduction

2. Reports on Recent International Meetings

—Third Meeting of the Inter-Organization Program for the Sound Management of Chemicals (IOMC)/ International Labour Organisation Working Group on Hazard Communication, June 21–23, 1999, Dublin, Ireland.

—Fourteenth Consultation of Coordinating Group for the Harmonization of Chemical Classification Systems, June 24–25, 1999, Dublin, Ireland.

—Fourth Meeting of the Organization for Economic Cooperation and Development Expert Group on Classification Criteria for Mixtures, June 28–29, 1999, Dublin, Ireland.

—UN Subcommittee of Experts on the Transport of Dangerous Goods, July 5–15, 1999, Geneva, Switzerland.

3. Preparation for Upcoming Meetings

—Fourth Meeting of the Inter-Organization Program for the Sound Management of Chemicals (IOMC)/ International Labour Organisation Working Group of Hazard Communication, November 1–4, 1999, Washington, DC. This group will consider issues relating to hazard communication label elements for the public and specialized audiences, and material safety data sheets for workers.

—Fifteenth Consultation of Coordinating Group for the Harmonization of Chemical Classification Systems, November 5, 1999, Washington, DC. This group will consider long and short term implementation issues and more detailed terms of reference for a joint committee on transport of dangerous goods and the GHS and a GHS subcommittee.

—Fifth Meeting of the Organization for Economic Cooperation and Development Expert Group on Classification Criteria for Mixtures, November 8–9, 1999, Washington, DC. This group will focus on approaches and options for classifying mixtures according to their health and environmental hazards.

—UN Subcommittee on Experts on the Transport of Dangerous Goods, December 6–17, 1999, Geneva, Switzerland. Among the issues under consideration will be classification criteria for flammable aerosols.

4. Public Comments

5. Concluding Remarks

Interested parties are invited to submit their comments as soon as possible for consideration in the development of U.S. positions and to present their views orally and/or in writing at the public meeting. Participants may address other topics relating to harmonization of chemical classification and labeling systems and are particularly invited to identify issues of concern to specific sectors that may be affected by the GHS. Participants who attended and participated in recent international sessions may also offer their observations on the results of the sessions.

All written comments will be placed in the public docket (OSHA docket H–022H). The docket is open from 10 am until 4 pm, Monday through Friday, and is located at the Department of Labor, Room 2625, 200 Constitution Avenue NW, Washington, DC. (Telephone: 202–219–7894; Fax: 202–219–5046). The public may also consult the docket to review previous **Federal Register** notices, comment received, Questions and Answers about the GHS, a response to comments on the April 3, 1997. **Federal Register** notice, and other relevant documents.

Dated: September 1, 1999.

Daniel T. Fantozzi,

Director, Office of Environmental Policy, Bureau of Oceans and International Environmental and Scientific Affairs.

[FR Doc. 99–23817 Filed 9–13–99; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5462]

Commercial Fishing Industry Vessel Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Commercial Fishing Industry Vessel Advisory Committee

(CFIVAC) will meet to discuss the Coast Guard's proposed safety initiatives that resulted from the Fishing Vessel Casualty Task Force Report and input from CFIVAC and Coast Guard Fishing Vessel Coordinators. The meeting is open to the public.

DATES: CFIVAC will meet on Monday, October 4, 1999, from 8:30 a.m. to 4:30 p.m. and Tuesday, October 5, 1999, from 8:30 a.m. to 4:30 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before September 20, 1999. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before September 17, 1999.

ADDRESSES: On Monday, October 4, 1999, CFIVAC will meet at Coast Guard Headquarters, 2100 2nd Street, SW, Room 2415, Washington, DC, and on Tuesday, October 5, 1999, CFIVAC will meet at the Department of Transportation, NASSIF Building, 400 7th Street, Room 3328, Washington, DC. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Commander Mark A. Prescott, Executive Director of CFIVAC, or Lieutenant Commander Randy Clark, Assistant to the Executive Director, telephone 202–267–1181, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. As the result of an alarming death rate in the commercial fishing industry in late 1998 and early 1999 the Coast Guard chartered a Task Force to conduct a fast track study to determine the circumstances of these casualties; examine these incidents in the context of historical data; review the current fishing vessel safety program and past recommendations; recommend the most significant measures that have the greatest potential for reducing the loss of life and property and provide quick feedback to the commercial fishing industry. The Task Force completed its report in March 1999 and it was presented to CFIVAC and Coast Guard Fishing Vessel Coordinators for their review in April 1999. The report is available at http://www.get.to/thefishingreport or at Commandant (G–MOA), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, 202–267–1430. The Coast Guard consolidated only those recommendations that were commonly supported by these groups and developed a draft proposal of future safety initiatives to be undertaken. The final proposal will be available at the October 4–5 meeting. The Coast Guard is seeking further feedback on these safety initiatives and their implementation from CFIVAC. Interested parties, including members of Congress, have been advised of this meeting.

Draft Agenda of Meeting

Monday, 4 October

Report from Coast Guard on casualty statistics and implementation of new safety initiatives since the Task Force Report

Presentation from Coast Guard on proposed safety initiatives

Discuss with CFIVAC specific details on how to implement these proposals

Tuesday, 5 October

Continue working on details of new initiative development

Progress report—wrap up

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. Due to security procedures, members of the public must produce a photo ID to enter the Coast Guard Headquarters and Department of Transportation, NASSIF buildings. At the Chairperson's discretion, members of the public may make oral presentations during the meetings. Persons wishing to make oral presentations at the meetings should notify the Executive Director no later than September 20, 1999. Written material for distribution at a meeting should reach the Coast Guard no later than September 17, 1999. If a person submitting material would like a copy distributed to each member of a subcommittee in advance of a meeting, that person should submit 20 copies to the Executive Director no later than September 17, 1999.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: September 2, 1999.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 99–23947 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular; Instructions for Continued Airworthiness

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of Advisory Circular (AC) on Instructions for Continued Airworthiness.

SUMMARY: This notice announces the issuance of Advisory Circular (AD), No. 33.4, Instructions for Continued Airworthiness. This AC may be used to prepare Instructions for Continued Airworthiness (ICA) under § 33.4. This AC is meant to provide information and guidance concerning an acceptable method, but not the only method, for compliance. This AC neither changes any regulatory requirements nor authorizes changes in or deviations from the regulatory requirements.

DATES: Advisory Circular No. 33.4, was issued by the Engine and Propeller Directorate, Aircraft Certification Service, on August 27, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Chung Hsieh, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7114, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Background

This AC is on the subject of continued airworthiness of aircraft engines type certificated under part 33 of Title 14 of the Code of Federal Regulations (14 CFR Part 33). The information and guidance presented in this AC would provide a method that can be used to demonstrate compliance with the requirements of § 33.4 and Appendix A to part 33—Instructions for Continued Airworthiness.

Interested parties were given the opportunity to review and comment on the draft AC during the proposal and development phases. Notice was published in the **Federal Register** on April 5, 1999 (64 FR 16515), to announce the availability of, and comment to the draft AC.

This advisory circular, published under the authority granted to the Administrator by 49 U.S.C. 106(g), 40113, 44701–44702, 44704, provides guidance for these new requirements that were published in the **Federal Register** on September 11, 1980 (45 FR 60154).

Issued in Burlington, Massachusetts, on August 27, 1999.

David A. Downey,

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

[FR Doc. 99–23946 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Riverside County, California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this Notice of Intent to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Riverside County, California.

FOR FURTHER INFORMATION CONTACT: C. Glenn Clinton, Team Leader, Program Delivery Team-South, Federal Highway Administration, 980 9th Street, Suite 400, Sacramento, CA 95814–2724, *Telephone:* (916) 498–5037.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, will prepare an EIS on a proposal to replace the existing seismic deficient River Road Bridge over the Santa Ana River. The proposed bridge would be constructed on approximately the same alignment but at a higher elevation to avoid local flooding.

Alternatives under consideration include (1) taking no action, (2) alternatives reflecting various lengths of structure and fill, and (3) alternatives on or adjacent to the existing crossing. Within the limits of the study area for this project, various environmental resources and issues are known to exist. These include, but are not limited to: cultural, parkland, wetlands, floodway and floodplain, wildlife habitat, noise, seismic exposure, hazardous waste, and irrigation/drain systems.

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 interest in this proposal. At least one public meeting will be held to solicit input from the local citizens on alternatives. In addition, a public hearing will be held. Public Notice will be given of the time and place of the meetings and 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 Document 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: September 1, 1999.

C. Glenn Clinton,

Team Leader, Program Delivery Team-South, Sacramento, California.

[FR Doc. 99–23951 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6021; Notice 1]

Explorer Van Company, Receipt of Application for Decision of Inconsequential Noncompliance and Safety-Related Defect

Explorer Van Company (Explorer), a division of the Bodor Corporation, is a corporation organized under the laws of the State of Indiana and is located in Warsaw, Indiana. Explorer has determined that it manufactured conversion vans that are in noncompliance with the agency's Federal Motor Vehicle Safety Standard (FMVSS) No. 120, Tire selection and rims for motor vehicles other than passenger cars, and 49 CFR Part 567, Certification, and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Explorer 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 and defect are 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 judgment concerning the merits of the application.

First, from February 1, 1998 to May 31, 1998, Explorer manufactured approximately 2,416 conversion vans that do not meet the requirements stated in FMVSS No. 120, "Tire selection and rims for vehicles other than passenger cars." The certification label affixed to these Explorer's units pursuant to 49 CFR part 567 failed to comply with S5.3 of FMVSS No. 120 because of the omission of metric measurements, and the failure of Explorer to separately provide the metric measurements on another label, an alternative allowed by FMVSS No. 120.

Second, from January 1998 to August 1998, Explorer manufactured approximately 187 conversion vans that do not meet the requirements stated in FMVSS No. 120. On the vehicles' certification labels provided by Explorer, the tires on the rear axle have a specified inflation pressure of 41 psi, while the maximum inflation pressure indicated on the tires is 35 psi. Therefore, the maximum inflation pressure specified on the certification label exceeds the inflation pressure molded on the sidewall of the standard load tires. Per the safety standard, a vehicle manufacturer must not specify a higher inflation pressure for a tire than the maximum inflation pressure molded on that tire. This problem occurred because these vans were equipped with the wrong tires. To properly accommodate the weight of the conversion van, the vans were supposed to be equipped with extra load rated tires; however, they were equipped with standard load tires. Hence, each van has an inflation pressure specified on its certification label for extra load tires, but not for the standard load tires that are actually on it.

Third, from 1997 to 1999, Explorer manufactured approximately 68 conversion vans that do not meet the requirements stated in 49 CFR Part 567. On the vehicles' certification label, the GVWR of the vehicle was indicated to be 7,000 pounds; however, the vehicles' actual GVWR was found to be 7,214 pounds, which exceeds the specified GVWR by 214 pounds. Failure to provide a proper GVWR may constitute a safety-related defect.

Explorer supports its application for inconsequential noncompliance with the following statements:

1. METRIC AND ENGLISH INFORMATION: "All certification labels now in use by Bodor Corporation's Explorer Vans correctly specify the weights and pressures in metric and English, as required. There were a small number of "old style" labels remaining in inventory which were to have been destroyed and were inadvertently used by the production staff during a short period when the error was discovered . . . the

language is inconsequential to motor vehicle safety and should be exempted."

2. TIRE PRESSURE INFORMATION: "Due to a programming error, not more than 187 vehicles may potentially have incorrect tire pressure." "The tires are each individually clearly marked with the tire pressure information."

3. GVWR LABELING: "Bodor Corporation undertook a materials weight reduction program, and, further, no longer utilizes the [Ford] E–150 chassis for high-top conversions, favoring instead the E–250 model with an initial higher weight GVWR. The E–250 was previously not made available in [a] large enough quantity by Ford Motor Company for conversion purposes."

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, D.C., 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: October 14, 1999.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: September 8, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–23906 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 32–12]

Restrictions on Lobbying for Federal Grants, Cooperative Agreements, Loans, and Commitments To Insure or Guarantee a Loan

September 1, 1999.

1. *Purpose.* This directive establishes policy, procedures and responsibilities for implementing Office of Management and Budget (OMB) guidance on restrictions on lobbying for Federal grants, cooperative agreements, loans, and commitments to insure or guarantee a loan.

2. *Scope.* This directive applies to all bureaus, Departmental Offices (DO), the Office of Inspector General (IG) and the Treasury Inspector General for Tax Administration.

3. *Policy.* It is the policy of the Department of the Treasury that persons, including those who represent corporations, partnerships, and other entities, who request or receive a covered Federal grant, cooperative agreement, loan or commitment to insure or guarantee a loan (see paragraph 6.a., below) must file the certification and disclosure forms on lobbying activities required by law.

4. *Background.*

a. 31 U.S.C. 1352 prohibits recipients of Federal contracts, grants, loans, or cooperative agreements from using appropriated funds to influence, or attempt to influence, Government employees, and members of Congress or their staffs. The law specifies penalities for

b. Treasury has codified OMB's guidance on lobbying restrictions at 31 CFR part 21.

c. Treasury procedures on restrictions on lobbying for contracts are covered in Department of the Treasury Acquisition Regulation, subpart 1003.8, "Limitation on the Payment of Funds to Influence Federal Transactions."

5. *Definitions.*

a. *Cooperative Agreement.* A legal instrument between a bureau or office and a person to work together for a common purpose. Substantial involvement is expected between the bureau or office and the person.

b. *Direct Loan.* This occurs when a bureau or office disburses funds to a borrower and enters into a contract with the borrower for repayment.

c. *Grant.* An award of financial assistance in the form of money, or property in lieu of money, by a bureau or office, or a direct appropriation made by law to any person.

d. *Guaranteed or Insured Loans.* This occurs when a third party lender makes a direct loan to a borrower; the bureau or office agrees to repay the lender all or a portion of the loan in case the borrower defaults.

e. *Person.* An individual, corporation, company, association, authority, firm, partnership, society, and State or local government, regardless of whether such entity is operated for profit or not for profit.

6. *Procedures.*

a. The certification and disclosure requirements in 31 U.S.C. 1352 apply to:

(1) A Federal grant or cooperative agreement from Treasury in excess of $100,000.

(2) A Federal loan or commitment to insure or guarantee a loan from Treasury in excess of $150,000.

b. A person who requests or receives a covered Federal grant, cooperative agreement, or loan from Treasury must certify (*see* 31 CFR part 21 appendix A that the person has not made and will not make any payment prohibited by 31 U.S.C. 1352. Such a person must file SF LLL, "Disclosure of Lobbying Activities" (*see* 31 CFR part 21 appendix B) if that person has made or has agreed to make any payment from nonappropriated funds which would be prohibited under 31 U.S.C. 1352 if paid for with appropriated funds.

c. A person who requests or receives a covered commitment providing for the United States to insure or guarantee a loan must certify (*see* 31 CFR part 21 appendix A) as to whether the person has made or agreed to make any payment prohibited by 31 U.S.C. 1352. Such a person must file SF LLL, "Disclosure of Lobbying Activities" (*see* 31 CFR part 21 appendix B) if that person has made or has agreed to make any payment to influence or attempt to influence a Government officer or employee in connection with that loan insurance or guarantee.

d. The appropriate certification and, if required, disclosure form shall be filed with each submission that initiates agency consideration for, and upon award of, a grant, cooperative agreement, loan, or commitment to insure or guarantee a loan described above. Certifications and disclosure forms shall be filed with the appropriate bureau or office.

7. *Responsibilities.*

a. *The Deputy Assistant Secretary (Administration), Heads of Bureaus, the Inspector General and the Treasury Inspector General for Tax Administration* as it relates to their respective bureaus and offices, shall ensure that each person who requests or receives a Federal grant, cooperative agreement, loan, or commitment to insure or guarantee a loan, is required to file the required certification and, if required, disclosure forms with the appropriate bureau or office.

b. *Treasury's Director of Procurement* will issue procedures to bureaus concerning lobbying for contracts.

8. *Authorities.*

a. 31 U.S.C. 1352, "Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions."

b. OMB Interim Final Rule, 55 FR 6736 (1990).

c. 31 CFR part 21, "New Restrictions on Lobbying."

9. *References.*

a. Department of the Treasury Acquisition Regulation, subpart 1003.8, "Limitations on the Payment of Funds to Influence Federal Transactions."

10. *Supply of Forms.* Copies of the "Certification Regarding Lobbying" and OMB Standard Form LLL, "Disclosure of Lobbying Activities" are available from the Office of Treasury's Deputy Chief Financial Officer.

11. *Cancellation.* Treasury Directive 32–12, "Restrictions on Lobbying for Treasury Grants, Loans and Cooperative Agreements", dated January 6, 1992, is superseded.

12. *Office of Primary Interest.* Office of Accounting and Internal Control, Office of the Deputy Chief Financial Officer, Office of the Assistant Secretary for Management and Chief Financial Officer.

Nancy Killefer,

Assistant Secretary for Management and Chief Financial Officer.

[FR Doc. 99–23827 Filed 9–13–99; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Explosives Delivery Record.

DATES: Written comments should be received on or before Novemeber 15, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Michael Bouchard, Chief, Arson & Explosives Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7930.

SUPPLEMENTARY INFORMATION:

Title: Explosives Delivery Record.

OMB Number: 1512–0133.

Form Number: ATF F 5400.8.

Abstract: This information collection activity is used to verify distributors' compliance with Federal laws and regulations, thereby documenting the flow of explosives in commerce and as a tracing tool to prevent misuse and traffic in stolen explosives. The record retention period for this information collection is 5 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for profit.

Estimated Number of Respondents: 25,000.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 2,500.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 3, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–23924 Filed 9–13–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Usual and Customary Business Records Relating to Wine.

DATES: Written comments should be received on or before November 15, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marjorie Ruhf, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8202.

SUPPLEMENTARY INFORMATION:

Title: Usual and Customary Business Records Relating to Wine.

OMB Number: 1512–0298.

Recordkeeping Requirement ID Number: ATF REC 5120/1.

Abstract: Usual and customary business records relating to wine are routinely inspected by ATF officers to ensure the payment of alcohol taxes due to the Federal Government. The record retention period for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposed only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,650.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 165.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 3, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–23925 Filed 9–13–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Beer for Exportation.

DATES: Written comments should be received on or before November 15, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marjorie Ruhf, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8202.

SUPPLEMENTARY INFORMATION:

Title: Beer for Exportation.

OMB Number: 1512–0096.

Form Number: ATF F 5130.12.

Abstract: ATF collects this information in order to monitor export activities by brewers. Certification as to type and quantity of beer exported is analyzed by brewers' operational reports to ensure compliance with tax laws enforced by ATF. The record retention period for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 392.

Estimated Time Per Respondent: 1 hour and 39 minutes.

Estimated Total Annual Burden Hours: 38,808.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the informaion shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 3, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–23926 Filed 9–13–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Notification to Fire Marshal and Chief, Law Enforcement Officer of Storage of Explosive Materials.

DATES: Written comments should be received on or before November 15, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Michael Bouchard, Chief, Arson & Explosives Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7930.

SUPPLEMENTARY INFORMATION:

Title: Notification to Fire Marshal and Chief, Law Enforcement Officer of Storage of Explosive Materials.

OMB Number: 1512–0536.

Abstract: ATF requires all persons who store explosives to notify local law enforcement officials and fire departments orally before the end of the day on which storage of the explosive materials commenced and in writing within 48 hours from the time such storage commenced. The information is necessary for the safety of emergency response personnel responding to fires at sites where explosives are stored.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, individuals or households, farms, State, Local or Tribal Government.

Estimated Number of Respondents: 10,057.

Estimated Time Per Respondent: 90 minutes.

Estimated Total Annual Burden Hours: 60,342.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information: (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 3, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–23927 Filed 9–13–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Bond for Drawback Under 26 U.S.C. 5131.

DATES: Written comments should be received on or before November 15, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Steve Simon, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8183.

SUPPLEMENTARY INFORMATION:

Title: Bond for Drawback Under 26 U.S.C. 5131.

OMB Number: 1512–0537.

Form Number: ATF F 5154.3.

Abstract: ATF F 5154.3 is required pursuant to 26 U.S.C. 5131 from all persons who claim, on a monthly basis, drawback of tax on distilled spirits used in the manufacture of approved nonbeverage products. The form is used to establish eligibility to file drawback claims on a monthly basis and, when necessary, to enforce collection of money owed to the Government.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 60.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 12 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 3, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–23928 Filed 9–13–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 880]

Commerce in Explosives; List of Explosive Materials

Pursuant to the provisions of section 841(d) of title 18, U.S.C., and 27 CFR 55.23, the Director, Bureau of Alcohol, Tobacco and Firearms, must revise and publish in the **Federal Register** at least annually a list of explosives determined to be within the coverage of 18 U.S.C. Chapter 40, Importation, Manufacture, Distribution and Storage of Explosive Materials. This chapter covers not only explosives, but also blasting agents and detonators, all of which are defined as explosive materials in section 841(c) of title 18, U.S.C. Accordingly, the following is the 1999 List of Explosive Materials subject to regulation under 18 U.S.C. Chapter 40; it includes both the list of explosives (including detonators) required to be published in the **Federal Register** and blasting agents.

The list is intended to include any and all mixtures containing any of the materials on the list. Materials constituting blasting agents are marked by an asterisk. While the list is comprehensive, it is not all inclusive. The fact that an explosive material may not be on the list does not mean that it is not within the coverage of the law if it otherwise meets the statutory definitions in section 841 of title 18, U.S.C. Explosive materials are listed alphabetically by their common names, followed by chemical names and synonyms in brackets.

This revised list supersedes the List of Explosive Materials dated May 1, 1998 (Notice No. 360; 63 FR 24207) and will be effective as of the date of publication in the **Federal Register**.

List of Explosive Materials

A

Acetylides of heavy metals.
Aluminum containing polymeric propellant.
Aluminum ophorite explosive.
Amatex.
Amatol.
Ammonal.
*Ammonium nitrate explosive mixtures (cap sensitive).

*Ammonium nitrate explosive mixtures (non cap sensitive).
Aromatic nitro-compound explosive mixtures.
Ammonium perchlorate explosive mixtures.
Ammonium perchlorate composite propellant.
Ammonium picrate [picrate of ammonia, Explosive D] .
Ammonium salt lattice with isomorphously substituted inorganic salts.
*ANFO [ammonium nitrate-fuel oil].

B

Baratol.
Baronol.
BEAF [1, 2-bis (2, 2-difluoro-2-nitroacetoxyethane)].
Black powder.
Black powder based explosive mixtures.
*Blasting agents, nitro-carbo-nitrates, including non cap sensitive slurry and water gel explosives.
Blasting caps.
Blasting gelatin.
Blasting powder.
BTNEC [bis (trinitroethyl) carbonate].
Bulk salutes.
BTNEN [bis (trinitroethyl) nitramine].
BTTN [1,2,4 butanetriol trinitrate].
Butyl tetryl.

C

Calcium nitrate explosive mixture.
Cellulose hexanitrate explosive mixture.
Chlorate explosive mixtures.
Composition A and variations.
Composition B and variations.
Composition C and variations.
Copper acetylide.
Cyanuric triazide.
Cyclotrimethylenetrinitramine [RDX].
Cyclotetramethylenetetranitramine [HMX].
Cyclonite [RDX].
Cyclotol.

D

DATB [diaminotrinitrobenzene].
DDNP [diazodinitrophenol].
DEGDN [diethyleneglycol dinitrate].
Detonating cord.
Detonators.
Dimethylol dimethyl methane dinitrate composition.
Dinitroethyleneurea.
Dinitroglycerine [glycerol dinitrate].
Dinitrophenol.
Dinitrophenolates.
Dinitrophenyl hydrazine.
Dinitroresorcinol.
Dinitrotoluene-sodium nitrate explosive mixtures.
DIPAM.
Dipicryl sulfone.
Dipicrylamine.
Display fireworks.
DNPD [dinitropentano nitrile].
DNPA [2,2-dinitropropyl acrylate].
Dynamite.

E

EDDN [ethylene diamine dinitrate].
EDNA.
Ednatol.
EDNP [ethyl 4,4-dinitropentanoate].
Erythritol tetranitrate explosives.
Esters of nitro-substituted alcohols.
EGDN [ethylene glycol dinitrate].
Ethyl-tetryl.
Explosive conitrates.
Explosive gelatins.
Explosive mixtures containing oxygen-releasing inorganic salts and hydrocarbons.
Explosive mixtures containing oxygen-releasing inorganic salts and nitro bodies.
Explosive mixtures containing oxygen-releasing inorganic salts and water insoluble fuels.
Explosive mixtures containing oxygen-releasing inorganic salts and water soluble fuels.
Explosive mixtures containing sensitized nitromethane.
Explosive mixtures containing tetranitromethane (nitroform).
Explosive nitro compounds of aromatic hydrocarbons.
Explosive organic nitrate mixtures.
Explosive liquids.
Explosive powders.

F

Flash powder.
Fulminate of mercury.
Fulminate of silver.
Fulminating gold.
Fulminating mercury.
Fulminating platinum.
Fulminating silver.

G

Gelatinized nitrocellolose.
Gem-dinitro aliphatic explosive mixtures.
Guanyl nitrosamino guanyl tetrazene.
Guanyl nitrosamino guanylidene hydrazine.
Guncotton.

H

Heavy metal azides.
Hexanite.
Hexanitrodiphenylamine.
Hexanitrostilbene.
Hexogen (RDX).
Hexogene or octogene and a nitrated N-methylaniline.
Hexolites.
HMX [cyclo-1,3,5,7-tetramethylene 2,4,6,8-tetranitramine; Octogen].
Hydrazinium nitrate/hydrazine/aluminum explosive system.
Hydrazoic acid.

I

Igniter cord.
Igniters.
Initiating tube systems.

K

KDNBF [potassium dinitrobenzo-furoxane].

L

Lead azide.
Lead mannite.
Lead mononitroresorcinate.
Lead picrate.
Lead salts, explosive.
Lead styphnate [styphnate of lead, lead trinitroresorcinate].
Liquid nitrated polyol and trimethylolethane.
Liquid oxygen explosives.

M

Magnesium ophorite explosives.
Mannitol hexanitrate.
MDNP [methyl 4,4-dinitropentanoate].
MEAN [monoethanolamine nitrate].
Mercuric fulminate.
Mercury oxalate.
Mercury tartrate.
Metriol trinitrate.
Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum].
MMAN [monomethylamine nitrate]; methylamine nitrate.
Mononitrotoluene-nitroglycerin mixture.
Monopropellants.

N

NIBTN [nitroisobutametriol trinitrate].
Nitrate sensitized with gelled nitroparaffin.
Nitrated carbohydrate explosive.
Nitrated glucoside explosive.
Nitrated polyhydric alcohol explosives.
Nitrates of soda explosive mixtures.
Nitric acid and a nitro aromatic compound explosive.
Nitric acid and carboxylic fuel explosive.
Nitric acid explosive mixtures.
Nitro aromatic explosive mixtures.
Nitro compounds of furane explosive mixtures.
Nitrocellulose explosive.
Nitroderivative of urea explosive mixture.
Nitrogelatin explosive.
Nitrogen trichloride.
Nitrogen tri-iodide.
Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine].
Nitroglycide.
Nitroglycol (ethylene glycol dinitrate, EGDN).
Nitroguanidine explosives.
Nitroparaffins Explosive Grade and ammonium nitrate mixtures.
Nitronium perchlorate propellant mixtures.

Nitrostarch.
Nitro-substituted carboxylic acids.
Nitrourea.

O

Octogen [HMX].
Octol [75 percent HMX, 25 percent TNT].
Organic amine nitrates.
Organic nitramines.

P

PBX [RDX and plasticizer].
Pellet powder.
Penthrinite composition.
Pentolite.
Perchlorate explosive mixtures.
Peroxide based explosive mixtures.
PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate].
Picramic acid and its salts.
Picramide.
Picrate of potassium explosive mixtures.
Picratol.
Picric acid (manufactured as an explosive).
Picryl chloride.
Picryl fluoride.
PLX [95% nitromethane, 5% ethylenediamine].
Polynitro aliphatic compounds.
Polyolpolynitrate-nitrocellulose explosive gels.
Potassium chlorate and lead sulfocyanate explosive.
Potassium nitrate explosive mixtures.
Potassium nitroaminotetrazole.
Pyrotechnic compositions.
PYX [2,6-bis(picrylamino)]-3,5-dinitropyridine.

R

RDX [cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6,-trinitramine; hexahydro-1,3,5-trinitro-S-triazine].

S

Safety fuse.
Salutes (bulk).
Salts of organic amino sulfonic acid explosive mixture.
Silver acetylide.
Silver azide.
Silver fulminate.
Silver oxalate explosive mixtures.
Silver styphnate.
Silver tartrate explosive mixtures.
Silver tetrazene.
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel, and sensitizer (cap sensitive).
Smokeless powder.
Sodatol.
Sodium amatol.
Sodium azide explosive mixture.
Sodium dinitro-ortho-cresolate.
Sodium nitrate-potassium nitrate explosive mixture.
Sodium picramate.
Special fireworks.
Squibs.
Styphnic acid explosives.

T

Tacot [tetranitro-2,3,5,6-dibenzo-1,3a,4,6a tetrazapentalene].
TATB [triaminotrinitrobenzene].
TEGDN [triethylene glycol dinitrate].
Tetrazene [tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate].
Tetranitrocarbazole.
Tetryl [2,4,6 tetranitro-N-methylaniline].
Tetrytol.
Thickened inorganic oxidizer salt slurried explosive mixture.
TMETN [trimethylolethane trinitrate].
TNEF [trinitroethyl formal].
TNEOC [trinitroethylorthocarbonate].
TNEOF [trinitroethylorthoformate].
TNT [trinitrotoluene, trotyl, trilite, triton].
Torpex.
Tridite.
Trimethylol ethyl methane trinitrate composition.
Trimethylolthane trinitrate-nitrocellulose.
Trimonite.
Trinitroanisole.
Trinitrobenzene.
Trinitrobenzoic acid.
Trinitrocresol.
Trinitro-meta-cresol.
Trinitronaphthalene.
Trinitrophenetol.
Trinitrophloroglucinol.
Trinitroresorcinol.
Tritonal.

U

Urea nitrate.

W

Water-bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive).
Water-in-oil emulsion explosive compositions.

X

Xanthamonas hydrophilic colloid explosive mixture.

FOR FURTHER INFORMATION CONTACT: Tom Hogue, ATF Specialist, Arson and Explosives Programs Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226 (202–927–7930).

Approved: September 2, 1999.

John W. Magaw,

Director.

[FR Doc. 99–23929 Filed 9–13–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Customs Service

Marking of Certain Silk Products and Their Containers

AGENCY: U.S. Customs Service, Department of the Treasury

ACTION: General notice.

SUMMARY: This document gives notice of Customs interpretation and application of subsection 304(h) of the Tariff Act of 1930, as amended, which became effective June 25, 1999. The newly enacted subsection 304(h) excepts certain silk products from the country of origin marking requirements of subsections 304 (a) and (b) of the Tariff Act of 1930, as amended. This document also gives notice of the types of marking that are required by the Federal Trade Commission to comply with the Textile Fiber Products Identification Act.

EFFECTIVE DATE: Applicable to goods entered, or withdrawn from warehouse, for consumption, on and after June 25, 1999.

FOR FURTHER INFORMATION CONTACT: Stephen Ecklund (202) 326–3553, Federal Trade Commission (regarding questions concerning acceptable methods of labeling); Monika Brenner (202) 927–1254 or Robert Dinerstein (202) 927–1454, Office of Regulations and Rulings, U.S. Customs Service (regarding questions concerning the marking exception under section 304).

SUPPLEMENTARY INFORMATION:

Background

Sections 304 (a) and (b) of the Tariff Act of 1930, as amended (19 U.S.C. 1304 (a) and (b)), require imported articles of foreign origin or their containers, unless excepted, to be marked in a manner that indicates to an ultimate purchaser in the United States the name of the country of origin of the article. On June 25, 1999, the President signed into law the "Miscellaneous Trade and Technical Corrections Act of 1999" (Pub. L. 106–36, 113 Stat. 127). Section 2423 of the Miscellaneous Trade and Technical Corrections Act of 1999 added a new subsection (h) to section 304 of the Tariff Act of 1930 to except certain silk products from the country of origin marking requirements of subsections (a) and (b).

Under the newly enacted subsection 304(h), articles provided for in subheading 6214.10.10 of the Harmonized Tariff Schedule of the United States (HTSUS) as in effect on January 1, 1997, and articles provided for in heading 5007, HTSUS, as in effect

on January 1, 1997, or containers of articles provided for in these HTSUS provisions, are excepted from the requirement to be marked to indicate to an ultimate purchaser in the United States that they are of foreign origin. Subheading 6214.10.10, HTSUS (1997), provided for: "Shawls, scarves, mufflers, mantillas, veils and the like: of silk or silk waste: Containing 70 percent or more by weight of silk or silk waste." Heading 5007, HTSUS (1997), provided for: "Woven fabrics of silk or of silk waste."

Notwithstanding that articles provided for in subheading 6214.10.10 and heading 5007, HTSUS (1997), are excepted from the foreign country of origin marking requirements of subsections 304 (a) and (b), other laws enforced by Customs, including 15 U.S.C. 1125, prohibit importations of goods bearing false or misleading descriptions of fact. In addition, these articles are subject to the marking requirements of the Textile Fiber Products Identification Act, 15 U.S.C. 70, *et seq.*, and the Federal Trade Commission's (FTC) implementing rules (16 CFR Part 303) as administered by the FTC and enforced by the U.S. Customs Service with respect to imported articles. The general legal requirement is that textile products carry labels or tags to inform consumers of, among other things, the name of the country where such imported product was processed or manufactured as provided in 16 CFR 303.33.

Accordingly, in order to provide information to importers on how articles of subheading 6214.10.10 and heading 5007, HTSUS, shall be labeled and to explain the meaning of these labels to consumers, the following guidance is provided:

Under the rules of origin for textile and apparel products codified at 19 U.S.C. 3592 and as implemented by 19 CFR 102.21, the country of origin of articles of subheading 6214.10.10 and heading 5007, HTSUS, is the country where the fabric of the article was formed by a fabric-making process. Since the textile and apparel rules of origin are still applicable, the article may not be labeled "MADE IN (name of country)", unless the designated country is the country of origin (where the fabric of the article was formed by a fabric-making process).

However, articles bearing the descriptive terms "CRAFTED IN (Country B)", "CRAFTED BY (name of designer and printer) IN (Country B)", "CREATED IN (Country B)", or "CREATED BY (name of designer and printer) IN (Country B)", will not be deemed to bear false or misleading descriptions of fact under 15 U.S.C. 1125, notwithstanding that the fabric-making process occurs in country A, provided (1) all cutting, sewing, and printing or dyeing operations, or (2) all dyeing, printing, and at least one finishing operation, such as those listed in 19 CFR 12.130(e)(1)(i), occur in Country B for articles of subheading 6214.10.10, HTSUS; or if all dyeing and printing operations occur in Country B for articles of heading 5007, HTSUS.

In addition to the foregoing, while the FTC's Rules and Regulations under 16 CFR 303.33(a)(1) state that "[e]ach imported textile fiber product shall be labeled with the name of the country where such imported product was processed or manufactured", the rules do not require that any particular words describe the processing or manufacturing operations, so long as the information given is accurate and not presented in a confusing manner. Accordingly, in addition to the terms "Crafted in" or "Created in" permitted above, where the fabric-making process takes place in country A, any of the following designations would also be acceptable for the silk products that are the subject of this notice, provided the information is truthful:

DESIGNED IN (Country B)
DYED AND PRINTED IN (Country B)
CUT AND SEWN IN (Country B)
FASHIONED IN (Country B)
(Name of designer and printer) of (Country B)
DESIGNED AND PRINTED BY (name of designer) IN (Country B)

Questions concerning the proper labeling of articles covered in these tariff provisions that involve operations performed in the United States, other than those described above, should be addressed to the Federal Trade Commission, Division of Enforcement, 601 Pennsylvania Ave., N.W., Washington, DC. 20580.

Conclusion

Section 2423 of the Miscellaneous Trade and Technical Corrections Act of 1999, which amended section 304 of the Tariff Act of 1930 by adding a new subsection (h), provides that articles classified in subheading 6214.10.10 and heading 5007, HTSUS (1997), are excepted from the country of origin marking requirements of subsections 304 (a) and (b). However, these articles are subject to the marking requirements of the Textile Fiber Products Identification Act, 15 U.S.C. 70, *et seq.* and 16 CFR Part 303, and may not bear any false descriptions under 15 U.S.C. 1125. Articles labeled in accordance with the guidance provided above will be considered to satisfy the labeling requirements of the Textile Fiber Products Identification Act, 15 U.S.C. 70, *et seq.* and 16 CFR Part 303, and will not be considered to bear any false descriptions.

Dated: September 8, 1999.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 99–23853 Filed 9–13–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

United States Secret Service

ACTION: Appointment of performance review board (PRB) members.

This notice announces the appointment of members of the Senior Executive Service Performance Review Boards in accordance with 5 U.S.C. 4314(c)(4) for the rating period beginning October 1, 1998, and ending September 30, 1999. Each PRB will be composed of at least three of the Senior Executive Service members listed below:

Name and Title

Bruce J. Bowen: Deputy Director (USSS)
Jane E. Vezeris: Assistant Director, Administration (USSS)
H. Terrence Samway: Assistant Director, Government Liaison and Public Affairs (USSS)
Gordon S. Heddell: Assistant Director, Inspection (USSS)
Kevin T. Foley: Assistant Director, Investigations (USSS)
Carlton D. Spriggs: Assistant Director, Protective Operations (USSS)
Barbara S. Riggs: Assistant Director, Protective Research (USSS)
Charles N. DeVita: Assistant Director, Training (USSS)
John J. Kelleher: Chief Counsel (USSS)

FOR ADDITIONAL INFORMATION CONTACT: Sheila M. Lumsden, Chief, Personnel Division, 950 H Street, Suite 7300, Washington, DC 20001, Telephone No. (202) 406–5635.

Jane E. Vezeris,

Acting Director.

[FR Doc. 99–23342 Filed 9–13–99; 8:45 am]

BILLING CODE 4810–42–M

Corrections

Federal Register
Vol. 64, No. 177
Tuesday, September 14, 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.

THE PRESIDENT

3 CFR

[Proclamation 7219 of September 2, 1999]

Contiguous Zone of the United States

Correction

In Presidential document 99–23460 beginning on page 48701 in the issue of Wednesday, September 8, 1999, the line with the Proclamation number and date should read as set out above, and the date in the running heads should read "September 8, 1999."

[FR Doc. C9–23460 Filed 9–13–99; 8:55 am]
BILLING CODE 1505–01–D

GENERAL SERVICES ADMINISTRATION

48 CFR Chapter 5

RIN 3090–AE90

General Services Administration Acquisition Regulation

Correction

In rule document 99–15961 beginning on page 37200 in the issue of Friday, July 9, 1999, make the following corrections:

552.216–70 [Corrected]

1. On page 37237, in the third column, in 552.216–70(c), remove the second paragraph.

570.502–2 [Corrected]

2. On page 37270, in the third column, in 570.502–2, in the last line, "(3)" should read "(e)".

[FR Doc. C9–15961 Filed 9–13–99; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Migratory Bird Hunting; Environmental Impact Statement on White Goose Management; Notice

Correction

In notice document 99–22382 appearing on page 47332 in the issue of Monday, August 30, 1999, make the following correction:

On page 47332, under **ADDRESSES**, in the ninth line "white–goose–eis@fws.gov" should read "white__goose__eis@fws.gov".

[FR Doc. C9–22382 Filed 9–13–99; 8:45 am]
BILLING CODE 1505–01–D

federal register

Tuesday
September 14, 1999

Part II

Federal Reserve System

12 CFR Part 230
Truth in Savings; Final Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–1003]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule.

SUMMARY: The Board is publishing an interim rule amending Regulation DD, which implements the Truth in Savings Act. The interim rule allows depository institutions to deliver Regulation DD disclosures on periodic statements in electronic form if the consumer agrees. This interim rule is adopted in response to comments received on a proposed rule issued in March 1998, allowing depository institutions to provide all disclosures under Regulation DD in electronic form. Elsewhere in today's **Federal Register**, the Board is publishing, for further comment, a modified proposal covering all Regulation DD disclosures.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Jane Ahrens, Senior Counsel, or Michael Hentrel, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3667 or 452–2412. Users of Telecommunications Device for the Deaf (TDD) *only*, contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Savings Act (TISA), 12 U.S.C. 4301 *et seq.*, requires depository institutions to disclose to consumers yields, fees, and other terms concerning deposit accounts at account opening, upon request, when changes in terms occur, and in periodic statements. It also includes rules about advertising for deposit accounts. The Board's Regulation DD (12 CFR part 230) implements the act. Credit unions are governed by a substantially similar regulation issued by the National Credit Union Administration.

The TISA and Regulation DD require a number of disclosures to be provided in writing, presuming that institutions provide paper documents. Under many laws that call for information to be in writing, information in electronic form is considered to be "written." Information produced, stored, or communicated by computer is also generally considered to be a writing, where visual text is involved.

In May 1996, the Board proposed to amend Regulation E (Electronic Fund Transfers) to permit disclosures to be provided electronically (61 FR 19696, May 2, 1996). Based on the comments received on that proposal and further analysis, in March 1998 the Board proposed to amend four of its other regulations to allow institutions to provide disclosures electronically: Regulation DD (63 FR 14533, March 25, 1998), Regulation B (Equal Credit Opportunity; 63 FR 14552), Regulation M (Consumer Leasing; 63 FR 14538), and Regulation Z (Truth in Lending; 63 FR 14548) (collectively, the "March 1998 proposed rules"). In March 1998 the Board also issued an interim rule under Regulation E so that financial institutions could implement systems, such as home-banking programs, to provide account information electronically (63 FR 14528, March 25, 1998).

The March 1998 proposed rules and the interim rule permitted financial institutions to provide disclosures electronically if the consumer agreed, with few other requirements. The rule was intended to provide flexibility and did not specify any particular method for obtaining a consumer's agreement. Whether the parties had an agreement would be determined by state law. The proposals and the interim rule did not preclude a financial institution and a consumer from entering into an agreement electronically, nor did they prescribe a formal mechanism for doing so.

The Board received approximately 200 written comments on the interim rule and the March 1998 proposed rules. The majority of comments were submitted by financial institutions and their trade associations. Industry commenters generally supported the use of electronic communication to deliver information required by the TISA and Regulation DD. Nevertheless, many sought specific revisions and additional guidance on how to comply with the disclosure requirements in particular transactions and circumstances.

Industry commenters were especially concerned about the condition that the consumer had to "agree" to receive information by electronic communication, because the rule did not specify a method for establishing that an "agreement" was reached. These commenters believed that relying on state law created uncertainty about what constitutes an agreement and, therefore, potential liability for noncompliance. To avoid uncertainty over which state's laws apply, some commenters urged the Board to adopt a federal minimum standard for agreements or for informed consent to receive disclosures by electronic communication. These commenters believed that such a standard would avoid the compliance burden associated with tailoring legally binding "agreements" to the contract laws of all jurisdictions where electronic communications may be sent.

Consumer advocates generally opposed the March 1998 interim rule and the proposed rules. Without additional safeguards, they believed, consumers may not be provided with adequate information about electronic communication before an "agreement" is reached. They also believed that promises of lower costs could induce consumers to agree to receive disclosures electronically without a full understanding of the implications. To avoid such problems, they urged the Board, for example, either to require institutions to disclose to consumers that their account with the institution will not be adversely affected if they do not agree to receive electronic disclosures, or to permit financial institutions to offer electronic disclosures only to consumers who initiate contact with the institution through electronic communication. They also noted that some consumers will likely consent to electronic disclosures believing that they have the technical capability to retrieve information electronically, but might later discover that they are unable to do so. They questioned consumers' willingness and ability to access and retain disclosures posted on Internet websites, and expressed their apprehension that the goals of federally mandated disclosure laws will be lost.

After careful consideration of the comments and further analysis, the Board is requesting comment on a modified rule under Regulation DD as well as the other four regulations (including Regulation E). The proposed amendments to Regulation DD and the other four regulations are published elsewhere in today's **Federal Register**.

The Board is also issuing this interim rule under Regulation DD, pursuant to its authority under section 269 of the TISA, permitting depository institutions to deliver Regulation DD disclosures on periodic statements in electronic form, as discussed below.

II. Regulatory Revisions

Some depository institutions are prepared to offer on-line banking programs that would include the electronic delivery of periodic statements and other material now provided in paper form. These institutions have urged the Board to move forward with the electronic communication rulemakings, to facilitate the development of electronic

commerce and enable them to realize cost savings by reducing or eliminating paper disclosures. Institutions have also requested that, pending the issuance of final rules, the Board adopt interim rules.

Based on the comments received and further analysis, the Board is issuing an interim rule allowing the issuance of periodic statements under Regulation DD. The electronic delivery of periodic statements for consumer asset accounts is already permissible under the Regulation E interim rule issued in March 1998. Institutions commonly provide a single periodic statement that complies with Regulation E and Regulation DD; thus, the issuance of a comparable interim rule for periodic statements under Regulation DD should allow institutions to implement electronic delivery of deposit account statements with a single set of procedures, and avoid the cost of printing and mailing the information in paper form. In addition to reducing paperwork and costs for institutions, the interim rule may benefit many consumers by allowing them to receive their periodic account statements, including required disclosures, more quickly and in a more convenient form. In addition to reducing paperwork and costs for institutions, the interim rule may benefit many consumers by allowing them to receive their periodic account statements, including required disclosures, more quickly and in a more convenient form. The Regulation DD interim rule follows the approach of the Regulation E interim rule.

Electronic delivery of periodic statements for open-end consumer credit accounts is currently permitted under the Board's Official Staff Commentary to Regulation Z, comment 5(b)(2)(ii)–3. Thus, an institution that issues combined periodic statements, covering deposit accounts along with open-end credit accounts (such as for overdrafts), can use electronic delivery for the combined statements and be in compliance with Regulations E, DD, and Z.

The interim rule under Regulation DD is limited to the electronic delivery of periodic statements. Other disclosures required by Regulation DD, such as account-opening disclosures and change-in-terms notices, are addressed in the modified proposals being published for comment. Additional public comment would be useful before a rule is issued permitting electronic delivery more generally. Institutions that opt to deliver periodic statements electronically are encouraged to test the approach outlined in the modified proposals; this may be helpful in assessing how well the modified proposals will work in practice.

The interim rule for Regulation DD incorporates various requirements set forth in the March 1998 proposed rule and in the Regulation E interim rule. For example, the periodic statement must be provided in a form that can be displayed as visual text, and must be clear and conspicuous and in a form that the consumer can retain. With regard to the rule that the consumer must agree to electronic delivery, the reference to state law is not intended to require a formal contract. The Board believes, however, that consumers should be clearly informed when they are consenting to the electronic delivery of Regulation DD periodic statements.

Comment 2(q)–1(ii) in the Regulation DD Official Staff Commentary states that a periodic statement does not include "information provided by computer through home banking services." Prior to the adoption of this interim rule, if a depository institution provided account information electronically that might be deemed to constitute a periodic statement as defined in Regulation DD, the institution could not comply with the regulation by including the disclosures required by § 230.6 in the information provided electronically; rather, it would have to send paper periodic statements including the required disclosures. The comment was intended to avoid this result. Because electronic delivery of statements, including the required disclosures, will now be permissible, the comment appears to be unnecessary. In the modified proposal under Regulation DD, published elsewhere in today's **Federal Register**, the Board proposes to delete the comment.

III. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the interim rule to Regulation DD. Overall, the amendments are not expected to have any significant impact on small entities. A depository institution's use of electronic communication to provide disclosures required by the regulation is optional. The rule will relieve compliance burden by giving depository institutions flexibility in providing disclosures.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the interim rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB number. The OMB control number for this interim rule is 7100–0271.

The collection of information requirements that are relevant to this interim rule are found in 12 CFR part 230. This information is mandatory (15 U.S.C. 4301 *et seq.*) to ensure adequate disclosure of basic terms, costs, and rights relating to services affecting consumers holding deposit accounts and receiving certain disclosures by electronic communication. (12 CFR 230.6). Institutions are also required to retain records for 24 months. The respondents/recordkeepers are for-profit depository institutions, including small businesses. This regulation applies to all types of depository institutions, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies imposed by this regulation.

Since the interim amendments provide an alternative method for delivering periodic statements, it is anticipated that the requirements will not be burdensome. The use of electronic communication will likely reduce the paperwork burden of depository institutions. Institutions will be able to use electronic communication to provide periodic statements rather than having to print and mail the information in paper form. There is estimated to be no additional annual cost burden and no capital or start-up cost.

With respect to the existing requirements of Regulation DD as they apply to state member banks, it is estimated that there are 988 respondents/recordkeepers and an average frequency of about 87,100 responses per respondent each year, and the current amount of annual burden is estimated to be roughly 1,464,000 hours.

Because the information is not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises; however, the information may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522(b)(4), (6), and (8)). The disclosures are confidential between institutions and the customer.

The Board has a continuing interest in the public's opinions of the Federal Reserve's collections of information. At

any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0271), Washington, DC 20503, with copies of such comments sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 230

Advertising, Banks, banking, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in savings.

Text of Revisions

For the reasons set forth in the preamble, the Board amends Regulation DD, 12 CFR part 230, as set forth below:

PART 230—TRUTH IN SAVINGS (REGULATION DD)

1. The authority citation for part 230 continues to read as follows:

Authority: 12 U.S.C. 4301 *et seq.*

2. Under § 230.6, a new paragraph (c) is added to read as follows:

§ 230.6 Periodic statement disclosures.

* * * * *

(c) *Electronic communication.* (1) *Definition.* The term *electronic communication* means a message transmitted electronically between a consumer and a depository institution in a format that allows visual text to be displayed on equipment such as a personal computer monitor.

(2) *Electronic communication between depository institution and consumer.* A depository institution and a consumer may agree that the institution will send by electronic communication periodic-statement disclosures required by § 230.6. Periodic-statement disclosures sent by electronic communication to a consumer must comply with § 230.3 and any applicable timing requirements contained in this part.

By order of the Board of Governors of the Federal Reserve System, August 31, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–23136 Filed 9–13–99; 8:45 am]

BILLING CODE 6210–01–P

federal register

Tuesday
September 14, 1999

Part III

Department of Defense

Department of the Navy

32 CFR Part 701
Availability of Records and Publication of Documents Affecting the Public; Final Rule

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

RIN 0703–AA53

Availability of Records and Publication of Documents Affecting the Public

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: This rule amends regulations on the Department of the Navy's Freedom of Information Act (FOIA) Program. This rule reflects changes in the Secretary of the Navy's procedures.

DATES: Effective September 14, 1999.

ADDRESSES: Department of the Navy PA/FOIA Policy Branch, Office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris M. Lama, Head, DON PA/FOIA Policy Branch, Office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000, Telephone: (202) 685–6545.

SUPPLEMENTARY INFORMATION: Pursuant to the authority cited below, the Department of the Navy amends 32 CFR part 701, subparts A, B, C, and D derived from the Secretary of the Navy Instruction 5720.42 series, which implements within the Department of the Navy the provisions of Department of Defense Directives 5400.7 and 5400.7–R series, Department of Defense Freedom of Information Act Program (32 CFR part 286). This rule is being published by the Department of the Navy for guidance and interest of the public in accordance with 5 U.S.C. 552(a)(1). It has been determined that invitation of public comment on these changes to the Department of the Navy's implementing instruction prior to adoption would be impracticable and unnecessary, and it is therefore not required under the public rulemaking provisions of 32 CFR parts 286 and 701, subpart E, and 5 U.S.C. 553(b). Interested persons, however, are invited to comment in writing on this amendment. All written comments received will be considered in making subsequent amendments or revisions to 32 CFR part 701, subparts A, B, C, and D, or the instruction upon which it is based. Changes may be initiated on the basis of comments received. Written comments should be addressed to Mrs. Doris M. Lama, Head, DON PA/FOIA Policy Branch, Office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000. It has been determined that this final rule is not a "significant regulatory action" as defined in Executive Order 12866.

List of Subjects in 32 CFR Part 701

Administrative practice and procedure, Freedom of Information, Privacy.

Accordingly, the Department of the Navy revises 32 CFR part 701 to read as follows:

PART 701—AVAILABILITY OF DEPARTMENT OF THE NAVY RECORDS AND PUBLICATION OF DEPARTMENT OF THE NAVY DOCUMENTS AFFECTING THE PUBLIC

Subpart A—Department of the Navy Freedom of Information Act (FOIA) Program

Subpart B—FOIA Definitions and Terms

Subpart C—FOIA Fees

Subpart D—FOIA Exemptions

Authority: 5 U.S.C. 552.

Subpart A—Department of the Navy Freedom of Information Act (FOIA) Program

§ 701.1 Purpose.

Subparts A, B, C, and D of this part issue policies and procedures for implementing the Freedom of Information Act (5 U.S.C. 552), and Department of Defense Directives 5400.7 and 5400.7–R series [1] ,Department of Defense Freedom of Information Act Program, (See 32 CFR part 286) and promote uniformity in the Department of the Navy Freedom of Information Act (FOIA) Program.

§ 701.2 Navy FOIA website/FOIA handbook.

(a) The Navy FOIA website (http://www.ogc.secnav.hq.navy. mil/foia/index.html) is an excellent resource for requesters and FOIA coordinators. It provides connectivity to the Navy's official website, to other FOIA and non/FOIA websites, and to the Navy's electronic reading rooms.

(b) FOIA requesters are encouraged to visit the Navy FOIA website prior to filing a request. It features a FOIA Handbook which provides: guidance on how and where to submit requests; what's releasable/what's not; addresses for frequently requested information; time limits and addresses for filing appeals, etc. FOIA requesters may also use the electronic FOIA request form on the website to seek access to records originated by the Secretary of the Navy (SECNAV) or the Chief of Naval Operations (CNO).

§ 701.3 Applicability.

(a) Subparts A, B, C, and D of this part apply throughout the Department of the Navy (DON) and take precedence over

[1] Copies may be obtained if needed from the Navy FOIA Website at http://www.ogc.secnav.hq.navy.mil/foia/index.html

other DON instructions, which may serve to supplement it [i.e., Public Affairs Regulations, Security Classification Regulations, Navy Regulations, Marine Corps Orders, etc.]. Further, issuance of supplementary instructions by DON activities, deemed essential to the accommodation of perceived requirements peculiar to those activities, may not conflict.

(b) The FOIA applies to "records" maintained by "agencies" within the Executive Branch of the Federal government, including the Executive Office of the President and independent regulatory agencies. It states that "any person" (U.S. citizen; foreigner, whether living inside or outside the United States; partnerships; corporations; associations; and foreign and domestic governments) has the right enforceable by law, to access Federal agency records, except to the extent that such records (or portions thereof) are protected from disclosure by one or more of the nine FOIA exemptions or one of three special law enforcement exclusions.

(c) Neither Federal agencies nor fugitives from justice may use the FOIA to access agency records.

(d) The Department of Defense (DoD) FOIA directive states that the FOIA programs of the U.S. Atlantic Command and the U.S. Pacific Command fall under the jurisdiction of the Department of Defense and not the Department of the Navy. This policy represents an exception to the policies directed under DoD Directive 5100.3, "Support of the Headquarters of Unified, Specified, and Subordinate Commands."

§ 701.4 Responsibility and authority.

(a) The Head, DON PA/FOIA Policy Branch [CNO (N09B30)] has been delegated the responsibility for managing the DON's FOIA program, which includes setting FOIA policy and administering, supervising, and overseeing the execution of the 5 U.S.C. 552 and Department of Defense Directives 5400.7 and 5400.7-R series, Department of Defense Freedom of Information Act Program (see 32 CFR part 286).

(1) As principal DON FOIA policy official, CNO (N09B30) issues SECNAV Instruction 5720.42; oversees the administration of the DON FOIA program; issues and disseminates FOIA policy; oversees the Navy FOIA website; represents the DON at all meetings, symposiums, and conferences that address FOIA matters; writes the Navy's FOIA Handbook; serves on FOIA boards and committees; serves as principal policy advisor and oversight official on all FOIA matters; prepares the DON Annual FOIA Report for submission to the Attorney General; reviews all FOIA appeals to determine trends that impact on the DON; reviews all FOIA litigation matters involving the DON and apprises the Director, Freedom of Information and Security Review, DoD of same; responds to depositions and litigation regarding DON FOIA policy Secretary of the Navy Instruction 5820.8A, Release of Information for Litigation Purposes and Testimony by DON Personnel; reviews/analyzes all proposed FOIA legislation to determine its impact on the DON; develops a Navy-wide FOIA training program and serves as training oversight manager; conducts staff assistance visits/reviews within the DON to ensure compliance with 5 U.S.C. 552 and this part; reviews all SECNAV and Operations Navy instructions/forms that address FOIA; and oversees the processing of FOIA requests received by SECNAV and Chief of Naval Operations (CNO), to ensure responses are complete, timely, and accurate. Additionally, N09B30 works closely with other DoD and DON officials to ensure they are aware of highly visible and/or sensitive FOIA requests being processed by the DON.

(2) SECNAV has delegated Initial Denial Authority (IDA) to N09B30 for requests at the Secretariat and OPNAV level.

(b) The Commandant of the Marine Corps is delegated responsibility for administering and supervising the execution of this instruction within the Marine Corps. To accomplish this task, the Director of Administrative Resource Management (Code ARAD) serves as the FOIA Coordinator for Headquarters, U.S. Marine Corps, and assists CNO (N09B30) in promoting the Department of the Navy FOIA Program by issuing a Marine Corps FOIA Handbook; utilizing the Marine Corps FOIA website to disseminate FOIA information; consolidating its activities Annual FOIA Reports and submitting it to CNO (N09B30); maintaining a current list of Marine Corps FOIA coordinators, etc.

(c) The DON Chief Information Officer (DONCIO) is responsible for preparing and making publicly available upon request an index of all DON major information systems and a description of major information and record locator systems maintained by the Department of the Navy as required by 5 U.S.C. 552 and DoD 5400.7–R, "DoD Freedom of Information Act Program."

(d) FOIA coordinators will:

(1) Implement and administer a local FOIA program under this instruction; serve as principal point of contact on FOIA matters; issue a command/activity instruction that implements SECNAVINST 5740.42F by reference and highlights only those areas unique to the command/activity (i.e., designate the command/activity's FOIA Coordinator and IDA; address internal FOIA processing procedures; and address command/activity level FOIA reporting requirements); receive and track FOIA requests to ensure responses are made in compliance with 5 U.S.C. 552 and DoD Directives 5400.7 and 5400.7–R and this part; provide general awareness training to command/activity personnel on the provisions of 5 U.S.C. 552 and this instruction; collect and compile FOIA statistics and submit a consolidated Annual FOIA Report to Echelon 2 FOIA coordinator for consolidation; provide guidance on how to process FOIA requests; and provide guidance on the scope of FOIA exemptions.

(2) Additionally, CMC (ARAD) and Echelon 2 FOIA coordinators will:

(i) Ensure that reading room materials are placed in the activity's electronic reading room and that the activity's website is linked to the Navy FOIA website and the activity's reading room is linked to the Navy's FOIA reading room lobby. Documents placed in the reading room shall also be indexed as a Government Information Locator Service (GILS) record, as this will serve as an index of available records.

(ii) Review proposed legislation and policy recommendations that impact the FOIA and provide comments to CNO (N09B30).

(iii) Review SECNAVINST 5720.42F and provide recommended changes/comments to CNO (N09B30).

(iv) Routinely conduct random staff assistance visits/reviews/self-evaluations within the command and lower echelon commands to ensure compliance with FOIA.

(v) Collect and compile command and feeder reports for the Annual FOIA Report and provide a consolidated report to CNO (N09B30).

(vi) Maintain a listing of their subordinate activities' FOIA coordinators to include full name, address, and telephone (office and fax) and place on their website.

(Note to paragraph (d)(2)(vi): Do not place names of FOIA coordinators who are overseas, routinely deployable or in sensitive units on the website. Instead just list "FOIA Coordinator")

(vii) Notify CNO (N09B30) of any change of name, address, office code and zip code, telephone and facsimile number, and/or e-mail address of Echelon 2 FOIA Coordinators.

(viii) Conduct overview training to ensure all personnel are knowledgeable

of the FOIA and its requirements. See § 701.12.

(ix) Work closely with the activity webmaster to ensure that information placed on the activity's website does not violate references in paragraphs (a), (c) and (f).

(e) *Initial Denial Authorities (IDAs).* The following officials are delegated to serve as Initial Denial Authorities, on behalf of SECNAV (see § 701.30 for definition):

(1) Under Secretary of the Navy; Deputy Under Secretary of the Navy; Assistant Secretaries of the Navy (ASNs) and their principal deputy assistants; Assistant for Administration (SECNAV); Director, Administrative Division (SECNAV); Special Assistant for Legal and Legislative Affairs (SECNAV); Director, Office of Program Appraisal (SECNAV); DONCIO; Director, Small and Disadvantaged Business Utilization (SECNAV); Chief of Information (CHINFO); Director, Navy International Programs Office; Chief of Legislative Affairs; CNO; Vice CNO; Director, Naval Nuclear Propulsion Program (NOON); Director, Navy Staff (N09B); Head, DON PA/FOIA Policy Branch (N09B30); Director of Naval Intelligence (N2); Director of Space, Information Warfare, Command and Control (N6); Director of Navy Test & Evaluation & Technology Requirements (N091); Surgeon General of the Navy (N093); Director of Naval Reserve (N095); Oceanographer of the Navy (N096); Director of Religious Ministries/Chief of Chaplains of the Navy (N097); all Deputy Chiefs of Naval Operations; Chief of Naval Personnel; Director, Strategic Systems Programs; Chief, Bureau of Medicine and Surgery; Director, Office of Naval Intelligence; Naval Inspector General; Auditor General of the Navy; Commanders of the Naval Systems Commands; Chief of Naval Education and Training; Commander, Naval Reserve Force; Chief of Naval Research; Director, Naval Criminal Investigative Service; Deputy Commander, Naval Legal Service Command; Commander, Navy Personnel Command; Director, Naval Center of Cost Analysis; Commander, Naval Meteorology and Oceanography Command; Director, Naval Historical Center; heads of DON staff offices, boards, and councils; Program Executive Officers; and all general officers.

(2) Within the Marine Corps: CMC and his Assistant, Chief of Staff, Deputy Chiefs of Staff; Director, Personnel Management Division; Fiscal Director of the Marine Corps; Counsel for the Commandant; Director of Intelligence; Director, Command, Communications and Computer Systems Division; Legislative Assistant to the Commandant; Director, Judge Advocate Division; Inspector General of the Marine Corps; Director, Manpower, Plans, and Policy Division; Head, Freedom of Information and Privacy Acts Section, HQMC; Director of Public Affairs; Director of Marine Corps History and Museums; Director, Personnel Procurement Division; Director, Morale Support Division; Director, Human Resources Division; Director of Headquarters Support; commanding generals; directors, Marine Corps districts; commanding officers, not in the administrative chain of command of a commanding general or district director. For each official listed above, the deputy or principal assistant is also authorized denial authority.

(3) JAG and his Deputy and the DON General Counsel (DONGC) and his deputies are excluded from this grant of authorization, since SECNAV has delegated them to serve as his appellate authorities. However, they are authorized to designate IDA responsibilities to other senior officers/officials within JAG and DONGC. DONGC has delegated IDA responsibilities to the Assistant General Counsels and the Associate General Counsel (Litigation).

(4) For the shore establishment and operating forces: All officers authorized by Article 22, Uniform Code of Military Justice (UCMJ) or designated in section 0120, Manual of the Judge Advocate General (JAGINST 5800.7C) to convene general courts-martial.

(5) IDAs must balance their decision to centralize denials for the purpose of promoting uniform decisions against decentralizing denials to respond to requests within the FOIA time limits. Accordingly, the IDAs listed in paragraphs (e)(1) through (4) are authorized to delegate initial denial authority to subordinate activities for the purpose of streamlining FOIA processing. They may also delegate authority to a specific staff member, assistant, or individuals acting during their absence if this serves the purpose of streamlining and/or complying with the time limits of FOIA.

(Note to paragraph (e)(5): Such delegations shall be limited to comply with DoD Directive 5400.7, "DoD Freedom of Information Act Program".)

(6) Delegations of IDA authority should be reflected in the activity's supplementing FOIA instruction or by letter, with a copy to CNO (N09B30) or CMC (ARAD), as appropriate.

(f) Release authorities. Release authorities are authorized to grant requests on behalf of the Office of the Secretary of the Navy for agency records under their possession and control for which no FOIA exemption applies; to respond to requesters concerning refinement of their requests; to provide fee estimates; and to offer appeal rights for adequacy of search or fee estimates to the requester.

(g) Appellate authorities are addressed in § 701.12.

§ 701.5 Policy.

(a) *Compliance with the FOIA.* DON policy is to comply with the FOIA as set forth in the Department of Defense's FOIA Directives 5400.7 and 5400.7–R, and this instruction in this part in both letter and spirit; conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation; and provide the public with the maximum amount of accurate and timely information concerning its activities.

(b) *Prompt action.* DON activities shall act promptly on requests when a member of the public complies with the procedures established in the instruction in this part (i.e., files a "perfected request") and the request is received by the official designated to respond. See § 701.11 for minimum requirements of the FOIA.

(c) *Provide assistance.* DON activities shall assist requesters in understanding and complying with the procedures established by the instruction in this part, ensuring that procedural matters do not unnecessarily impede a requester from obtaining DON records promptly.

(d) *Grant access.* (1) DON activities shall grant access to agency records when a member of the public complies with the provisions of the instruction in this part and there is no FOIA exemption available to withhold the requested information (see subpart D of this part).

(2) In those instances where the requester has not cited FOIA, but the records are determined to be releasable in their entirety, the request shall be honored without requiring the requester to invoke FOIA.

(e) *Create a record.* (1) A record must exist and be in the possession and control of the DON at the time of the request to be considered subject to the instruction in this part and the FOIA. Accordingly, DON activities need not process requests for records which are not in existence at the time the request is received. In other words, requesters may not have a "standing FOIA request" for release of future records.

(2) There is no obligation to create, compile, or obtain a record to satisfy a FOIA request. However, this is not to be confused with honoring form or format requests (see § 701.8). A DON activity,

however, may compile a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would be charged for providing the existing record. Fee assessments shall be in accordance with subpart C of this part.

(3) With respect to electronic data, the issue of whether records are actually created or merely extracted from an existing database is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creation of a record, programming, or particular format are questionable, DON activities should apply a standard of reasonableness. In other words, if the capability exists to respond to the request, and the effort would be a business as usual approach, then the request should be processed. However, the request need not be processed when the capability to respond does not exist without a significant expenditure of resources, thus not being a normal business as usual approach. As used in this sense, a significant interference with the operation of the DON activity's automated information system would not be a business as usual approach.

(f) *Disclosures.* (1) *Discretionary Disclosures.* DON activities shall make discretionary disclosures whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption. A discretionary disclosure is normally not appropriate for records clearly exempt under exemptions (b)(1), (b)(3), (b)(4), (b)(6), (b)(7)(C) and (b)(7)(F). Exemptions (b)(2), (b)(5), and (b)(7)(A), (b)(7)(B), (b)(7)(D) and (b)(7)(E) are discretionary in nature and DON activities are encouraged to exercise discretion whenever possible. Exemptions (b)(4), (b)(6), and (b)(7)(C) cannot be claimed when the requester is the "submitter" of the information. While discretionary disclosures to FOIA requesters constitute a waiver of the FOIA exemption that may otherwise apply, this policy does not create any legally enforceable right.

(2) *Public domain.* Non-exempt records released under FOIA to a member of the public are considered to be in the public domain. Accordingly, such records may also be made available in reading rooms, in paper form, as well as electronically to facilitate public access.

(3) *Limited disclosures.* Disclosure of records to a properly constituted advisory committee, to Congress, or to other Federal agencies does not waive a FOIA exemption.

(4) *Unauthorized disclosures.* Exempt records disclosed without authorization by the appropriate DON official do not lose their exempt status.

(5) *Official versus personal disclosures.* While authority may exist to disclose records to individuals in their official capacity, the provisions of the instruction in this part apply if the same individual seeks the records in a private or personal capacity.

(6) *Distributing information.* DON activities are encouraged to enhance access to information by distributing information on their own initiative through the use of electronic information systems, such as the Government Information Locator Service (GILS).

(g) *Honor form or format requests.* DON activities shall provide the record in any form or format requested by the requester, if the record is readily reproducible in that form or format. DON activities shall make reasonable efforts to maintain their records in forms or formats that are reproducible. In responding to requests for records, DON activities shall make reasonable efforts to search for records in electronic form or format, except when such efforts would significantly interfere with the operation of the DON activities' automated information system. Such determinations shall be made on a case-by-case basis.

(h) *Authenticate documents.* Records provided under the instruction in this part shall be authenticated with an appropriate seal, whenever necessary, to fulfill an official Government or other legal function. This service, however, is in addition to that required under the FOIA and is not included in the FOIA fee schedule. DON activities may charge for the service at a rate of $5.20 for each authentication.

§ 701.6. Reading rooms.

The FOIA requires that (a)(2) records created on or after 1 November 1996, be made available electronically (starting 1 November 1997) as well as in hard copy, in the FOIA reading room for inspection and copying, unless such records are published and copies are offered for sale. DoD 5400.7–R, "DoD Freedom of Information Act Program," requires that each DoD Component provide an appropriate facility or facilities where the public may inspect and copy or have copied the records held in their reading rooms. To comply, the Navy FOIA website includes links that assist members of the public in locating Navy libraries, online documents, and Navy electronic reading rooms maintained by SECNAV/CNO, CMC, OGC, JAG and Echelon 2 commands. Although each of these activities will maintain their own document collections on their own servers, the Navy FOIA website provides a common gateway for all Navy online resources. To this end, DON activities shall:

(a) Establish their reading rooms and link them to the Navy FOIA Reading Room Lobby which is found on the Navy FOIA website.

(b) Ensure that responsive documents held by their subordinate activities are also placed in the reading room.

(Note to paragraph (b): SECNAV/ASN and OPNAV offices shall ensure that responsive documents are provided to CNO (N09B30) for placement in the reading room.)

(c) Ensure that documents placed in a reading room are properly excised to preclude the release of personal or contractor-submitted information prior to being made available to the public. In every case, justification for the deletion must be fully explained in writing, and the extent of such deletion shall be indicated on the record which is made publicly available, unless such indication would harm an interest protected by an exemption under which the deletion was made. If technically feasible, the extent of the deletion in electronic records or any other form of record shall be indicated at the place in the record where the deletion was made. However, a DON activity may publish in the **Federal Register** a description of the basis upon which it will delete identifying details of particular types of records to avoid clearly unwarranted invasions of privacy, or competitive harm to business submitters. In appropriate cases, the DON activity may refer to this description rather than write a separate justification for each deletion. DON activities may remove (a)(2)(D) records from their electronic reading room when the appropriate officials determine that access is no longer necessary.

(d) Should a requester submit a FOIA request for FOIA-processed (a)(2) records, and insist that the request be processed, DON activities shall process the FOIA request. However, DON activities have no obligation to process a FOIA request for 5 U.S.C. 552(a)(2)(A), (B), and (C) [5 U.S.C. 552] records because these records are required to be made public and not FOIA-processed under paragraph (a)(3) of the FOIA.

(e) DON activities may share reading room facilities if the public is not unduly inconvenienced. When appropriate, the cost of copying may be imposed on the person requesting the

material in accordance with FOIA fee guidelines (see subpart C of this part).

(f) DON activities shall maintain an index of all available documents. A general index of FOIA-processed (a)(2) records shall be made available to the public, both in hard copy and electronically by 31 December 1999. To comply with this requirement, DON activities shall establish a GILS record for each document it places in a reading room. No (a)(2) materials issued or adopted after 4 July 1967, that are not indexed and either made available or published may be relied upon, used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Such materials issued or adopted before 4 July 1967, need not be indexed, but must be made available upon request if not exempted under the instruction in this part.

(g) An index and copies of unclassified Navy instructions, forms, and addresses for DON activities (i.e., the Standard Navy Distribution List (SNDL) are located on the Navy Electronics Directives System (http://neds.nebt.daps.mil/).

(h) DON material published in the **Federal Register**, such as material required to be published by Section 552(a)(1) of the FOIA, shall be made available by JAG in their FOIA reading room and electronically to the public.

(i) Although not required to be made available in response to FOIA requests or made available in FOIA Reading Rooms, "(a)(1)" materials may, when feasible, be made available to the public in FOIA reading rooms for inspection and copying, and by electronic means. Examples of "(a)(1)" materials are: descriptions of an agency's central and field organization, and to the extent they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

§ 701.7 Relationship between the FOIA and PA.

Not all requesters are knowledgeable of the appropriate statutory authority to cite when requesting records. In some instances, they may cite neither Act, but will imply one or both Acts. For these reasons, the following guidelines are provided to ensure requesters receive the greatest amount of access rights under both Acts:

(a) If the record is required to be released under the FOIA, the PA does not bar its disclosure. Unlike the FOIA, the PA applies only to U.S. citizens and aliens admitted for permanent residence. Subpart F of this part implements the DON's Privacy Act Program.

(b) Requesters who seek records about themselves contained in a PA system of records and who cite or imply only the PA, will have their requests processed under the provisions of both the PA and the FOIA. If the PA system of records is exempt from the provisions of 5 U.S.C. 552a(d)(1) and the records, or any portion thereof are exempt under the FOIA, the requester shall be so advised with the appropriate PA and FOIA exemption. Appeals shall be processed under both Acts.

(c) Requesters who seek records about themselves that are not contained in a PA system of records and who cite or imply the PA will have their requests processed under the provisions of the FOIA, since the PA does not apply to these records. Appeals shall be processed under the FOIA.

(d) Requesters who seek records about themselves that are contained in a PA system of records and who cite or imply the FOIA or both Acts will have their requests processed under the provisions of both the PA and the FOIA. If the PA system of records is exempt from the provisions of 5 U.S.C. 552a(d)(1), and the records, or any portion thereof are exempt under the FOIA, the requester shall be so advised with the appropriate PA and FOIA exemption. Appeals shall be processed under both Acts.

(e) Requesters who seek access to agency records that are not part of a PA system of records, and who cite or imply the PA and FOIA, will have their requests processed under FOIA, since the PA does not apply to these records. Appeals shall be processed under the FOIA.

(f) Requesters who seek access to agency records and who cite or imply the FOIA will have their requests and appeals processed under the FOIA.

(g) Requesters shall be advised in final responses which Act(s) was (were) used, inclusive of appeal rights.

(h) The time limits for responding to the request will be determined based on the Act cited. For example, if a requester seeks access under the FOIA for his or her personal records which are contained in a PA system of records, the time limits of the FOIA apply.

(i) Fees will be charged based on the kind of records being requested (i.e., FOIA fees if agency records are requested; PA fees for requesters who are seeking access to information contained in a PA system of record which is retrieved by their name and/or personal identifier).

§ 701.8 Processing FOIA requests.

Upon receipt of a FOIA request, DON activities shall:

(a) Review the request to ensure it meets the minimum requirements of the FOIA to be processed.

(1) *Minimum requirements of a FOIA request.* A request must be in writing; cite or imply FOIA; reasonably describe the records being sought so that a knowledgeable official of the agency can conduct a search with reasonable effort; and if fees are applicable, the requester should include a statement regarding willingness to pay all fees or those up to a specified amount or request a waiver or reduction of fees.

(2) If a request does not meet the minimum requirements of the FOIA, DON activities shall apprise the requester of the defect and assist him/her in perfecting the request.

(**Note to paragraph (a)(2):** The statutory 20 working day time limit applies upon receipt of a "perfected" FOIA request.)

(b) When a requester or his/her attorney requests personally identifiable information in a record, the request may require a notarized signature or a statement certifying under the penalty of perjury that their identity is true and correct. Additionally, written consent of the subject of the record is required for disclosure from a Privacy Act System of records, even to the subject's attorney.

(c) *Review description of requested record(s).* (1) The FOIA requester is responsible for describing the record he/she seeks so that a knowledgeable official of the activity can locate the record with a reasonable amount of effort. In order to assist DON activities in conducting more timely searches, a requester should endeavor to provide as much identifying information as possible. When a DON activity receives a request that does not reasonably describe the requested record, it shall notify the requester of the defect in writing. The requester should be asked to provide the type of information outlined in this paragraph. DON activities are not obligated to act on the request until the requester responds to the specificity letter. When practicable, DON activities shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the FOIA. The following guidelines are provided to deal with generalized requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(i) Category I is file-related and includes information such as type of

record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(ii) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(2) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, non random search based on the DON activity's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search.

(3) The following guidelines deal with requests for personal records: Ordinarily, when personal identifiers are provided solely in connection with a request for records concerning the requester, only records in Privacy Act system of records that can be retrieved by personal identifiers need be searched. However, if a DON activity has reason to believe that records on the requester may exist in a record system other than a PA system, the DON activity shall search the system under the provisions of the FOIA. In either case, DON activities may request a reasonable description of the records desired before searching for such records under the provisions of the FOIA and the PA. If the records are required to be released under the FOIA, the PA does not bar its disclosure.

(4) The guidelines in paragraph (c)(3) notwithstanding, the decision of the DON activity concerning reasonableness of description must be based on the knowledge of its files. If the description enables the DON activity personnel to locate the record with reasonable effort, the description is adequate. The fact that a FOIA request is broad or burdensome in its magnitude does not, in and of itself, entitle a DON activity to deny the request on the ground that it does not reasonably describe the records sought. The key factor is the ability of the staff to reasonably ascertain and locate which records are being requested.

(d) *Review request to determine if FOIA fees may be applicable.* (1) FOIA fee issues shall be resolved before a DON activity begins processing a FOIA request.

(2) FOIA fees shall be at the rates prescribed at subpart C of this part.

(3) If fees are applicable, a requester shall be apprised of what category of requester he/she has been placed and provided a complete breakout of fees to include any and all information provided before fees are assessed (e.g., first two hours of search and first 100 pages of reproduction have been provided without charge.)

(4) Forms DD 2086 (for FOIA requests) and 2086–1 (for FOIA requests for technical data) serve as an administrative record of all costs incurred to process a request; actual costs charged to a requester (i.e., search, review, and/or duplication and at what salary level and the actual time expended); and as input to the Annual FOIA Report. Requesters may request a copy of the applicable form to review the time and costs associated with the processing of a request.

(5) Final response letters shall address whether or not fees are applicable or have been waived. A detailed explanation of FOIA fees is provided at subpart C of this part.

(e) *Control FOIA Request.* Each FOIA request should be date stamped upon receipt; given a case number; and entered into a formal control system to track the request from receipt to response. Coordinators may wish to conspicuously stamp, label, and/or place the request into a brightly colored folder/cover sheet to ensure it receives immediate attention by the action officer.

(f) *Enter request into multitrack processing system.* When a DON activity has a significant number of pending requests that prevents a response determination being made within 20 working days, the requests shall be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the requests, and whether the request qualifies for expedited processing.

(1) DON activities may establish as many queues as they wish, however, at a minimum three processing tracks shall be established, all based on a first-in, first-out concept, and rank ordered by the date of receipt of the request: one track for simple requests, one track for complex requests, and one track for expedited processing. Determinations as to whether a request is simple or complex shall be made by each DON activity.

(2) DON activities shall provide a requester whose request does not qualify for the fastest queue (except for expedited processing), an opportunity to limit in writing by hard copy, facsimile, or electronically the scope of the request in order to qualify for the fastest queue.

(3) This multitrack processing system does not obviate the activity's responsibility to exercise due diligence in processing requests in the most expeditious manner possible.

(4) Referred requests shall be processed according to the original date received by the initial activity and then placed in the appropriate queue.

(5) Establish a separate queue for expedited processing. A separate queue shall be established for requests meeting the test for expedited processing. Expedited processing shall be granted to a requester after the requester requests such and demonstrates a compelling need for the information. Notice of the determination as to whether to grant expedited processing in response to a requester's compelling need shall be provided to the requester within 10 calendar days after receipt of the request in the office which will determine whether to grant expedited access. Once the determination has been made to grant expedited processing, DON activities shall process the request as soon as practicable. Actions by DON activities to initially deny or affirm the initial denial on appeal of a request for expedited processing, and failure to respond in a timely manner shall be subject to judicial review.

(i) Compelling need means that the failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

(ii) Compelling need also means that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. An individual primarily engaged in disseminating information means a person whose primary activity involves publishing or otherwise disseminating information to the public. Representatives of the news media would normally qualify as individuals primarily engaged in disseminating information. Other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public.

(iii) Urgently needed means that the information has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of general public interest. However, information of historical interest only, or information sought for litigation or commercial activities would not qualify, nor would a news media publication or broadcast deadline unrelated to the news breaking nature of the information.

(iv) A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be

true and correct to the best of his/her knowledge. This statement must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access.

(v) Other reasons that merit expedited processing by DON activities are an imminent loss of substantial due process rights and humanitarian need. A demonstration of imminent loss of substantial due process rights shall be made by a statement certified by the requester to be true and correct to the best of his/her knowledge. Humanitarian need means that disclosing the information will promote the welfare and interests of mankind. A demonstration of humanitarian need shall also be made by a statement certified by the requester to be true and correct to the best of his/her knowledge. Both of these statements must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access. Once the decision has been made to expedite the request for either of these reasons, the request may be processed in the expedited processing queue behind those requests qualifying for compelling need.

(6) These same procedures also apply to requests for expedited processing of administrative appeals.

(g) *Respond to request within FOIA time limits.* Once an activity receives a "perfected" FOIA request, it shall inform the requester of its decision to grant or deny access to the requested records within 20 working days. Activities are not necessarily required to release records within the 20 working days, but access to releasable records should be granted promptly thereafter and the requester apprised of when he/she may expect to receive a final response to his/her request. Naturally, interim releases of documents are encouraged if appropriate. Sample response letters are provided on the Navy FOIA website.

(1) If a significant number of requests, or the complexity of the requests prevents a final response determination within the statutory time period, DON activities shall advise the requester of this fact, and explain how the request will be responded to within its multitrack processing system. A final response determination is notification to the requester that the records are released, or will be released by a certain date, or the records are denied under the appropriate FOIA exemption(s) or the records cannot be provided for one or more of the "other reasons" (see § 701.8(n)). Interim responses acknowledging receipt of the request, negotiations with the requester concerning the scope of the request, the response timeframe, and fee agreements are encouraged; however, such actions do not constitute a final response determination under FOIA.

(2) *Formal extension.* In those instances where a DON activity cannot respond within the 20 working day time limit, the FOIA provides for extension of initial time limits for an additional 10 working days for three specific situations: the need to search for and collect records from separate offices; the need to examine a voluminous amount of records required by the request; and the need to consult with another agency or agency component. In such instances, naval activities shall apprise requesters in writing of their inability to respond within 20 working days and advise them of their right to appeal to the appellate authority.

(Note to paragraph (g)(2): Formal extension letters require IDA signature.)

(3) *Informal extension.* A recommended alternative to taking a formal extension is to call the requester and negotiate an informal extension of time with the requester. The advantages include the ability to agree on a mutually acceptable date to respond that exceeds a formal extension of an additional 10 working days, and the letter of confirmation does not require the signature of an IDA. Additionally, it does not impact on the additional days the appellate authority may take when responding to a FOIA appeal.

(h) *Conduct a search for responsive records.* (1) Conduct a search for responsive records, keeping in mind a test for reasonableness (i.e., file disposition requirements set forth in SECNAVINST 5212.5D, "Navy and Marine Corps Records Disposal Manual"). This includes making a manual search for records as well as an electronic search for records. Do not assume that because a document is old, it does not exist. Rather, ensure that all possible avenues are considered before making a determination that no record could be found (i.e., such as determining if the record was transferred to a federal records center for holding).

(2) Requesters can appeal "adequacy of search." To preclude unnecessary appeals, you are encouraged to detail your response letter to reflect the search undertaken so the requester understands the process. It is particularly helpful to address the records disposal requirements set forth in SECNAVINST 5212.5D, "Navy and Marine Corps Records Disposal Manual" for the records being sought.

(i) *Review documents for release.* Once documents have been located, the originator or activity having possession and control is responsible for reviewing them for release and coordinating with other activities/agencies having an interest. The following procedures should be followed:

(1) Sort documents by originator and make necessary referrals (see § 701.9).

(2) Documents for which the activity has possession and control should be reviewed for release. If the review official determines that all or part of the documents requested require denial, and the head of the activity is an IDA, he/she shall respond directly to the requester. If, however, the activity head is not an IDA, then the request, a copy of the responsive documents (unexcised), proposed redacted copy of the documents, and a detailed explanation regarding their release must be referred to the IDA for a final release determination and the requester shall be notified in writing of the transfer.

(3) Documents for which the activity does not have possession and control, but has an interest, should be referred to the originator along with any recommendations regarding release (see § 701.9).

(j) *Process non-responsive information in responsive documents.* DON activities shall interpret FOIA requests liberally when determining which records are responsive to the requests, and may release non-responsive information. However, should DON activities desire to withhold non-responsive information, the following steps shall be accomplished:

(1) Consult with the requester, and ask if the requester views the information as responsive, and if not, seek the requester's concurrence to deletion of non-responsive information without a FOIA exemption. Reflect this concurrence in the response letter.

(2) If the responsive record is unclassified and the requester does not agree to deletion of non-responsive information without a FOIA exemption, release all non-responsive and responsive information which is not exempt. For non-responsive information that is exempt, notify the requester that even if the information were determined responsive, it would likely be exempted (state the appropriate exemption(s).) Advise the requester of the right to request this information under a separate FOIA request. The separate request shall be placed in the same location within the processing queue as the original request.

(3) If the responsive record is classified, and the requester does not agree to deletion of non-responsive

information without a FOIA exemption, release all unclassified responsive and non-responsive information which is not exempt. If the non-responsive information is exempt, follow the procedures provided. The classified, non-responsive information need not be reviewed for declassification at this point. Advise the requester than even if the classified information were determined responsive, it would likely be exempt under 5 U.S.C. 552 (b)(1) and other exemptions if appropriate. Advise the requester of the right to request this information under a separate FOIA request. The separate request shall be placed in the same location within the processing queue as the original request.

(k) *Withholding/excising information.* (1) DON records may only be withheld if they qualify for exemption under one or more of the nine FOIA exemptions/three exclusions and it is determined that a foreseeable harm to an interest protected by those exemptions would result if the information is released. There are nine FOIA exemptions. See subpart D of this part for the scope of each exemption.

(2) Although a FOIA exemption may apply, DON activities are encouraged to consider discretionary disclosures of information when an exemption permits such disclosure (see § 701.5(f).)

(3) *Excising documents.* The excision of information within a document should be made so that the requester can readily identify the amount of information being withheld and the reason for the withholding. Accordingly, ensure that any deletion of information is bracketed and all applicable exemptions listed. In those instances, where multiple pages of documents are determined to be exempt from disclosure in their entirety, indicate the number of pages being denied and the basis for the denial.

(l) *Reasonably segregable information.* DON activities must release all "reasonably segregable information" when the meaning of these portions is not distorted by deletion of the denied portions, and when it reasonably can be assumed that a skillful and knowledgeable person could not reasonably reconstruct excised information. When a record is denied in whole, the response to the requester will specifically state that it is not reasonable to segregate portions of the record for release.

(m) *Making a discretionary disclosure.* A discretionary disclosure to one requester may preclude the withholding of similar information under a FOIA exemption if subsequently requested by the same individual or someone else. The following suggested language should be included with the discretionary disclosure of any record that could be subject to withholding: "The information you requested is subject to being withheld under section (b)(__) of the FOIA. The disclosure of this material to you by the DON is discretionary and does not constitute a waiver of our right to claim this exemption for similar records in the future."

(n) *Other reasons.* There are 10 reasons for not complying with a request for a record under FOIA:

(1) *No record.* The DON activity conducts a reasonable search of files and fails to identify records responsive to the request.

(Note to paragraph (n)(1): Requester must be advised that he/she may appeal the adequacy of search and provided appeal rights. Response letter does not require signature by IDA.)

(2) *Referral.* The request is referred to another DoD/DON activity or to another executive branch agency for their action.

(Note to paragraph (n)(2): Referral does not need to be signed by IDA.)

(3) *Request withdrawn.* The requester withdraws request.

(Note to paragraph (n)(3): Response letter does not require signature by IDA.)

(4) *Fee-related reason.* Requester is unwilling to pay fees associated with the request; is past due in payment of fees from a previous request; or disagrees with the fee estimate.

(Note to paragraph (n)(4): Requester must be advised that he/she may appeal the fee estimate. Response letter does not require signature by IDA.)

(5) *Records not reasonably described.* A record has not been described with sufficient particularity to enable the DON activity to locate it by conducting a reasonable search.

(Note to paragraph (n)(5): Response letter does not require signature by IDA.)

(6) *Not a proper FOIA request for some other reason.* When the requester fails unreasonably to comply with procedural requirements, other than those fee-related issues described in paragraph (n)(4), imposed by the instruction in this part and/or other published rules or directives.

(Note to paragraph (n)(6): Response letter does not require signature by IDA.)

(7) *Not an agency record.* When the requester is provided a response indicating that the requested information was "not an agency record" within the meaning of the FOIA and the instruction in this part.

(Note to paragraph (n)(7): Response letter does not require signature by IDA.)

(8) *Duplicate request.* When a request is duplicative of another request which has already been completed or currently in process from the same requester.

(Note to paragraph (n)(8): Response letter does not require signature by IDA.

(9) *Other (specify).* When a FOIA request cannot be processed because the requester does not comply with published rules, other than for those reasons described in paragraphs (n) (1) through (8). DON activities must document the specific discrepancy.

(Note to paragraph (n)(9): Response letter does not require signature by IDA.)

(10) *Denial of request.* The record is denied in whole or in part in accordance with procedures set forth in 5 U.S.C. 552, DoD 5400.7–R, and the instruction in this part.

(Note to paragraph (n)(10): The requester is advised that he/she may appeal the determination and response letter must be signed by IDA.)

(o) *Writing a response letter.* FOIA response letters should contain the following information:

(1) The date of the request; when it was received; if records were not located, where the search was conducted and what the records disposal requirements are for those records.

(2) Cut-off dates. Normally, DON activities shall consider the date of receipt of a FOIA request as the cut-off date for a records search. Where a DON activity employs a particular cut-off date, however, it should give notice of that date in the response letter to the requester.

(3) If a request is denied in whole or in part, the denial response letter should cite the exemption(s) claimed; if possible, delineate the kinds of information withheld (i.e., social security numbers, date of birth, home addresses, etc.) as this may satisfy the requester and thus eliminate an appeal; provide appeal rights, and be signed by an IDA. However, there is no requirement that the response contain the same documentation necessary for litigation (i.e., FOIA requesters are not entitled to a Vaughn index (see definition in § 701.39 during the administrative process).

(4) The fees charged or waived; if fees were charged, what category was the requester placed in and provide a breakout of the fees charged (i.e., the first 2 hours of search were waived and so you are being charged for the remaining 4 hours of search at $25 per hour, or $100; the first 100 pages of reproduction were waived and the remaining 400 pages being provided

were charged at $.15 per page, resulting in $60 in reproduction fees, for a total of $160). These figures are derived from Form DD 2086 (FOIA Fees) or Form DD 2086–1 (Technical Data Fees).

(5) Sample response letters are provided on the Navy FOIA website.

(p) *Press responses.* Ensure responses being made to the press are cleared through public affairs channels.

(q) *Special mail services.* DON activities are authorized to use registered mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence.

§ 701.9 Referrals.

(a) The DoD/DON FOIA referral policy is based upon the concept of the originator of a record making a release determination on its information. If a DON activity receives a request for records originated by another DoD/DON activity, it should contact the activity to determine if it also received the request, and if not, obtain concurrence to refer the request. In either situation, the requester shall be advised of the action taken, unless exempt information would be revealed.

(b) While referrals to originators of information result in obtaining the best possible decision on release of the information, the policy does not relieve DON activities from the responsibility of making a release decision on a record should the requester object to referral of the request and the record. Should this situation occur, DON activities should coordinate with the originator of the information prior to making a release determination.

(c) A request received by a DON activity having no records responsive to a request shall be referred routinely to another DoD/DON activity, if the other activity has reason to believe it has the requested record. Prior to notifying a requester of a referral to another DoD/DON activity, the DON activity receiving the initial request shall consult with the other DoD/DON activity to determine if that activity's association with the material is exempt. If the association is exempt, the activity receiving the initial request will protect the association and any exempt information without revealing the identity of the protected activity. The protected activity shall be responsible for submitting the justifications required in any litigation.

(d) Any DON activity receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester. DON activities making referrals of requests or records shall include with the referral, a point of contact by name, a telephone number (commercial and DSN), and an e-mail address (if available).

(e) A DON activity shall refer a FOIA request for a record that it holds but was originated by another Executive Branch agency, to them for a release determination and direct response to the requester. The requester shall be informed of the referral, unless it has been determined that notification would reveal exempt information. Referred records shall only be identified to the extent consistent with security requirements.

(f) A DON activity may refer a request for a record that it originated to another activity or agency when the activity or agency has a valid interest in the record, or the record was created for the use of the other agency or activity. In such situations, provide the record and a release recommendation on the record with the referral action. DON activities should include a point of contact and telephone number in the referral letter. If that organization is to respond directly to the requester, apprise the requester of the referral.

(g) Within the DON/DoD, a DON activity shall ordinarily refer a FOIA request and a copy of the record it holds, but that was originated by another DON/DoD activity or that contains substantial information obtained from that activity, to that activity for direct response, after direct coordination and obtaining concurrence from the activity. The requester shall be notified of such referral. In any case, DON activities shall not release or deny such records without prior consultation with the activity, except as provided in paragraph (c) of this section.

(h) Activities receiving a referred request shall place it in the appropriate processing queue based on the date it was initially received by the referring activity/agency.

(i) *Agencies outside the DON that are subject to the FOIA.* (1) A DON activity may refer a FOIA request for any record that originated in an agency outside the DON or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the DON activity must respond to the request.

(**Note:** DON activities shall not refer documents originated by entities outside the Executive Branch of Government (e.g., Congress, State and local government agencies, police departments, private citizen correspondence, etc.), to them for action and direct response to the requester, since they are not subject to the FOIA).

(2) A DON activity shall refer to the agency that provided the record any FOIA request for investigative, intelligence, or any other type of records that are on loan to the DON for a specific purpose, if the records are restricted from further release and so marked. However, if for investigative or intelligence purposes, the outside agency desires anonymity, a DON activity may only respond directly to the requester after coordination with the outside agency.

§ 701.10 Processing requests received from governmental officials.

(a) *Members of Congress.* Many constituents seek access to information through their Member of Congress. Members of Congress who seek access to records on behalf of their constituent are provided the same information that the constituent would be entitled to receive. There is no need to verify that the individual has authorized the release of his/her record to the Congressional member, since the Privacy Act's "blanket routine use" for Congressional inquiries applies.

(b) *Privileged release to U.S. Government officials.* DON records may be authenticated and released to U.S. Government officials if they are requesting them in their official capacity on behalf of Federal governmental bodies, whether legislative, executive, administrative, or judicial. To ensure adequate protection of these documents, DON activities shall inform officials receiving records under the provisions of this paragraph that those records are exempt from public release under FOIA. DON activities shall also mark the records as "Privileged" and "Exempt from Public Disclosure" and annotate any special handling instructions on the records. Because such releases are not made under the provisions of the FOIA, they do not impact on future decisions to release/deny requests for the same records to other requesters. Examples of privileged releases are:

(1) In response to a request from a Committee or Subcommittee of Congress, or to either House sitting as a whole.

(2) To the Federal Courts, whenever ordered by officers of the court as necessary for the proper administration of justice.

(3) To other Federal agencies, both executive and administrative, as determined by the head of a DON activity or designee.

(c) *State or local government officials.* Requests from State or local government

officials for DON records are treated the same as any other requester.

(d) *Non-FOIA requests from foreign governments.* Requests from foreign governments that do not invoke the FOIA shall be referred to the appropriate foreign disclosure channels and the requester so notified. See § 701.11(c) regarding processing FOIA requests from foreign governments and/or their officials.

§ 701.11 Processing specific kinds of records.

DON activities that possess copies or receive requests for the following kinds of records shall promptly forward the requests to the officials named in this section and if appropriate apprise the requester of the referral:

(a) *Classified records.* Executive Order 12958 governs the classification of records.

(1) Glomar response. In the instance where a DON activity receives a request for records whose existence or nonexistence is itself classifiable, the DON activity shall refuse to confirm or deny the existence or non-existence of the records. This response is only effective as long as it is given consistently. If it were to be known that an agency gave a "Glomar" response only when records do exist and gave a "no records" response otherwise, then the purpose of this approach would be defeated. A Glomar response is a denial and exemption (b)(1) is cited and appeal rights are provided to the requester.

(2) Processing classified documents originated by another activity. DON activities shall refer the request and copies of the classified documents to the originating activity for processing. If the originating activity simply compiled the classified portions of the document from other sources, it shall refer, as necessary, those portions to the original classifying authority for their review and release determination and apprise that authority of any recommendations they have regarding release. If the classification authority for the information cannot be determined, then the originator of the compiled document has the responsibility for making the final determination. Records shall be identified consistent with security requirements. Only after consultation and approval from the originating activity, shall the requester be apprised of the referral. In most cases, the originating activity will make a determination and respond directly to the requester. In those instances where the originating activity determines a Glomar response is appropriate, the referring agency shall deny the request.

(b) *Courts-martial records of trial.* The release/denial authority for these records is the Office of the Judge Advocate General (Code 20), Washington Navy Yard, Building 111, Washington, DC 20374–1111. Promptly refer the request and/or documents to this activity and apprise the requester of the referral.

(c) *Foreign requests/information.* (1) FOIA requests received from foreign governments/foreign government officials should be processed as follows:

(i) When a DON activity receives a FOIA request for a record in which an affected DoD/DON activity has a substantial interest in the subject matter, or the DON activity receives a FOIA request from a foreign government, a foreign citizen, or an individual or entity with a foreign address, the DON activity receiving the request shall provide a copy of the request to the affected DON activity.

(ii) Upon receiving the request, the affected activity shall review the request for host nation relations, coordinate with Department of State as appropriate, and if necessary, provide a copy of the request to the appropriate foreign disclosure office for review. Upon request by the affected activity, the DON activity receiving the initial request shall provide a copy of releasable records to the affected activity. The affected activity may further release the records to its host nation after coordination with Department of State if release is in the best interest of the United States Government. If the record is released to the host nation government, the affected DON activity shall notify the DON activity which initially received the request of the release to the host nation.

(iii) Such processing must be done expeditiously so as not to impede the processing of the FOIA request by the DON activity that initially received the request.

(2) Non-U.S. Government Records (i.e., records originated by multinational organizations such as the North Atlantic Treaty Organization (NATO), the North American Air Defense (NORAD) and foreign governments) which are under the possession and control of DON shall be coordinated prior to a final release determination being made. Coordination with foreign governments shall be made through the Department of State.

(d) *Government Accounting Office (GAO) documents.* (1) On occasion, the DON receives FOIA requests for GAO documents containing DON information, either directly from requesters or as referrals from GAO. Since the GAO is outside of the Executive Branch and therefore not subject to FOIA, all FOIA requests for GAO documents containing DON information will be processed by the DON under the provisions of the FOIA.

(2) In those instances when a requester seeks a copy of an unclassified GAO report, DON activities may apprise the requester of its availability from the Director, GAO Distribution Center, ATTN: DHISF, P.O. Box 6015, Gaithersburg, MD 20877–1450 under the cash sales program.

(e) *Judge Advocate General Manual (JAGMAN) investigative records.* These records are no longer centrally processed. Accordingly, requests for investigations should be directed to the following officials:

(1) JAGMAN Investigations conducted prior to 1 Jul 95—to the Judge Advocate General (Code 35), Washington Navy Yard, Suite 3000, 1322 Patterson Avenue, SE, Washington, DC 20374–5066.

(2) Command Investigation—to the command that conducted the investigation.

(3) Litigation-Report Investigation—to the Judge Advocate General (Code 35), Washington Navy Yard, Suite 3000, 1322 Patterson Avenue, SE, Washington, DC 20374–5066.

(4) Court or Board of Inquiry—to the Echelon 2 commander over the command that convened the investigation.

(f) *Mailing lists.* Numerous FOIA requests are received for mailing lists of home addresses or duty addresses of DON personnel. Processing of such requests is as follows:

(1) Home addresses are normally not releasable without the consent of the individuals concerned. This includes lists of home addresses and military quarters' addresses without the occupant's name (i.e., exemption (b)(6) applies).

(2) Disclosure of lists of names and duty addresses or duty telephone numbers of persons assigned to units that are stationed in foreign territories, routinely deployable, or sensitive, has also been held by the courts to constitute a clearly unwarranted invasion of personal privacy and must be withheld from disclosure under 5 U.S.C. 552(b)(6). General officers and public affairs officers information is releasable. Specifically, disclosure of such information poses a security threat to those service members because it reveals information about their degree of involvement in military actions in support of national policy, the type of Navy and/or Marine Corps units to which they are attached, and their presence or absence from households. Release of such information aids in the

targeting of service members and their families by terrorists or other persons opposed to implementation of national policy. Only an extraordinary public interest in disclosure of this information can outweigh the need and responsibility of the DON to protect the tranquility and safety of service members and their families who repeatedly have been subjected to harassment, threats, and physical injury. Units covered by this policy are:

(i) Those located outside of the 50 States, District of Columbia, Commonwealth of Puerto Rico, Guam, U.S. Virgin Islands, and American Samoa.

(ii) Routinely deployable units—Those units that normally deploy from homeport or permanent station on a periodic or rotating basis to meet operational requirements or participate in scheduled exercises. This includes routinely deployable ships, aviation squadrons, operational staffs, and all units of the Fleet Marine Force (FMF). Routinely deployable units do not include ships undergoing extensive yard work or those whose primary mission is support of training, e.g., yard craft and auxiliary aircraft landing training ships.

(iii) Units engaged in sensitive operations. Those primarily involved in training for or conduct of covert, clandestine, or classified missions, including units primarily involved in collecting, handling, disposing, or storing of classified information and materials. This also includes units engaged in training or advising foreign personnel. Examples of units covered by this exemption are nuclear power training facilities, SEAL Teams, Security Group Commands, Weapons Stations, and Communications Stations.

(3) Except as otherwise provided, lists containing names and duty addresses of DON personnel, both military and civilian, who are assigned to units in the Continental United States (CONUS) and U.S. territories shall be released regardless of who has initiated the request.

(4) Exceptions to this policy must be coordinated with CNO (N09B30) or CMC (ARAD) prior to responding to requests, including those from Members of Congress. The policy in paragraphs (f)(1) through (3) should be considered when weighing the releasability of the address or telephone number of a specifically named individual.

(5) DON activities are reminded that e-mail addresses that identify an individual who is routinely deployable, overseas, or assigned to a sensitive unit should not be made available. Additionally, organizational charts for these kinds of units and activities that identify specific members should not be placed on the Internet.

(g) *Medical quality assurance documents.* The Chief, Bureau of Medicine and Surgery (BUMED) is the release/denial authority for all naval medical quality assurance documents as defined by Title 10, United States Code, Section 1102. Requests for medical quality assurance documents shall be promptly referred to BUMED and the requester notified of the referral.

(h) *Mishap investigation reports (MIRs).* The Commander, Naval Safety Center (NAVSAFECEN) is the release/denial authority for all requests for mishap investigations or documents which contain mishap information. All requests or documents located which apply shall be promptly referred to the Commander, Naval Safety Center, Code 503, 375 A Street, Norfolk, VA 23511–4399 for action. Telephonic liaison with NAVSAFECEN is encouraged. The requester shall be notified of the referral.

(i) *National Security Council (NSC)/White House.* (1) DON activities that receive requests for records of NSC, the White House, or the White House/Military Office (WHMO) shall process the requests.

(2) DON records in which the NSC or the White House has a concurrent reviewing interest, and NSC, White House, or WHMO records discovered in DON activity files, shall be forwarded to CNO (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000. N09B30, in turn, will coordinate the request directly with DFOISR, so DFOISR can coordinate the request with NSC, White House, or WHMO. After coordination, the records will be returned to the DON activity for their direct response to the requester. During the interim, DON activities should notify the requester that they are coordinating their request and a response will therefore be delayed.

(j) *Naval attache documents/information.* The Director, Defense Intelligence Agency (DIA) has the responsibility for reviewing for release/denial any naval attache-originated documents/information. Accordingly, FOIA requests for naval attache documents or copies of the documents located in DON files or referred in error to a DON activity shall be promptly referred to the Chief, Freedom of Information Act Staff, Defense Intelligence Agency (SVI–1), Washington, DC 20340–5100 for action and direct response to the requester. Ensure that the requester is notified in writing of the transfer to DIA.

(k) *Naval Audit Service reports.* The Director, Naval Audit Service is the release/denial authority for their reports. All requests or documents located which apply shall be promptly referred to the Director, Naval Audit Service, 5611 Columbia Pike, NASSIF Building, Falls Church, VA 22041–5080 for action. The requester shall be notified of the referral.

(l) *Naval Criminal Investigative Service (NCIS) reports.* The Director, NCIS is the release/denial authority for all NCIS reports/information. All requests for and copies of NCIS reports located in DON activity files shall be promptly referred to the Director, NCIS (Code OOJF), Washington Navy Yard, Building 111, 716 Sicard Street, SE, Washington, DC 20388–5380 for action and, if appropriate, the requester so notified. Telephonic liaison with NCIS Headquarters is strongly encouraged.

(m) *Naval Inspector General (NAVINSGEN) reports.* (1) NAVINSGEN is the release/denial authority for all investigations and inspections conducted by or at the direction of NAVINSGEN and for any records held by any command that relate to Navy hotline complaints that have been referred to the NAVINSGEN. Accordingly, such actions shall be promptly referred to the Naval Inspector General (Code OOL), Building 200, Room 100, Washington Navy Yard, 901 M Street, SE, Washington, DC 20374–5006 for action and, if appropriate, the requester so notified.

(2) Requests for local command inspector general reports which have not been referred to NAVINSGEN should be processed by the command that conducted the investigation and NAVINSGEN advised as necessary.

(3) The Deputy Naval Inspector General for Marine Corps Matters (DNIGMC) is the release/denial authority for all investigations conducted by the DNIGMC. Requests for local Marine Corps command Inspector General reports shall be coordinated with the DNIGMC.

(n) *Naval Nuclear Propulsion Information (NNPI).* The Director, Naval Nuclear Propulsion Program (CNO (NOONB)/NAVSEA (08)) is the release/denial authority for all information and requests concerning NNPI. Naval activities receiving such requests are responsible for searching their files for responsive records. If no documents are located, the naval activity shall respond to the requester and provide CNO (NOONB) with a copy of the request and response. If documents are located, the naval activity shall refer the request, responsive documents, and a recommendation regarding release to the Director, Naval Nuclear Propulsion Program (NOONB), 2000 Navy

Pentagon, Washington, DC 20350–2000, who will make the final release determination to the requester, after coordinating the release through DoD activities.

(o) *Naval Telecommunications Procedures (NTP) publications.* The Commander, Naval Computer and Telecommunications Command is the release/denial authority for NTP publications. All requests or documents located which apply shall be promptly referred to the Commander, Naval Computer and Telecommunications Command (Code NOOJ), 4401 Massachusetts Avenue, NW, Washington, DC 20394–5460 for action and direct response to the requester.

(p) *News media requests.* (1) Respond promptly to requests received from news media representatives through public information channels, if the information is releasable under FOIA. This eliminates the requirement to invoke FOIA and may result in timely information being made available to the public.

(2) In those instances where records/information are not releasable, either in whole or in part, or are not currently available for a release consideration, Public Affairs Officers shall promptly advise the requester of where and how to submit a FOIA request.

(3) DON activities receiving and processing requests from members of the press shall ensure that responses are cleared through their public affairs channels.

(q) *Records originated by other government agencies.* (1) A DON activity may refer a FOIA request for any record that originated in an agency outside the DON or that is based on information obtained from an outside agency to the cognizant agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the DON activity must respond to the request.

(2) A DON activity shall refer to the agency that provided the record any FOIA request for investigative, intelligence, or any other type of records that are on loan to the DON for a specific purpose, if the records are restricted from further release and so marked. However, if for investigative or intelligence purposes, the outside agency desires anonymity, a DON activity may only respond directly to the requester after coordination with the outside agency.

(r) *Submitter documents.* (1) When a request is received for a record containing confidential commercial information that was submitted to the Government, the requirements of Executive Order 12600 shall apply. Specifically, the submitter shall be notified of the request (telephonically, by letter, or by facsimile) and afforded a reasonable amount of time (anywhere from 2 weeks to a month depending on the circumstances) to present any objections concerning release, unless it is clear there can be no valid basis for objection. For example, the record was provided with actual or presumptive knowledge of the submitter that it would be made available to the public upon request.

(2) The DON activity will evaluate any objections and negotiate with the submitter as necessary. When a substantial issue has been raised, the DON activity may seek additional information from the submitter and afford the submitter and requester reasonable opportunities to present their arguments in legal and substantive issues prior to making an agency determination.

(3) The final decision to disclose information claimed to be exempt under exemption (b)(4) shall be made by an official at least equivalent in rank to the IDA and the submitter advised that he or she may seek a restraining order or take court action to prevent the release. The submitter is given 10 days to take action.

(4) Should the submitter take such action, the requester will be notified and no action will be taken on the request until the outcome of the court action is known.

(s) Technical Documents Controlled by Distribution Statements B, C, D, E, F, or X shall be referred to the controlling DoD office for review and release determination.

§ 701.12. FOIA appeals/litigation.

(a) *Appellate authorities.* SECNAV has delegated his appellate authority to the JAG and the DONGC to act on matters under their cognizance. Their responsibilities include adjudicating appeals made to SECNAV on: denials of requests for copies of DON records or portions thereof; disapproval of a fee category claim by a requester; disapproval of a request to waive or reduce fees; disputes regarding fee estimates; reviewing determinations not to grant expedited access to agency records, and reviewing "no record" determinations when the requester considers such responses adverse in nature. They have the authority to release or withhold records, or portions thereof; to waive or reduce fees; and to act as required by SECNAV for appeals under 5 U.S.C. 552 and this instruction. The JAG has further delegated this appellate authority to the Assistant Judge Advocate General (Civil Law). The DONGC has further delegated this appellate authority to the Principal Deputy General Counsel, the Deputy General Counsel, and the Associate General Counsel (Management).

(1) In their capacity, appellate authorities will serve as principal points of contact on DON FOIA appeals and litigation; receive and track FOIA appeals and ensure responses are made in compliance with 5 U.S.C. 552, DoD 5400.7 and 5400.7–R, and the instruction in this part; complete responsive portions of the Annual FOIA Report that addresses actions on appeals and litigation costs during the fiscal year and submit to CNO (N09B30); provide CNO (N09B30) with a copy of all appeal determinations as they are issued; and keep CNO (N09B30) informed in writing of all FOIA lawsuits as they are filed against the DON. Appellate authorities shall facsimile a copy of the complaint to CNO (N09B30) for review and provide updates to CNO (N09B30) to review and disseminate to DFOISR.

(2) OGC's cognizance: Legal advice and services to SECNAV and the Civilian Executive Assistants on all matters affecting DON; legal services in subordinate commands, organizations, and activities in the areas of business and commercial law, real and personal property law, intellectual property law, fiscal law, civilian personnel and labor law, environmental law, and in coordination with the JAG, such other legal services as may be required to support the mission of the Navy and the Marine Corps, or the discharge of the General Counsel's responsibilities; and conducting litigation involving the areas enumerated above and oversight of all litigation affecting the DON.

(3) JAG's cognizance: In addition to military law, all matters except those falling under the cognizance of the DONGC.

(b) Appellants may file an appeal if they have been denied information in whole or in part; have been denied a waiver or reduction of fees; have been denied/have not received a response within 20 working days; or received a "no record" response or wish to challenge the "adequacy of a search" that was made. Appeal procedures also apply to the disapproval of a fee category claim by a requester, disputes regarding fee estimates, review of an expedited basis determination not to grant expedited access to agency records, or any determination found to be adverse in nature by the requester.

(c) *Action by the appellate authority.* (1) Upon receipt, JAG (34) or Assistant to the General Counsel (FOIA) will

promptly notify the IDA of the appeal. In turn, the IDA will provide the appellate authority with the following documents so that a determination can be made: a copy of the request, responsive documents both excised and unexcised, a copy of the denial letter, and supporting rationale for continued withholding. IDAs shall respond to the appellate authority within 10 working days.

(2) Final determinations on appeals normally shall be made within 20 working days after receipt. When the appellate authority has a significant number of appeals preventing a response determination within 20 working days, the appeals shall be processed in a multitrack processing system based, at a minimum, on the three processing tracks established for initial requests.

(3) If the appeal is received by the wrong appellate authority, the time limits do not take effect until it is received by the right one. If, however, the time limit for responding cannot be met, the appellate authority shall advise the appellant that he/she may consider his/her administrative remedies exhausted. However, he/she may await a substantive response without prejudicing his/her right of judicial remedy. Nonetheless, the appellate authority will continue to process the case expeditiously, whether or not the appellant seeks a court order for release of records. In such cases, a copy of the response will be provided to the Department of Justice (DOJ).

(d) *Addresses for filing appeals.* (1) General Counsel of the Navy, 720 Kennon Street, SE, Room 214, Washington Navy Yard, Washington, DC 20374–5012, or

(2) Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374–5066.

(e) *Appeal letter requirements.* The appellant shall file a written appeal with the cognizant appellate authority (i.e., DONGC or JAG). The appeal should include a copy of the DON response letter and supporting rationale on why the appeal should be granted.

(f) *Consultation/coordination.* (1) The Special Assistant for Naval Investigative Matters and Security (CNO (N09N)) may be consulted to resolve inconsistencies or disputes involving classified records.

(2) Direct liaison with officials within DON and other interested Federal agencies is authorized at the discretion of the appellate authority, who also coordinates with appropriate DoD and DOJ officials.

(3) SECNAV, appropriate Assistant or Deputy Assistant Secretaries, and CNO (N09B30) shall be consulted and kept advised of cases with unusual implications. CHINFO shall be consulted and kept advised on cases involving public affairs implications.

(4) Final refusal involving issues not previously resolved or that the DON appellate authority knows to be inconsistent with rulings of other DoD components ordinarily should not be made before consultation with the DoD Office of General Counsel (OGC).

(5) Tentative decisions to deny records that raise new and significant legal issues of potential significance to other agencies of the Government shall be provided to the DoD OGC.

(g) *Copies of final appeal determinations.* Appellate authorities shall provide copies of final appeal determinations to the activity affected and to CNO (N09B30) as appeals are decided.

(h) *Denying an appeal.* The appellate authority must render his/her decision in writing with a full explanation as to why the appeal is being denied along with a detailed explanation of the basis for refusal with regard to the applicable statutory exemption(s) invoked. With regard to denials involving classified information, the final refusal should explain that a declassification review was undertaken and based on the governing Executive Order and implementing security classification guides (identify the guides), the information cannot be released and that information being denied does not contain meaningful portions that are reasonably segregable. In all instances, the final denial letter shall contain the name and position title of the official responsible for the denial and advise the requester of the right to seek judicial review.

(i) *Granting an appeal.* The appellate authority must render his/her decision in writing. When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, a copy of the releasable records should be promptly forwarded to the requester after compliance with any procedural requirements, such as payment of fees.

(j) *Processing appeals made under PA and FOIA.* When denials have been made under the provisions of PA and FOIA, and the denied information is contained in a PA system of records, the appeal shall be processed under both PA and FOIA. If the denied information is not maintained in a PA system of records, the appeal shall be processed under FOIA.

(k) *Response letters.* (1) When an appellate authority makes a final determination to release all or portion of records withheld by an IDA, a written response and a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

(2) Final refusal of an appeal must be made in writing by the appellate authority or by a designated representative. The response at a minimum shall include the following:

(i) The basis for the refusal shall be explained to the requester in writing, both with regard to the applicable statutory exemption or exemptions invoked under the provisions of the FOIA, and with respect to other issues appealed for which an adverse determination was made.

(ii) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

(iii) The final denial shall include the name and title or position of the official responsible for the denial.

(iv) In the case of appeals for total denial of records, the response shall advise the requester that the information being denied does not contain meaningful portions that are reasonably segregable.

(v) When the denial is based upon an exemption (b)(3) statute, the response, in addition to citing the statute relied upon to deny the information, shall state whether a court has upheld the decision to withhold the information under the statute, and shall contain a concise description of the scope of the information withheld.

(vi) The response shall advise the requester of the right to judicial review.

(l) *Time limits/requirements.* (1) A FOIA appeal has been received by a DON activity when it reaches the appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

(2) The requester shall be advised to file an appeal so that it is postmarked no later than 60 calendar days after the date of the initial denial letter. If no appeal is received, or if the appeal is postmarked after the conclusion of the 60 day period, the case may be considered closed. However, exceptions may be considered on a case-by-case basis.

(3) In cases where the requester is provided several incremental determinations for a single request, the

time for the appeal shall not begin until the date of the final response. Requests and responsive records that are denied shall be retained for a period of 6 years to meet the statute of limitations requirement.

(4) Final determinations on appeals normally shall be made within 20 working days after receipt. When a DON appellate authority has a significant number of appeals preventing a response determination within 20 working days, the appeals shall be processed in a multitrack processing system, based at a minimum on the three processing tracks established for initial requests. (See § 701.8(f)).

(5) If additional time is needed due to unusual circumstances, the final decision may be delayed for the number of working days (not to exceed 10) that were not used as additional time for responding to the initial request.

(6) If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances, they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The appellate authority shall continue to process the case expeditiously.

(m) *FOIA litigation.* The appellate authority is responsible for providing CNO (N09B30) with a copy of any FOIA litigation filed against the DON and any subsequent status of the case. CNO (N09B30) will, in turn, forward a copy of the complaint to DFOISR for their review.

Subpart B—FOIA Definitions and Terms

§ 701.13 5 U.S.C. 552(a)(1) materials.

Section (a)(1) of the FOIA requires publication in the **Federal Register** of descriptions of agency organizations, functions, substantive rules, and statements of general policy.

§ 701.14 5 U.S.C. 552(a)(2) materials.

Section (a)(2) of the FOIA requires that certain materials routinely be made available for public inspection and copying. The (a)(2) materials are commonly referred to as "reading room" materials and are required to be indexed to facilitate public inspection. (a)(2) materials consist of:

(a) *5 U.S.C. 552(a)(2)(A) records.* Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551, that may be cited, used, or relied upon as precedents in future adjudications.

(b) *5 U.S.C. 552(a)(2)(B) records.* Statements of policy and interpretations that have been adopted by the agency and are not published in the **Federal Register.**

(c) *5 U.S.C. 552(a)(2)(C) records.* Administrative staff manuals and instructions, or portions thereof, that establish DON policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DON activity. Examples of manuals and instructions not normally made available are:

(1) Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(2) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

(d) *5 U.S.C. 552(a)(2)(D) records.* Those (a)(2) records, which because of the nature of the subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records. These records are referred to as FOIA-processed (a)(2) records. DON activities shall decide on a case-by-case basis whether records fall into this category based on the following factors: previous experience of the DON activity with similar records; particular circumstances of the records involved, including their nature and the type of information contained in them; and/or the identity and number of requesters and whether there is widespread press, historic, or commercial interest in the records.

(1) This provision is intended for situations where public access in a timely manner is important and it is not intended to apply where there may be a limited number of requests over a short period of time from a few requesters. DON activities may remove the records from this access medium when the appropriate officials determine that access is no longer necessary.

(2) Should a requester submit a FOIA request for FOIA-processed (a)(2) records and insist that the request be processed under FOIA, DON activities shall process the FOIA request. However, DON activities have no obligation to process a FOIA request for (a)(2)(A), (B) and (C) records because these records are required to be made public and not FOIA-processed under paragraph (a)(3) of the FOIA.

(e) However, agency records that are withheld under FOIA from public disclosure, based on one or more of the FOIA exemptions, do not qualify as (a)(2) materials and need not be published in the **Federal Register** or made available in a library reading room.

§ 701.15 5 U.S.C. 552(a)(3) materials.

Agency records which are processed for release under the provisions of the FOIA.

§ 701.16 Administrative appeal.

A request made by a FOIA requester asking the appellate authority (JAG or OGC) to reverse a decision to: withhold all or part of a requested record; deny a fee category claim by a requester; deny a request for expedited processing due to demonstrated compelling need; deny a request for a waiver or reduction of fees; deny a request to review an initial fee estimate; and confirm that no records were located during the initial search. FOIA requesters may also appeal a non-response to a FOIA request within the statutory time limits.

§ 701.17 Affirmative information disclosure.

This is where a DON activity makes records available to the public on its own initiative. In such instance, the DON activity has determined in advance that a certain type of records or information is likely to be of such interest to members of the public, and that it can be disclosed without concern for any FOIA exemption sensitivity. Affirmative disclosures can be of mutual benefit to both the DON and the members of the public who are interested in obtaining access to such information.

§ 701.18 Agency record.

Agency records are either created or obtained by an agency and under agency control at the time of the FOIA request. Agency records are stored as various kinds of media, such as:

(a) Products of data compilation (all books, maps, photographs, machine readable materials, inclusive of those in electronic form or format, or other documentary materials), regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in

connection with the transaction of public business and in Department of the Navy possession and control at the time the FOIA request is made.

(b) Care should be taken not to exclude records from being considered agency records, unless they fall within one of the following categories:

(1) Objects or articles, such as structures, furniture, paintings, three-dimensional models, vehicles, equipment, parts of aircraft, ships, etc., whatever their historical value or value as evidence.

(2) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(3) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use. Personal papers fall into three categories: those created before entering Government service; private materials brought into, created, or received in the office that were not created or received in the course of transacting Government business, and work-related personal papers that are not used in the transaction of Government business.

(4) A record must exist and be in the possession and control of the DON at the time of the request to be considered subject to this instruction and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request.

(5) Hard copy or electronic records, which are subject to FOIA requests under 5 U.S.C. 552(a)(3), and which are available to the public through an established distribution system, or through the **Federal Register**, the National Technical Information Service, or the Internet, normally need not be processed under the provisions of the FOIA. If a request is received for such information, DON activities shall provide the requester with guidance, inclusive of any written notice to the public, on how to obtain the information. However, if the requester insists that the request be processed under the FOIA, then process the request under FOIA.

§ 701.19 Appellate authority.

SECNAV has delegated the OGC and JAG to review administrative appeals of denials of FOIA requests on his behalf and prepare agency paperwork for use by the DOJ in defending a FOIA lawsuit. JAG is further authorized to delegate this authority to a designated Assistant JAG. The authority of OGC is further delegated to the Principal Deputy General Counsel, the Deputy General Counsel, and the Associate General Counsel (Management).

§ 701.20 Discretionary disclosure.

The decision to release information that could qualify for withholding under a FOIA exemption, but upon review the determination has been made that there is no foreseeable harm to the Government for releasing such information. Discretionary disclosures do not apply to exemptions (b)(1), (b)(3), (b)(4), (b)(6) and (b)(7)(C).

§ 701.21 Electronic record.

Records (including e-mail) which are created, stored, and retrieved by electronic means.

§ 701.22 Exclusions.

The FOIA contains three exclusions (c)(1), (c)(2) and (c)(3) which expressly authorize Federal law enforcement agencies for especially sensitive records under certain specified circumstances to treat the records as not subject to the requirements of the FOIA.

§ 701.23 Executive Order 12958.

Revoked Executive Order 12356 on October 14, 1995 and is the basis for claiming that information is currently and properly classified under (b)(1) exemption of the FOIA. It sets forth new requirements for classifying and declassifying documents. It recognizes both the right of the public to be informed about the activities of its government and the need to protect national security information from unauthorized or untimely disclosure.

§ 701.24 Federal agency.

A Federal agency is any executive department, military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

§ 701.25 5 U.S.C. 552, Freedom of Information Act (FOIA).

An access statute that pertains to agency records of the Executive Branch of the Federal Government, including the Executive Office of the President and independent regulatory agencies.

(Note to § 701.25: Records maintained by State governments, municipal corporations, by the courts, by Congress, or by companies and private citizens do not fall under this Federal statute)

§ 701.26 FOIA exemptions.

There are nine exemptions that identify certain kinds of records/information that qualify for withholding under FOIA. See subpart D of this part for a detailed explanation of each exemption.

§ 701.27 FOIA fee terms location.

The FOIA fee terms can be found in subpart C of this part.

§ 701.28 FOIA request.

A written request for DON records, made by "any person" including a member of the public (U.S. or foreign citizen/entity), an organization, or a business, but not including a Federal agency or a fugitive from the law that either explicitly or implicitly invokes the FOIA by citing DoD FOIA regulations or the instruction in this part. FOIA requests can be made for any purpose whatsoever, with no showing of relevancy required. Because the purpose for which records are sought has no bearing on the merits of the request, FOIA requesters do not have to explain or justify their requests. Written requests may be received by postal service or other commercial delivery means, by facsimile or electronically.

§ 701.29 Glomar response.

Refusal by the agency to either confirm or deny the existence or non-existence of records responsive to a FOIA request. See exemptions (b)(1), (b)(6), and (b)(7)(C) at subpart D of this part.

§ 701.30 Initial Denial Authority (IDA).

SECNAV has delegated authority to a limited number of officials to act on his behalf to withhold records under their cognizance that are requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure; to deny a fee category claim by a requester; to deny a request for expedited processing due to demonstrated compelling need; to deny or grant a request for waiver or reduction of fees when the information sought relates to matters within their respective geographical areas of responsibility or chain of command; fees; to review a fee estimate; and to confirm that no records were located in response to a request. IDAs may also grant access to requests.

§ 701.31 Mosaic or compilation response.

The concept that apparently harmless pieces of information when assembled together could reveal a damaging picture. See exemption (b)(1) at subpart D of this part.

§ 701.32 Perfected request.

A request which meets the minimum requirements of the FOIA to be processed and is received by the DON

activity having possession and control over the documents/information.

§ 701.33 Public domain.

Agency records released under the provisions of FOIA and the instruction in this part to a member of the public.

§ 701.34 Public interest.

The interest in obtaining official information that sheds light on a DON activity's performance of its statutory duties because the information falls within the statutory purpose of the FOIA to inform citizens what their government is doing. That statutory purpose, however, is not fostered by disclosure of information about private citizens accumulated in various governmental files that reveals nothing about an agency's or official's own conduct.

§ 701.35 Reading room.

Location where (a)(2) materials are made available for public inspection and copying.

§ 701.36 Release authorities.

Commanding officers and heads of Navy and Marine Corps shore activities or their designees are authorized to grant requests on behalf of SECNAV for agency records under their possession and control for which no FOIA exemption applies. As necessary, they will coordinate releases with other officials who may have an interest in the releasability of the record.

§ 701.37 Reverse FOIA.

When the "submitter" of information, usually a corporation or other business entity, that has supplied the agency with data on its policies, operations and products, seeks to prevent the agency that collected the information from revealing the data to a third party in response to the latter's FOIA request.

§ 701.38 Technical data.

Recorded information, regardless of form or method of the recording, of a scientific or technical nature (including computer software documentation).

§ 701.39 Vaughn index.

Itemized index, correlating each withheld document (or portion) with a specific FOIA exemption(s) and the relevant part of the agency's nondisclosure justification. The index may contain such information as: date of document; originator; subject/title of document; total number of pages reviewed; number of pages of reasonably segregable information released; number of pages denied; exemption(s) claimed; justification for withholding; etc. FOIA requesters are not entitled to a Vaughn index during the administrative process.

Subpart C—FOIA Fees

§ 701.40 Background.

(a) The DON follows the uniform fee schedule developed by DoD and established to conform with the Office of Management and Budget's (OMB's) Uniform Freedom of Information Act Fee Schedule and Guidelines.

(b) Fees reflect direct costs for search; review (in the case of commercial requesters); and duplication of documents, collection of which is permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business, nor are they meant as a substitute for any other schedule of fees, which does not supersede the collection of fees under the FOIA.

(c) FOIA fees do not supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records. For example, 5 U.S.C. 552 (a)(4)(A)(vi) enables a Government agency such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set and collect fees. DON activities should ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, such as GPO or NTIS, they inform requesters of the steps necessary to obtain records from those sources.

§ 701.41 FOIA fee terms.

(a) *Direct costs* means those expenditures a DON activity actually makes in searching for, reviewing (in the case of commercial requesters), and duplicating documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits), and the costs of operating duplicating machinery. These factors have been included in the fee rates prescribed in this subpart. Not included in direct costs are overhead expenses such as costs of space, heating or lighting the facility in which the records are stored.

(b) *Duplication* refers to the process of making a copy of a document in response to a FOIA request. Such copies can take the form of paper copy, microfiche, audiovisual, or machine readable documentation (e.g., magnetic tape or disc), among others. Every effort will be made to ensure that the copy provided is in a form that is reasonably usable, the requester shall be notified that the copy provided is the best available, and that the activity's master copy shall be made available for review upon appointment. For duplication of computer tapes and audiovisual, the actual cost, including the operator's time, shall be charged. In practice, if a DON activity estimates that assessable duplication charges are likely to exceed $25.00, it shall notify the requester of the estimate, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with activity personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(c) *Review* refers to the process of examining documents located in response to a FOIA request to determine whether one or more of the statutory exemptions permit withholding. It also includes processing the documents for disclosure, such as excising them for release. Review does not include the time spent resolving general legal or policy issues regarding the application of exemptions. It should be noted that charges for commercial requesters may be assessed only for the initial review. DON activities may not charge for reviews required at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable.

(d) *Search* refers to time spent looking, both manually and electronically, for material that is responsive to a request. Search also includes a page-by-page or line-by-line identification (if necessary) of material in the record to determine if it, or portions thereof are responsive to the request. DON activities should ensure that searches are done in the most efficient and least expensive manner so as to minimize costs for both the activity and the requester. For example, activities should not engage in line-by-line searches when duplicating an entire document known to contain responsive information would prove to be the less expensive and quicker method of complying with the request. Time spent reviewing documents in order to determine whether to apply one or more of the statutory exemptions is not search time, but review time.

(1) DON activities may charge for time spent searching for records, even if that

search fails to locate records responsive to the request.

(2) DON activities may also charge search and review (in the case of commercial requesters) time if records located are determined to be exempt from disclosure.

(3) In practice, if the DON activity estimates that search charges are likely to exceed $25.00, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with activity personnel with the object of reformulating the request to meet his or her needs at a lower cost.

§ 701.42 Categories of requesters—applicable fees.

(a) Commercial requesters refers to a request from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, DON activities must determine the use to which a requester will put the documents requested. More over, where an activity has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, it should seek additional clarification before assigning the request to a specific category.

(1) Fees shall be limited to reasonable standard charges for document search, review and duplication when records are requested for commercial use. Requesters must reasonably describe the records sought.

(2) When DON activities receive a request for documents for commercial use, they should assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters (unlike other requesters) are not entitled to 2 hours of free search time, nor 100 free pages of reproduction of documents. Moreover, commercial requesters are not normally entitled to a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. However, because use is the exclusive determining criteria, it is possible to envision a commercial enterprise making a request that is not for commercial use. It is also possible that a non-profit organization could make a request that is for commercial use. Such situations must be addressed on a case-by-case basis.

(b) Educational Institution refers to a pre-school, a public or private elementary or secondary school, an institution of graduate high education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(1) Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by an educational institution whose purpose is scholarly research. Requesters must reasonably describe the records sought.

(2) Requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but in furtherance of scholarly research.

(3) Fees shall be waived or reduced in the public interest if criteria of § 701.58 have been met.

(c) Non-commercial Scientific Institution refers to an institution that is not operated on a "commercial" basis and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(1) Fees shall be limited to only reasonable standard charges for document duplication (excluding the first 100 pages) when the request is made by a non-commercial scientific institution whose purpose is scientific research. Requesters must reasonably describe the records sought.

(2) Requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but in furtherance of or scientific research.

(d) *Representative of the news media.* (1) Refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not meant to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but DON activities may also look to the past publication record of a requester in making this determination.

(2) To be eligible for inclusion in this category, a requester must meet the criteria established in paragraph (d)(1), and his or her request must not be made for commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. For example, a document request by a newspaper for records relating to the investigation of a defendant in a current criminal trial of public interest could be presumed to be a request from an entity eligible for inclusion in this category, and entitled to records at the cost of reproduction alone (excluding charges for the first 100 pages).

(3) Representative of the news media does not include private libraries, private repositories of Government records, information vendors, data brokers or similar marketers of information whether to industries and businesses, or other entities.

(4) Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a representative of the news media. Requesters must reasonably describe the records sought. Fees shall be waived or reduced if the fee waiver criteria have been met.

(e) All other requesters. DON activities shall charge requesters who do not fit into any of the categories described in paragraph (a) through (d) fees which recover the full direct cost of searching for and duplicating records, except that the first 2 hours of search time and the first 100 pages of duplication shall be furnished without charge. Requesters must reasonably describe the records sought. Requests from subjects about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974, which permit fees only for duplication. DON activities are reminded that this category of requester may also be eligible for a waiver or reduction of fees if disclosure of the information is in the public interest.

§ 701.43 Fee declarations.

Requesters should submit a fee declaration appropriate for the categories in paragraphs (a) through (c) of this section, if fees are expected to exceed the minimum fee threshold of $15.00.

(a) Commercial. Requesters should indicate a willingness to pay all search, review and duplication costs.

(b) Educational or noncommercial scientific institution or news media. Requesters should indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

(c) All others. Requesters should indicate a willingness to pay assessable search and duplication costs if more than 2 hours of search effort or 100 pages of records are desired.

(d) If the conditions in paragraphs (a) through (c) are not met, then the request need not be processed and the requester shall be so informed.

§ 701.44 Restrictions.

(a) No fees may be charged by any DON activity if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, activities shall provide the first 2 hours of search time, and the first 100 pages of duplication without charge. For example, for a request (other than one from a commercial requester) that involved 2 hours and 10 minutes of search time, and resulted in 105 pages of documents, an activity would determine the cost of only 10 minutes of search time, and only five pages of reproduction. If this processing cost was equal to, or less than, the cost to the activity for billing the requester and processing the fee collected, no charges would result.

(b) Requesters receiving the first 2 hours of search and the first 100 pages of duplication without charge are entitled to such only once per request. Consequently, if a DON activity, after completing its portion of a request, finds it necessary to refer the request to a subordinate office, another DON activity, or another Federal agency to action their portion of the request, the referring activity shall inform the recipient of the referral of the expended amount of search time and duplication cost to date.

(c) The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to the DON activity of receiving and recording a remittance, and processing the fee for deposit in the Department of Treasury's special account. The cost to the Department of Treasury to handle such remittance is negligible and shall not be considered in activity determinations.

(d) For the purposes of the restrictions in this section, the word "pages" refers to paper copies of a standard size, which will normally be "8½×11" or "11×14." Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout however, might meet the terms of the restriction.

(e) In the case of computer searches, the first 2 free hours will be determined against the salary scale of the individual operating the computer for the purposes of the search. As an example, when the direct costs of the computer central processing unit, input-output devices, and memory capacity equal $24.00 (2 hours of equivalent search at the clerical level), amounts of computer costs in excess of that amount are chargeable as computer search time. In the event the direct operating cost of the hardware configuration cannot be determined, computer search shall be based on the salary scale of the operator executing the computer search.

§ 701.45 Fee assessment.

(a) Fees may not be used to discourage requesters, and to this end, FOIA fees are limited to standard charges for direct document search, review (in the case of commercial requesters) and duplication.

(b) In order to be as responsive as possible to FOIA requests while minimizing unwarranted costs to the taxpayer, DON activities shall analyze each request to determine the category of the requester. If the activity's determination regarding the category of the requester is different than that claimed by the requester, the activity shall:

(1) Notify the requester to provide additional justification to warrant the category claimed, and that a search for responsive records will not be initiated until agreement has been attained relative to the category of the requester. Absent further category justification from the requester, and within a reasonable period of time (i.e., 30 calendar days), the DON activity shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights of the determination.

(2) Advise the requester that, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs appropriate for the category determined by the activity.

(c) Estimate of fees. DON activities must be prepared to provide an estimate of assessable fees if desired by the requester. While it is recognized that search situations will vary among activities, and that an estimate is often difficult to obtain prior to an actual search, requesters who desire estimates are entitled to such before committing to a willingness to pay. Should the activity's actual costs exceed the amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the requester's agreed amount shall not be charged without the requester's agreement.

(d) Advance payment of fees. DON activities may not require advance payment of any fee (i.e., before work is commenced or continued on a request) unless the requester has failed to pay fees in a timely fashion (i.e., 30 calendar days from the date of the assessed billing in writing), or the activity has determined that the fee will exceed $250.00.

(e) When a DON activity estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, the activity shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payments, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no payment history.

(f) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 calendar days from the date of the billing), the DON activity may require the requester to pay the full amount owed, plus any applicable interest, or demonstrate that he or she has paid the fee, and to make an advance payment of the full amount of the estimated fee before the DON activity begins to process a new or pending request from the requester. Interest will be at the rate prescribed by 31 U.S.C. 3737 and confirmed with respective finance and accounting offices.

(g) After all the work is completed on a request, and the documents are ready for release, DON activities may require payment before forwarding the documents, particularly for those requesters who have no payment history, or for those requesters who have failed to previously pay a fee in a timely fashion (i.e., within 30 calendar days from the date of the billing).

(h) DON activities may charge for time spent searching for records, even if that search fails to locate records responsive

to the request. DON activities may also charge search and review (in the case of commercial requesters) time if records located are determined to be exempt from disclosure. In practice, if the DON activity estimates that search charges are likely to exceed $25.00, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with activity personnel with the object of reformulating the request to meet his or her needs at a lower cost.

§ 701.46 Aggregating requests.

Except for requests that are for a commercial use, a DON activity may not charge for the first 2 hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When an activity reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, the activity may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. For example, it would be reasonable to presume that multiple requests of this type made within a 30-day period had been made to avoid fees. For requests made over a longer period however, such a presumption becomes harder to sustain and activities should have a solid basis for determining that aggregation is warranted in such cases. DON activities are cautioned that before aggregating requests from more than one requester, they must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may an activity aggregate multiple requests on unrelated subjects.

§ 701.47 FOIA fees must be addressed in response letters.

DON activities shall ensure that requesters receive a complete breakout of all fees which are charged and apprised of the "Category" in which they have been placed. For example: "We are treating you as an 'All Other Requester.' As such, you are entitled to 2 free hours of search and 100 pages of reproduction, prior to any fees being assessed. We have expended an additional 2 hours of search at $25.00 per hour and an additional 100 pages of reproduction, for a total fee of $65.00."

§ 701.48 Fee waivers.

Documents shall be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters, when the DON activity determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the DON/DoD and is not primarily in the commercial interest of the requester. When assessable costs for a FOIA request total $15.00 or less, fees shall be waived automatically for all requesters, regardless of category. Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis, consistent with the following factors:

(a) Disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government."

(b) The subject of the request. DON activities should analyze whether the subject matter of the request involves issues that will significantly contribute to the public understanding of the operations or activities of the DON/DoD. Requests for records in the possession of the DON which were originated by non-government organizations and are sought for their intrinsic content, rather than informative value, will likely not contribute to public understanding of the operations or activities of the DON/DoD. An example of such records might be press clippings, magazine articles, or records forwarding a particular opinion or concern from a member of the public regarding a DON/DoD activity. Similarly, disclosures of records of considerable age may or may not bear directly on the current activities of the DON/DoD, however, the age of a particular record shall not be the sole criteria for denying relative significance under this factor. It is possible to envisage an informative issue concerning the current activities of the DON/DoD, based upon historical documentation. Requests of this nature must be closely reviewed consistent with the requester's stated purpose for desiring the records and the potential for public understanding of the operations and activities of the DON/DoD.

(c) The informative value of the information to be disclosed. This factor requires a close analysis of the substantive contents of a record, or portion of the record, to determine whether disclosure is meaningful, and shall inform the public on the operations or activities of the DON. While the subject of a request may contain information that concerns operations or activities of the DON, it may not always hold great potential for contributing to a meaningful understanding of these operations or activities. An example of such would be a previously released record that has been heavily redacted, the balance of which may contain only random words, fragmented sentences, or paragraph headings. A determination as to whether a record in this situation will contribute to the public understanding of the operations or activities of the DON must be approached with caution and carefully weighed against the arguments offered by the requester. Another example is information already known to be in the public domain. Disclosure of duplicative or nearly identical information already existing in the public domain may add no meaningful new information concerning the operations and activities of the DON.

(d) The contribution to an understanding of the subject by the general public likely to result from disclosure. The key element in determining the applicability of this factor is whether disclosure will inform, or have the potential to inform, the public rather than simply the individual requester or small segment of interested persons. The identity of the requester is essential in this situation in order to determine whether such requester has the capability and intention to disseminate the information to the public. Mere assertions of plans to author a book, researching a particular subject, doing doctoral dissertation work, or indigence are insufficient without demonstrating the capacity to further disclose the information in a manner that will be informative to the general public. Requesters should be asked to describe their qualifications, the nature of their research, the purpose of the requested information, and their intended means of dissemination to the public.

(e) The significance of the contribution to public understanding. In applying this factor, DON activities must differentiate the relative significance or impact of the disclosure against the current level of public knowledge, or understanding which exists before the disclosure. In other words, will disclosure on a current subject of wide public interest be unique in contributing previously unknown facts, thereby enhancing public knowledge, or will it basically duplicate what is already known by the

general public? A decision regarding significance requires objective judgment, rather than subjective determination, and must be applied carefully to determine whether disclosure will likely lead to a significant public understanding of the issue. DON activities shall not make value judgments as to whether the information is important enough to be made public.

(f) Disclosure of the information "is not primarily in the commercial interest of the requester."

(1) The existence and magnitude of a commercial interest. If the request is determined to be of a commercial interest, DON activities should address the magnitude of that interest to determine if the requester's commercial interest is primary, as opposed to any secondary personal or non-commercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in obtaining certain records. Where it is difficult to determine whether the requester is of a commercial nature, DON activities may draw inference from the requester's identity and circumstances of the request. Activities are reminded that in order to apply the commercial standards of the FOIA, the requester's commercial benefit must clearly override any personal or non-profit interest.

(2) The primary interest in disclosure. Once a requester's commercial interest has been determined, DON activities should then determine if the disclosure would be primarily in that interest. This requires a balancing test between the commercial interest of the request against any public benefit to be derived as a result of that disclosure. Where the public interest is served above and beyond that of the requester's commercial interest, a waiver or reduction of fees would be appropriate. Conversely, even if a significant public interest exists, and the relative commercial interest of the requester is determined to be greater than the public interest, then a waiver or reduction of fees would be inappropriate. As examples, news media organizations have a commercial interest as business organizations; however, their inherent role of disseminating news to the general public can ordinarily be presumed to be of a primary interest. Therefore, any commercial interest becomes secondary to the primary interest in serving the public. Similarly, scholars writing books or engaged in other forms of academic research may recognize a commercial benefit, either directly, or indirectly (through the institution they represent); however, normally such pursuits are primarily undertaken for educational purposes, and the application of a fee charge would be inappropriate. Conversely, data brokers or others who merely compile government information for marketing can normally be presumed to have an interest primarily of a commercial nature.

(g) The factors and examples used in this section are not all inclusive. Each fee decision must be considered on a case-by-case basis and upon the merits of the information provided in each request. When the element of doubt as to whether to charge or waive the fee cannot be clearly resolved, DON activities should rule in favor of the requester.

(h) The following additional circumstances describe situations where waiver or reduction of fees are most likely to be warranted:

(1) A record is voluntarily created to prevent an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

(2) A previous denial of records is reversed in total, or in part, and the assessable costs are not substantial (e.g. $15.00–$30.00).

§ 701.49 Payment of fees.

(a) Normally, fees will be collected at the time of providing the documents to the requester when the requester specifically states that the costs involved shall be acceptable or acceptable up to a specified limit that covers the anticipated costs, and the fees do not exceed $250.00.

(b) However, after all work is completed on a request, and the documents are ready for release, DON activities may request payment before forwarding the documents, particularly for those requesters who have no payment history, or for those requesters who have failed previously to pay a fee in a timely fashion (i.e., within 30 calendar days from the date of the billing).

(c) When a DON activity estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, the activity shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payments, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(d) Advance payment of a fee is also applicable when a requester has previously failed to pay fees in a timely fashion (i.e., 30 calendar days) after being assessed in writing by the activity. Further, where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 calendar days from the date of the billing), the DON activity may require the requester to pay the full amount owed, plus any applicable interest, or demonstrate that he or she has paid the fee, and to make an advance payment of the full amount of the estimated fee before the activity begins to process a new or pending request from the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717 and confirmed with respective finance and accounting offices.

§ 701.50 Effect of the Debt Collection Act of 1982.

The Debt Collection Act of 1982 (Pub. L. 97–365) provides for a minimum annual rate of interest to be charged on overdue debts owed the Federal Government. DON activities may levy this interest penalty for any fees that remain outstanding 30 calendar days from the date of billing (the first demand notice) to the requester of the amount owed. The interest rate shall be as prescribed in 31 U.S.C. 3717. DON activities should verify the current interest rate with respective finance and accounting offices. After one demand letter has been sent and 30 calendar days have lapsed with no payment, DON activities may submit the debt to respective finance and accounting offices for collection.

§ 701.51 Refunds.

In the event that a DON activity discovers that it has overcharged a requester or a requester has overpaid, the DON activity shall promptly refund the charge to the requester by reimbursement methods that are agreeable to the requester and the activity.

§ 701.52 Computation of fees.

(a) It is imperative that DON activities compute all fees to ensure accurate reporting in the Annual FOIA Report, but ensure that only applicable fees be charged to the requester. For example, although we calculate correspondence and preparation costs, these fees are not recoupable from the requester.

(b) DD 2086, Record of Freedom of Information (FOI) Processing Cost, should be filled out accurately to reflect all processing costs, as requesters may solicit a copy of that document to ensure accurate computation of fees. Costs shall be computed on time actually spent. Neither time-based nor dollar-based minimum charges for search, review and duplication are authorized.

§ 701.53 FOIA fee schedule.

The following fee schedule shall be used to compute the search, review (in the case of commercial requesters) and duplication costs associated with processing a given FOIA request. The appropriate fee category of the requester shall be applied before computing fees.

(a) Manual search.

Type	Grade	Hourly rate
Clerical	E9/GS8 and below.	$12.00
Professional	O1–O6/GS9–GS15.	25.00
Executive	O7/GS16/ES1 and above.	45.00

(b) *Computer search.* Fee assessments for computer search consist of two parts; individual time (hereafter referred to as human time) and machine time.

(1) *Human time.* Human time is all the time spent by humans performing the necessary tasks to prepare the job for a machine to execute the run command. If execution of a run requires monitoring by a human, that human time may be also assessed as computer search. The terms "programmer/operator" shall not be limited to the traditional programmers or operators. Rather, the terms shall be interpreted in their broadest sense to incorporate any human involved in performing the computer job (e.g. technician, administrative support, operator, programmer, database administrator, or action officer).

(2) *Machine time.* Machine time involves only direct costs of the central processing unit (CPU), input/output devices, and memory capacity used in the actual computer configuration. Only this CPU rate shall be charged. No other machine-related costs shall be charged. In situations where the capability does not exist to calculate CPU time, no machine costs can be passed on to the requester. When CPU calculations are not available, only human time costs shall be assessed to requesters. Should DON activities lease computers, the services charged by the lessor shall not be passed to the requester under the FOIA.

(c) Duplication.

Type	Cost per page
Pre-Printed material	$.02
Office copy	.15
Microfiche	.25
Computer copies (tapes, discs or printouts).	Actual cost of duplicating the tape, disc or printout (includes operator's time and cost of the medium).

(d) *Review time (in the case of commercial requesters, only).*

Type	Grade	Hourly rate
Clerical	E9/GS8 and below.	$12.00
Professional	O1–O6/GS9–GS15.	25.00
Executive	O7/GS16/ES1 and above.	45.00

(e) *Audiovisual documentary materials.* Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

(f) *Other records.* Direct search and duplication cost for any record not described in this section shall be computed in the manner described for audiovisual documentary material.

(g) *Costs for special services.* Complying with requests for special services is at the discretion of the DON activity. Neither the FOIA nor its fee structure cover these kinds of services. Therefore, DON activities may recover the costs of special services requested by the requester after agreement has been obtained in writing from the requester to pay for such fees as certifying that records are true copies, sending records by special methods such as express mail, etc.

§ 701.54 Collection of fees and fee rates for technical data.

(a) Technical data, other than technical data that discloses critical technology with military or space application, if required to be released under the FOIA, shall be released after the person requesting such technical data pays all reasonable costs attributed to search, duplication and review of the records to be released. Technical data, as used in this section, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). This term does not include computer software, or data incidental to contract administration, such as financial and/or management information.

(b) DON activities shall retain the amounts received by such a release, and it shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs were incurred in complying with request. All reasonable costs as used in this sense are the full costs to the Federal Government of rendering the service, or fair market value of the service, whichever is higher. Fair market value shall be determined in accordance with commercial rates in the local geographical area. In the absence of a known market value, charges shall be based on recovery of full costs to the Federal Government. The full costs shall include all direct and indirect costs to conduct the search and to duplicate the records responsive to the request. This cost is to be differentiated from the direct costs allowable under information released under FOIA.

(c) Waiver. DON activities shall waive the payment of costs required in paragraph (a) of this section which are greater than the costs that would be required for release of this same information under the FOIA if:

(1) The request is made by a citizen of the United States or a United States corporation and such citizen or corporation certifies that the technical data requested is required to enable it to submit an offer or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States. However, DON activities may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, which will be refunded upon submission of an offer by the citizen or corporation;

(2) The release of technical data is requested in order to comply with the terms of an international agreement; or,

(3) The DON activity determines in accordance with § 701.48 that such a waiver is in the interest of the United States.

(d) Fee rates. (1) Manual search.

Type	Grade	Hourly rate
Clerical	E9/GS8 and below.	$13.25
Clerical (Minimum Charge).	.....	8.30
Professional	01 to 06/GS9 to GS15.	(**)
Executive	07/GS16/ES–1 and above.	(**)

** Rate to be established at actual hourly rate prior to search. A minimum charge will be established at ½ Minimum Charge)

(2) Computer search is based on the total cost of the central processing unit,

input-output devices, and memory capacity of the actual computer configuration. The wage (based upon the scale for manual search) for the computer operator and/or programmer determining how to conduct, and subsequently executing the search will be recorded as part of the computer search.

(3) Duplication.

Type	Cost
Aerial photograph, maps, specifications, permits, charts, blueprints, and other technical engineering documents	$2.50
Engineering data (microfilm):	
Aperture cards:	
Silver duplicate negative, per card	.75
When key punched and verified, per card	.85
Diazo duplicate negative, per card	.65
When key punched and verified, per card	.75
35mm roll film, per frame	.50
16mm roll film, per frame	.45
Paper prints (engineering drawings), each	1.50
Paper reprints of microfilm indices, each	.10

(4) Review Time.

Type	Grade	Hourly rate
Clerical	E9/GS8 and below.	$13.25
Clerical Minimum Charge.	E9/GS8 and below.	8.30
Professional	01 to 06/GS9 to GS15.	(**)
Executive	07/GS16/ES1 or higher.	(**)

** Rate to be established at actual hourly rate prior to search. (A minimum charge will be established at ½ Minimum Charge)

(5) Other technical data records. Charges for any additional services not specifically provided in paragraph (d) of this section, consistent with Volume 11A of DoD 7000.14–R (NOTAL) shall be made by DON activities at the following rates:

Minimum charge for office copy up to six images)—$3.50
Each additional image—$ .10
Each typewritten page—$3.50
Certification and validation with seal, each—$5.20
Hand-drawn plots and sketches, each hour or fraction Thereof—$12.00

§ 701.55 Processing FOIA fee remittances.

(a) Payments for FOIA charges, less fees assessed for technical data or by a Working Capital Fund or a Non-Appropriated Fund (NAF) activity, shall be made payable to the U.S. Treasurer and deposited in Receipt Account Number 172419.1203.

(b) Payments for fees assessed for technical data shall be made payable to the DON activity that incurred the costs and will be deposited directly into the accounting line item from which the costs were incurred.

(c) Payments for fees assessed by Working Capital Fund or Non-Appropriated Fund (NAF) activities shall be made payable to the DON activity and deposited directly into their account.

Subpart D—FOIA Exemptions

§ 701.56 Background.

The FOIA is a disclosure statute whose goal is an informed citizenry. Accordingly, records are considered to be releasable, unless they contain information that qualifies for withholding under one or more of the nine FOIA exemptions. The exemptions are identified as 5 U.S.C. 552 (b)(1) through (b)(9).

§ 701.57 Ground rules.

(a) *Identity of requester.* In applying exemptions, the identity of the requester and the purpose for which the record is sought are irrelevant with the exception that an exemption may not be invoked where the particular interest to be protected is the requester's interest. However, if the subject of the record is the requester for the record and the record is contained in a Privacy Act system of records, it may only be denied to the requester if withholding is both authorized in systems notice and by a FOIA exemption.

(b) *Reasonably segregable.* Even though a document may contain information which qualifies for withholding under one or more FOIA exemptions, FOIA requires that all "reasonably segregable" information be provided to the requester, unless the segregated information would have no meaning. In other words, redaction is not required when it would reduce the balance of the text to unintelligible gibberish.

(c) *Discretionary release.* A discretionary release of a record to one requester shall prevent the withholding of the same record under a FOIA exemption if the record is subsequently requested by someone else. However, a FOIA exemption may be invoked to withhold information that is similar or related that has been the subject of a discretionary release.

(d) *Initial Denial Authority (IDA) actions.* The decision to withhold information in whole or in part based on one or more of the FOIA exemptions requires the signature of an IDA. See listing of IDAs in § 701.4.

§ 701.58 In-depth analysis of FOIA exemptions.

An in-depth analysis of the FOIA exemptions is addressed in the DOJ's annual publication, "Freedom of Information Act Guide & Privacy Act Overview." A copy is available on the DOJ's FOIA website (see Navy FOIA website at http://www.ogc.secnav.hq.navy.mil/foia/index.html for easy access).

§ 701.59 A brief explanation of the meaning and scope of the nine FOIA exemptions.

(a) 5 U.S.C. 552 (b)(1): Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by Executive Order and implemented by regulations.

(1) Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified based on the Executive Order on classification (i.e., Executive Order 12958) and/or a security classification guide. The procedures for reclassification are addressed in the Executive Order.

(2) If the information qualifies as exemption (b)(1) information, there is no discretion regarding its release. In addition, this exemption shall be invoked when the following situations are apparent:

(i) Glomar response: The fact of the existence or nonexistence of a record would itself reveal classified information. In this situation, DON activities shall neither confirm nor deny the existence or nonexistence of the record being requested. A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no record" response when a record does not exist, and a "refusal to confirm or deny" when a record does exist will itself disclose national security information.

(ii) Compilation: Compilations of items of information that are individually unclassified may be classified if the compiled information reveals additional association or relationship that meets the standard for classification under an existing executive order for classification and is not otherwise revealed in the individual items of information.

(b) 5 U.S.C. 552 (b)(2): Those related solely to the internal personnel rules and practices of the DON and its

activities. This exemption is entirely discretionary and has two profiles, high (b)(2) and low (b)(2):

(1) High (b)(2) are records containing or constituting statutes, rules, regulations, orders, manuals, directives, instructions, and security classification guides, the release of which would allow circumvention of these records thereby substantially hindering the effective performance of a significant function of the DON. For example:

(i) Those operating rules, guidelines, and manuals for DON investigators, inspectors, auditors, or examiners that must remain privileged in order for the DON activity fulfill a legal requirement;

(ii) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion;

(iii) Computer software, the release of which would allow circumvention of a statute or DON rules, regulations, orders, manuals, directives, or instructions. In this situation, the use of the software must be closely examined to ensure a circumvention possibility exists.

(2) Discussion of low (b)(2) is provided for information only, as DON activities may not invoke the low (b)(2). Low (b)(2) records are those matters which are trivial and housekeeping in nature for which there is no legitimate public interest or benefit to be gained by release, and it would constitute an administrative burden to process the request in order to disclose the records. Examples include rules of personnel's use of parking facilities or regulation of lunch hours, statements of policy as to sick leave, and administrative data such as file numbers, mail routing stamps, initials, data processing notations, brief references to previous communications, and other like administrative markings.

(c) 5 U.S.C. 552 (b)(3): Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. A few examples of (b)(3) statutes are:

(1) 10 U.S.C. 128, Physical Protection of Special Nuclear Material, Limitation on Dissemination of Unclassified Information.

(2) 10 U.S.C. 130, Authority to Withhold From Public Disclosure Certain Technical Data.

(3) 10 U.S.C. 1102, Confidentiality of Medical Quality Assurance Records.

(4) 10 U.S.C. 2305(g), Protection of Contractor Submitted Proposals.

(5) 12 U.S.C. 3403, Confidentiality of Financial Records.

(6) 18 U.S.C. 798, Communication Intelligence.

(7) 35 U.S.C. 181–188, Patent Secrecy—any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(8) 35 U.S.C. 205, Confidentiality of Inventions Information.

(9) 41 U.S.C. 423, Procurement Integrity.

(10) 42 U.S.C. 2162, Restricted Data and Formerly Restricted Data.

(11) 50 U.S.C. 403 (d)(3), Protection of Intelligence Sources and Methods.

(d) 5 U.S.C. 552 (b)(4): Those containing trade secrets or commercial or financial information that a DON activity receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the Government's ability to obtain necessary information in the future; or impair some other legitimate Government interest. Commercial or financial information submitted on a voluntary basis, absent any exercised authority prescribing criteria for submission is protected without any requirement to show competitive harm. If the information qualifies as exemption (b)(4) information, there is no discretion in its release. Examples include:

(1) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals set forth in or incorporated by reference in a contract entered into between the DON activity and the offeror that submitted the proposal, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data. Additionally, when the provisions of 10 U.S.C. 2305(g) and 41 U.S.C. 423 are met, certain proprietary and source selection information may be withheld under exemption (b)(3).

(2) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(3) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(4) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within the DON.

(5) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(6) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, and technical or scientific data developed in part with Federal funds and in part at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interests in such data in accordance with 10 U.S.C. 2320–2321 and DoD Federal Acquisition Regulation Supplement (DFARS), chapter 2 of 48 CFR, subparts 227.71 and 227.72. Technical data developed exclusively with Federal funds may be withheld under Exemption (b)(3) if it meets the criteria of 10 U.S.C. 130 and DoD Directive 5230.25 of 6 November 1984.

(7) Computer software which is copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would have an adverse impact on the potential market value of a copyrighted work.

(8) Proprietary information submitted strictly on a voluntary basis, absent any exercised authority prescribing criteria for submission. Examples of exercised authorities prescribing criteria for submission are statutes, Executive Orders, regulations, invitations for bids, requests for proposals, and contracts. Submission of information under these authorities is not voluntary.

(e) 5 U.S.C. 552(b)(5): Those containing information considered privileged in litigation, primarily under the deliberative process privilege. For example: internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in deliberative records pertaining to the decision-making process of an agency, whether within or among agencies or within or among DON activities. In order to meet the test of this exemption, the record must be both deliberative in nature, as

well as part of a decision-making process. Merely being an internal record is insufficient basis for withholding under this exemption. Also potentially exempted are records pertaining to the attorney-client privilege and the attorney work-product privilege. This exemption is entirely discretionary. Examples of the deliberative process include:

(1) The nonfactual portions of staff papers, to include after-action reports, lessons learned, and situation reports containing staff evaluations, advice, opinions, or suggestions.

(2) Advice, suggestions, or evaluations prepared on behalf of the DON by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(3) Those non-factual portions of evaluations by DON personnel of contractors and their products.

(4) Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate government functions.

(5) Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interest.

(6) Those portions of official reports of inspection, reports of the Inspector Generals, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more DON activities, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(7) Planning, programming, and budgetary information that is involved in the defense planning and resource allocation process.

(8) If any such intra- or inter-agency record or reasonably segregable portion of such record hypothetically would be made available routinely through the discovery process in the course of litigation with the agency, then it should not be withheld under the FOIA. If, however, the information hypothetically would not be released at all, or would only be released in a particular case during civil discovery where a party's particularized showing of need might override a privilege, then the record may be withheld. Discovery is the formal process by which litigants obtain information from each other for use in the litigation. Consult with legal counsel to determine whether exemption 5 material would be routinely made available through the discovery process.

(9) Intra- or inter-agency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through discovery, and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(10) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

(11) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

(f) 5 U.S.C. 552(b)(6): Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to a requester, other than the person about whom the information is about, would result in a clearly unwarranted invasion of personal privacy. Release of information about an individual contained in a Privacy Act System of records that would constitute a clearly unwarranted invasion of privacy is prohibited, and could subject the releaser to civil and criminal penalties. If the information qualifies as exemption (b)(6) information, there is no discretion in its release. Examples of other files containing personal information similar to that contained in personnel and medical files include:

(1) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(2) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(3) Home addresses, including private e-mail addresses, are normally not releasable without the consent of the individuals concerned. This includes lists of home addressees and military quarters' addressees without the occupant's name. Additionally, the names and duty addresses (postal and/or e-mail) of DON/DoD military and civilian personnel who are assigned to units that are sensitive, routinely deployable, or stationed in foreign territories can constitute a clearly unwarranted invasion of personal privacy.

(4) Privacy interest. A privacy interest may exist in personal information even though the information has been disclosed at some place and time. If personal information is not freely available from sources other than the Federal Government, a privacy interest exists in its nondisclosure. The fact that the Federal Government expended funds to prepare, index and maintain records on personal information, and the fact that a requester invokes FOIA to obtain these records indicates the information is not freely available.

(5) Names and duty addresses (postal and/or e-mail) published in telephone directories, organizational charts, rosters and similar materials for personnel assigned to units that are sensitive, routinely deployable, or stationed in foreign territories are withholdable under this exemption.

(6) This exemption shall not be used in an attempt to protect the privacy of a deceased person. but it may be used to protect the privacy of the deceased person's family if disclosure would rekindle grief, anguish, pain, embarrassment, or even disruption of peace of mind of surviving family members. In such situations, balance the surviving family members' privacy against the public's right to know to determine if disclosure is in the public interest. Additionally, the deceased's social security number should be withheld since it is used by the next of kin to receive benefits. Disclosures may be made to the immediate next of kin as defined in DoD Directive 5154.24 of 28 October 1996 (NOTAL).

(7) A clearly unwarranted invasion of the privacy of third parties identified in a personnel, medical or similar record constitutes a basis for deleting those reasonably segregable portions of that record. When withholding third party personal information from the subject of the record and the record is contained

in a Privacy Act system of records, consult with legal counsel.

(8) This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, DON activities shall neither confirm nor deny the existence or nonexistence of the record being requested. This is a Glomar response, and exemption (b)(6) must be cited in the response. Additionally, in order to insure personal privacy is not violated during referrals, DON activities shall coordinate with other DON activities or Federal agencies before referring a record that is exempt under the Glomar concept.

(i) A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no records" response when a record does not exist and a "refusal to confirm or deny" when a record does exist will itself disclose personally private information.

(ii) Refusal to confirm or deny should not be used when the person whose personal privacy is in jeopardy has provided the requester a waiver of his or her privacy rights; the person initiated or directly participated in an investigation that led to the creation of an agency record seeks access to that record; or the person whose personal privacy is in jeopardy is deceased, the Agency is aware of that fact, and disclosure would not invade the privacy of the deceased's family.

(g) 5 U.S.C. 552(b)(7). Records or information compiled for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of Executive Orders or regulations issued under law. This exemption may be invoked to prevent disclosure of documents not originally created for, but later gathered for law enforcement purposes. With the exception of (b)(7)(C) and (b)(7)(F), this exemption is discretionary. This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:

(1) 5 U.S.C. 552(b)(7)(A): Could reasonably be expected to interfere with enforcement proceedings.

(2) 5 U.S.C. 552(b)(7)(B): Would deprive a person of the right to a fair trial or to an impartial adjudication.

(3) 5 U.S.C. 552(b)(7)(C): Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

(i) This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, Components shall neither confirm nor deny the existence or nonexistence of the record being requested. This is a Glomar response, and exemption (b)(7)(C) must be cited in the response. Additionally, in order to insure personal privacy is not violated during referrals, DON activities shall coordinate with other DON/DoD activities or Federal Agencies before referring a record that is exempt under the Glomar concept. A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no records" response when a record does not exist and a "refusal to confirm or deny" when a record does exist will itself disclose personally private information.

(ii) Refusal to confirm or deny should not be used when the person whose personal privacy is in jeopardy has provided the requester with a waiver of his or her privacy rights; or the person whose personal privacy is in jeopardy is deceased, and the activity is aware of that fact.

(4) 5 U.S.C. 552(b)(7)(D): Could reasonably be expected to disclose the identity of a confidential source, including a source within the DON; a State, local, or foreign agency or authority; or any private institution that furnishes the information on a confidential basis; and could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

(5) 5 U.S.C. 552(b)(7)(E): Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

(6) 5 U.S.C. 552(b)(7)(F): Could reasonably be expected to endanger the life or physical safety of any individual.

(7) Some examples of exemption 7 are: Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related Government litigation or adjudicative proceedings; the identity of firms or individuals being investigated for alleged irregularities involving contracting with the DoD when no indictment has been obtained nor any civil action filed against them by the United States; information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DON activity or a lawful national security intelligence investigation conducted by an authorized agency or office within the DON; national security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(8) The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500), is not diminished.

(9) *Exclusions.* Excluded from the exemption in paragraph (g)(8) are the following two situations applicable to the DON:

(i) Whenever a request is made that involves access to records or information compiled for law enforcement purposes, and the investigation or proceeding involves a possible violation of criminal law where there is reason to believe that the subject of the investigation or proceeding is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, DON activities may, during only such times as that circumstance continues, treat the records or information as not subject to the FOIA. In such situation, the response to the requester will state that no records were found.

(ii) Whenever informant records maintained by a criminal law enforcement organization within a DON activities under the informant's name or personal identifier are requested by a third party using the informant's name or personal identifier, the DON activity may treat the records as not subject to the FOIA, unless the informant's status as an informant has been officially confirmed. If it is determined that the records are not subject to 5 U.S.C. 552(b)(7), the response to the requester will state that no records were found.

(iii) DON activities considering invoking an exclusion should first consult with the DOJ's Office of Information and Privacy.

(h) 5 U.S.C. 552(b)(8): Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(i) 5 U.S.C. 552(b)(9): Those containing geological and geophysical information and data (including maps) concerning wells.

Dated: August 30, 1999.

J. L. Roth,

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

[FR Doc. 99–23344 Filed 9–13–99; 8:45 am]

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August 14, 1999

Part IV

National Counterintelligence Center

32 CFR Part 1800, et al.

Freedom of Information Act; Privacy Act; and Executive Order 12958; Implementation; Interim Rule

NATIONAL COUNTERINTELLIGENCE CENTER

32 CFR Parts 1800, 1801, 1802, 1803, 1804, 1805, 1806 and 1807

Freedom of Information Act; Privacy Act; and Executive Order 12958; Implementation

AGENCY: National Counterintelligence Center (NACIC).

ACTION: Interim rule.

SUMMARY: The National Counterintelligence Center (NACIC) is hereby promulgating interim rules and soliciting comments prior to adoption of final rules to implement its obligations under the Freedom of Information Act, the Privacy Act, and Executive Order 12958 (or successor Orders) provisions relating to classification challenges by authorized holders, requests for mandatory declassification review, and access by historical researchers.

DATES: The interim rules are effective September 14, 1999. Public comments are solicited for the interim rules on or before November 15, 1999.

ADDRESSES: Comments may be submitted to the Information and Privacy Coordinator, Executive Secretariat Office, National Counterintelligence Center, 3W01 NHB, Washington, DC 20505.

FOR FURTHER INFORMATION CONTACT: Information and Privacy Coordinator, Executive Secretariat Office, National Counterintelligence Center, 3W01 NHB, Washington, DC 20505; telephone (703) 874–4121 facsimile (703) 874–5844.

SUPPLEMENTARY INFORMATION: This document promulgates interim rules for access under the Freedom of Information Act (FOIA), the Privacy Act (PA), Executive Order (E.O.) 12958, and seeks public comment prior to adoption of a final rule.

Part 1800 Public Access to NACIC Records Under the Freedom of Information Act (FOIA)

This part is issued under the authority of and in order to implement the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552); and section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403). It prescribes procedures for requesting information on available NACIC records, or NACIC administration of FOIA, or estimates of fees that may become due as a result of a request, requesting records pursuant to FOIA, and filing an administrative appeal of an initial adverse decision under FOIA.

Part 1801 Public Rights Under the Privacy Act of 1974

This part is issued under the authority of and in order to implement the Privacy Act of 1974(5 U.S.C. 552a) and § 102 of the National Security Act of 1947, as amended (50 U.S.C. 403). This part implements procedures governing a request for notification that the NACIC maintains a record concerning requestor in any non-exempt portion of a system of records or any non-exempt system of records, to request a copy of all non-exempt records or portions of records; to request records be amended or augmented, or to file an administrative appeal related to initial adverse determinations.

Part 1802 Challenges to Classification of Documents by Authorized Holders Pursuant § 1.9 of Executive Order 12958

This part is intended to implement the provisions of § 1.9 of Executive Order (E.O.) 12958 which permits authorized holders of classified information to challenge the classified status of that information. This provision and these regulations confer no rights upon members of the general public who shall continue to request reviews of classification under the Mandatory Declassification Review provisions set forth at § 3.6 of E.O. 12958 and at 32 CFR part 1803.

Part 1803 Public Request for Mandatory Declassification Review of Classified Information pursuant to § 3.6 of Executive Order 12958

This part is intended to implement the provisions of § 3.6 of Executive Order (E.O.) 12958 which permits members of the public to request a declassification review of any information classified under this or predecessor orders. It includes sections addressing the right of appeal to the new Interagency Security Classification Appeals Panel which was established pursuant to § 5.4 of E.O. 12958. This Executive Order provision and these regulations do not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or employees.

Part 1804 Access by Historical Researchers and Former Presidential Appointees Provision of Executive Order 12958

This part is issued under the authority of and in order to implement § 4.5 of E.O. 12958 (or successor Orders). It prescribes procedures for requesting access to NACIC records for purposes of historical research or requesting access to NACIC records as a former Presidential appointee.

Part 1805 Production of Official Information or Disclosure of Official Information in Proceedings Before Federal State or Local Government Entities of Competent Jurisdiction

Part 1806 Procedures Governing Acceptance of Service of Process

Part 1807 Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the National Counterintelligence Center

This part is intended to implement the provisions of § 4.5 of Executive Order (E.O.) 12958 which provides a waiver of the need-to-know principle in limited circumstances for historical researchers and former Presidential appointees. These rules do not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or employees. The decision of NACIC in this regard is final.

List of Subjects

32 CFR Part 1800

Freedom of information, National Counterintelligence Center

32 CFR Part 1801

National Counterintelligence Center, Privacy

32 CFR Parts 1802 and 1803

Administrative practice and procedure, Classified information, Executive Order, National Counterintelligence Center

32 CFR Part 1804

Administrative practice and procedure, National Counterintelligence Center, Research–Historian, Presidential appointees

32 CFR Part 1805

Administrative practice and procedure, Information disclosure

32 CFR Part 1806

Buildings, Federal, Law–process servers

32 CFR Part 1807

Civil rights, Federal programs, Persons with disabilities

Dated: August 25, 1999.

Michael Waguespack,

Director, National Counterintelligence Center.

For the reasons set forth in the preamble, NACIC hereby adds Chapter XVIII consisting of Parts 1800, 1801, 1802, 1803, 1804, 1805, 1806, and 1807 to read as follows:

Chapter XVIII—National Counterintelligence Center

PART 1800—PUBLIC ACCESS TO NACIC RECORDS UNDER THE FREEDOM OF INFORMATION ACT (FOIA)

Subpart A—General

Subpart B—Filing of FOIA Requests

Subpart C—NACIC Action on FOIA Requests

Subpart D—Additional Administrative Matters

Subpart E—NACIC Action on FOIA Administrative Appeals

Authority: 5 U.S.C. 552.

Subpart A—General

§ 1800.1 Authority and purpose.

This part is issued under the authority of and in order to implement the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552); and section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403). It prescribes procedures for:

(a) Requesting information on available NACIC records, or NACIC administration of the FOIA, or estimates of fees that may become due as a result of a request;

(b) Requesting records pursuant to the FOIA; and

(c) Filing an administrative appeal of an initial adverse decision under the FOIA.

§ 1800.2 Definitions.

For purposes of this part, the following terms have the meanings indicated:

NACIC means the United States National Counterintelligence Center acting through the NACIC Information and Privacy Coordinator;

Days means calendar days when NACIC is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this part if responding by U.S. domestic mail; otherwise ten (10) days may be added if responding by international mail;

Control means ownership or the authority of NACIC pursuant to federal statute or privilege to regulate official or public access to records;

Coordinator means the NACIC Information and Privacy Coordinator who serves as the NACIC manager of the information review and release program instituted under the Freedom of Information Act;

Direct-costs means those expenditures which an agency actually incurs in the processing of a FOIA request; it does not include overhead factors such as space; it does include:

(1) *Pages* means paper copies of standard office size or the dollar value equivalent in other media;

(2) *Reproduction* means generation of a copy of a requested record in a form appropriate for release;

(3) *Review* means all time expended in examining a record to determine whether any portion must be withheld pursuant to law and in effecting any required deletions but excludes personnel hours expended in resolving general legal or policy issues; it also means personnel hours of professional time;

(4) *Search* means all time expended in looking for and retrieving material that may be responsive to a request utilizing available paper and electronic indices and finding aids; it also means personnel hours of professional time or the dollar value equivalent in computer searches;

Expression of interest means a written communication submitted by a member of the public requesting information on or concerning the FOIA program and/or the availability of documents from NACIC;

Federal agency means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

Fees means those direct costs which may be assessed a requester considering the categories established by the FOIA; requesters should submit information to assist NACIC in determining the proper fee category and NACIC may draw reasonable inferences from the identity and activities of the requester in making such determinations; the fee categories include:

(1) *Commercial* means a request in which the disclosure sought is primarily in the commercial interest of the requester and which furthers such commercial, trade, income or profit interests;

(2) *Non-commercial educational or scientific institution* means a request from an accredited United States educational institution at any academic level or institution engaged in research concerning the social, biological, or physical sciences or an instructor or researcher or member of such institutions; it also means that the information will be used in a specific scholarly or analytical work, will contribute to the advancement of public knowledge, and will be disseminated to the general public;

(3) *Representative of the news media* means a request from an individual actively gathering news for an entity that is organized and operated to publish and broadcast news to the American public and pursuant to their news dissemination function and not their commercial interests; the term *news* means information which concerns current events, would be of current interest to the general public, would enhance the public understanding of the operations or activities of the U.S. Government, and is in fact disseminated to a significant element of the public at minimal cost; freelance journalists are included in this definition if they can demonstrate a solid basis for expecting publication through such an organization, even though not actually employed by it; a publication contract or prior publication record is relevant to such status;

(4) *All other* means a request from an individual not within categories (h)(1), (2), or (3) of this section;

Freedom of Information Act or *"FOIA"* means the statutes as codified at 5 U.S.C. 552;

Interested party means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of NACIC, has a subject matter or physical interest in the documents or information at issue;

Originator means the U.S. Government official who originated the document at issue or successor in office or such official who has been delegated

release or declassification authority pursuant to law;

Potential requester means a person, organization, or other entity who submits an expression of interest;

Reasonably described records means a description of a document (record) by unique identification number or descriptive terms which permit a NACIC employee to locate documents with reasonable effort given existing indices and finding aids;

Records or agency records means all documents, irrespective of physical or electronic form, made or received by NACIC in pursuance of federal law or in connection with the transaction of public business and appropriate for preservation by NACIC as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of NACIC or because of the informational value of the data contained therein; it does not include:

(1) Books, newspapers, magazines, journals, magnetic or printed transcripts of electronic broadcasts, or similar public sector materials acquired generally and/or maintained for library or reference purposes; to the extent that such materials are incorporated into any form of analysis or otherwise distributed or published by NACIC, they are fully subject to the disclosure provisions of the FOIA;

(2) Index, filing, or museum documents made or acquired and preserved solely for reference, indexing, filing, or exhibition purposes; and

(3) Routing and transmittal sheets and notes and filing or destruction notes which do not also include information, comment, or statements of substance;

Responsive records means those documents (i.e., records) which NACIC has determined to be within the scope of a FOIA request.

§ 1800.3 Contact for general information and requests.

For general information on this part, to inquire about the FOIA program at NACIC, or to file a FOIA request (or expression of interest), please direct your communication in writing to the Information and Privacy Coordinator, Executive Secretariat Office, National Counterintelligence Center, 3W01 NHB, Washington, DC 20505. Such inquiries will also be accepted by facsimile at (703)874–5844. For general information or status information on pending cases only, the telephone number is (703)874–4121. Collect calls cannot be accepted.

§ 1800.4 Suggestions and complaints.

NACIC welcomes suggestions or complaints with regard to its administration of the Freedom of Information Act. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. NACIC will respond to all substantive communications and take such actions as determined feasible and appropriate.

Subpart B—Filing of FOIA Requests

§ 1800.11 Preliminary information.

Members of the public shall address all communications to the NACIC Coordinator as specified at § 1800.03 and clearly delineate the communication as a request under the Freedom of Information Act and this regulation. NACIC employees receiving a communication in the nature of a FOIA request shall expeditiously forward same to the Coordinator. Requests and appeals on requests, referrals, or coordinations received from members of the public who owe outstanding fees for information services at this or other federal agencies will not be accepted and action on all pending requests shall be terminated in such circumstances.

§ 1800.12 Requirements as to form and content.

(a) *Required information.* No particular form is required. A request need only reasonably describe the records of interest. This means that documents must be described sufficiently to enable a professional employee familiar with the subject to locate the documents with a reasonable effort. Commonly this equates to a requirement that the documents must be locatable through the indexing of our various systems. Extremely broad or vague requests or requests requiring research do not satisfy this requirement.

(b) *Additional information for fee determination.* In addition, a requester should provide sufficient personal identifying information to allow us to determine the appropriate fee category. A requester should also provide an agreement to pay all applicable fees or fees not to exceed a certain amount or request a fee waiver.

(c) *Otherwise.* Communications which do not meet these requirements will be considered an expression of interest and NACIC will work with, and offer suggestions to, the potential requester in order to define a request properly.

§ 1800.13 Fees for record services.

(a) *In general.* Search, review, and reproduction fees will be charged in accordance with the provisions below relating to schedule, limitations, and category of requester. Applicable fees will be due even if our search locates no responsive records or some or all of the responsive records must be denied under one or more of the exemptions of the Freedom of Information Act.

(b) *Fee waiver requests.* Records will be furnished without charge or at a reduced rate whenever NACIC determines:

(1) That, as a matter of administrative discretion, the interest of the United States Government would be served, or

(2) That it is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the United States Government and is not primarily in the commercial interest of the requester; NACIC shall consider the following factors when making this determination:

(i) Whether the subject of the request concerns the operations or activities of the United States Government; and, if so,

(ii) Whether the disclosure of the requested documents is likely to contribute to an understanding of United States Government operations or activities; and, if so,

(iii) Whether the disclosure of the requested documents will contribute to public understanding of United States Government operations or activities; and, if so,

(iv) Whether the disclosure of the requested documents is likely to contribute significantly to public understanding of United States Government operations and activities; and

(v) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(vi) Whether the disclosure is primarily in the commercial interest of the requester.

(c) *Fee waiver appeals.* Denials of requests for fee waivers or reductions may be appealed to the Director, NACIC via the Coordinator. A requester is encouraged to provide any explanation or argument as to how his or her request satisfies the statutory requirement set forth in paragraph (b) of this section.

(d) *Time for fee waiver requests and appeals.* It is suggested that such requests and appeals be made and resolved prior to the initiation of processing and the incurring of costs. However, fee waiver requests will be accepted at any time prior to the release of documents or the completion of a case, and fee waiver appeals within forty-five (45) days of our initial decision subject to the following condition: if processing has been initiated, then the requester must agree to be responsible for costs in the event

of an adverse administrative or judicial decision.

(e) *Agreement to pay fees.* In order to protect requesters from large and/or unanticipated charges, NACIC will request specific commitment when it estimates that fees will exceed $100.00. NACIC will hold in abeyance for forty-five (45) days requests requiring such agreement and will thereafter deem the request closed. This action, of course, would not prevent an individual from refiling his or her FOIA request with a fee commitment at a subsequent date.

(f) *Deposits.* NACIC may require an advance deposit of up to 100 percent of the estimated fees when fees may exceed $250.00 and the requester has no history of payment, or when, for fees of any amount, there is evidence that the requester may not pay the fees which would be accrued by processing the request. NACIC will hold in abeyance for forty-five (45) days those requests where deposits have been requested.

(g) *Schedule of fees*—(1) *In general.* The schedule of fees for services performed in responding to requests for records is established as follows:

(i) Personnel Search and Review

Clerical/Technical__Quarter hour__$ 5.00__Professional/Supervisory__Quarter hour__ 10.00____Manager/Senior Professional__Quarter hour__18.00

(ii) Computer Search and Production

Search (on-line)__Flat rate__10.00__Search (off-line)__Flat rate__30.00__Other activity__Per minute__10.00__Tapes (mainframe cassette)__Each__9.00__Tapes (mainframe cartridge)__Each__9.00__Tapes (mainframe reel)__Each__20.00__Tapes (PC 9mm)__Each__25.00__Diskette (3.5″) __Each__4.00__CD (bulk recorded)__Each__10.00__CD (recordable)__Each__20.00__ Telecommunications __Per minute__.50__ Paper (mainframe printer)__Per page__.10__Paper (PC b&w laser printer)__Per page__.10__Paper (PC color printer)__Per page__1.00

(iii) Paper Production

Photocopy (standard or legal)__Per page__.10__Microfiche__Per frame__.20__ Pre-printed (if available)__Per 100 pages__5.00__Published (if available)__Per item__NTIS__

(2) *Application of schedule.* Personnel search time includes time expended in either manual paper records searches, indices searches, review of computer search results for relevance, personal computer system searches, and various reproduction services. In any event where the actual cost to NACIC of a particular item is less than the above schedule (e.g., a large production run of a document resulted in a cost less than $5.00 per hundred pages), then the actual lesser cost will be charged.

(3) *Other services.* For all other types of output, production, or reproduction (e.g., photographs, maps, or published reports), actual cost or amounts authorized by statute. Determinations of actual cost shall include the commercial cost of the media, the personnel time expended in making the item to be released, and an allocated cost of the equipment used in making the item, or, if the production is effected by a commercial service, then that charge shall be deemed the actual cost for purposes of this part.

(h) *Limitations on collection of fees*—(1) *In general.* No fees will be charged if the cost of collecting the fee is equal to or greater than the fee itself. That cost includes the administrative costs to NACIC of billing, receiving, recording, and processing the fee for deposit to the Treasury Department and, as of the date of these regulations, is deemed to be $10.00.

(2) *Requests for personal information.* No fees will be charged for requesters seeking records about themselves under the FOIA; such requests are processed in accordance with both the FOIA and the Privacy Act in order to ensure the maximum disclosure without charge.

(i) *Fee categories.* There are four categories of FOIA requesters for fee purposes: "commercial use" requesters, "educational and non-commercial scientific institution" requesters, "representatives of the news media" requesters, and "all other" requesters. The categories are defined in § 1800.2, and applicable fees, which are the same in two of the categories, will be assessed as follows:

(1) "Commercial use" requesters: Charges which recover the full direct costs of searching for, reviewing, and duplicating responsive records (if any);

(2) "Educational and non-commercial scientific institution" requesters as well as "representatives of the news media" requesters: Only charges for reproduction beyond the first 100 pages;

(3) "All other" requesters: Charges which recover the full direct cost of searching for and reproducing responsive records (if any) beyond the first 100 pages of reproduction and the first two hours of search time which will be furnished without charge.

(j) *Associated requests.* A requester or associated requesters may not file a series of multiple requests, which are merely discrete subdivisions of the information actually sought for the purpose of avoiding or reducing applicable fees. In such instances, NACIC may aggregate the requests and charge the applicable fees.

§ 1800.14 Fee estimates (pre-request option).

In order to avoid unanticipated or potentially large fees, a requester may submit a request for a fee estimate. Pursuant to the Electronic Freedom of Information Act Amendments of 1996, NACIC will endeavor within twenty (20) days to provide an accurate estimate, and, if a request is thereafter submitted, NACIC will not accrue or charge fees in excess of our estimate without the specific permission of the requester.

Subpart C—NACIC Action On FOIA Requests

§ 1800.21 Processing of requests for records.

(a) *In general.* Requests meeting the requirements of §§ 1800.11 through 1800.13 shall be accepted as formal requests and processed under the Freedom of Information Act, 5 U.S.C. 552, and these regulations. Pursuant to the Electronic Freedom of Information Act Amendments of 1996, upon receipt, NACIC shall within twenty (20) days record each request, acknowledge receipt to the requester in writing, and thereafter effect the necessary taskings to the NACIC components reasonably believed to hold responsive records.

(b) *Database of "officially released information."* As an alternative to extensive tasking and as an accommodation to many requesters, NACIC maintains a database of "officially released information" which contains copies of documents released by NACIC. Searches of this database can be accomplished expeditiously. Moreover, requests that are specific and well-focused will often incur minimal, if any, costs. Requesters interested in this means of access should so indicate in their correspondence. Consistent with the mandate of the Electronic Freedom of Information Act Amendments of 1996, on-line electronic access to these records is available to the public. Detailed information regarding such access is available from the point of contact specified in § 1800.3.

(c) *Effect of certain exemptions.* In processing a request, NACIC shall decline to confirm or deny the existence or nonexistence of any responsive records whenever the fact of their existence or nonexistence is itself classified under Executive Order 12958 and may jeopardize intelligence sources or methods protected pursuant to section 103(c)(6) of the National Security Act of 1947. In such circumstances, NACIC, in the form of a final written response, shall so inform

the requester and advise of his or her right to an administrative appeal.

(d) *Time for response.* Pursuant to the Electronic Freedom of Information Act Amendments of 1996, NACIC will utilize every effort to determine within the statutory guideline of twenty (20) days after receipt of an initial request whether to comply with such a request. However, should the volume of requests require that NACIC seek additional time from a requester pursuant to § 1800.33, NACIC will inform the requester in writing and further advise of his or her right to file an administrative appeal of any adverse determination.

§ 1800.22 Action and determination(s) by originator(s) or any interested party.

(a) *Initial action for access.* (1) NACIC components tasked pursuant to a FOIA request shall search all relevant record systems within their cognizance. They shall:

(i) Determine whether a record exists;

(ii) Determine whether and to what extent any FOIA exemptions apply;

(iii) Approve the disclosure of all non-exempt records or portions of records for which they are the originator; and

(iv) Forward to the Coordinator all records approved for release or necessary for coordination with or referral to another originator or interested party.

(2) In making these decisions, the NACIC component officers shall be guided by the applicable law as well as the procedures specified at § 1800.31 and § 1800.32 regarding confidential commercial information and personal information (about persons other than the requester).

(b) *Referrals and coordinations.* As applicable and within twenty (20) days, pursuant to the Electronic Freedom of Information Act Amendments of 1996, of receipt by the Coordinator, any NACIC records containing information originated by other NACIC components shall be forwarded to those entities for action in accordance with paragraph (a) of this section and return. Records originated by other federal agencies or NACIC records containing other federal agency information shall be forwarded to such agencies within twenty (20) days of our completion of initial action in the case for action under their regulations and direct response to the requester (for other agency records) or return to NACIC (for NACIC records).

§ 1800.23 Payment of fees, notification of decision, and right of appeal.

(a) *Fees in general.* Fees collected under this part do not accrue to the National Counterintelligence Center and shall be deposited immediately to the general account of the United States Treasury.

(b) *Notification of decision.* Upon completion of all required review and the receipt of accrued fees (or promise to pay such fees), NACIC will promptly inform the requester in writing of those records or portions of records which may be released and which must be denied. With respect to the former, NACIC will provide copies; with respect to the latter, NACIC shall explain the reasons for the denial, identify the person(s) responsible for such decisions by name and title, and give notice of a right of administrative appeal.

(c) *Availability of reading room.* As an alternative to receiving records by mail, a requester may arrange to inspect the records deemed releasable at a NACIC "reading room" in the metropolitan Washington, DC area. Access will be granted after applicable and accrued fees have been paid. Requests to review or browse documents in our database of "officially released records" will also be honored in this manner to the extent that paper copies or electronic copies in unclassified computer systems exist. All such requests shall be in writing and addressed pursuant to § 1800.3. The records will be available at such times as mutually agreed but not less than three (3) days from our receipt of a request. The requester will be responsible for reproduction charges for any copies of records desired.

Subpart D—Additional Administrative Matters

§ 1800.31 Procedures for business information.

(a) *In general.* Business information obtained by NACIC by a submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. For purposes of this section, the following definitions apply:

Business information means commercial or financial information in which a legal entity has a recognized property interest;

Confidential commercial information means such business information provided to the United States Government by a submitter which is reasonably believed to contain information exempt from release under exemption (b)(4) of the Freedom of Information Act, 5 U.S.C. 552, because disclosure could reasonably be expected to cause substantial competitive harm;

Submitter means any person or entity who provides confidential commercial information to the United States Government; it includes, but is not limited to, corporations, businesses (however organized), state governments, and foreign governments; and

(b) *Designation of confidential commercial information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be confidential commercial information and hence protected from required disclosure pursuant to exemption (b)(4). Such designations shall expire ten (10) years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(c) *Process in event of FOIA request.*— (1) *Notice to submitters.* NACIC shall provide a submitter with prompt written notice of receipt of a Freedom of Information Act request encompassing business information whenever:

(i) The submitter has in good faith designated the information as confidential commercial information, or

(ii) NACIC believes that disclosure of the information could reasonably be expected to cause substantial competitive harm, and

(iii) The information was submitted within the last ten (10) years unless the submitter requested and provided acceptable justification for a specific notice period of greater duration.

(2) *Form of notice.* This notice shall either describe the exact nature of the confidential commercial information at issue or provide copies of the responsive records containing such information.

(3) *Response by submitter.* (i) Within seven (7) days of the above notice, all claims of confidentiality by a submitter must be supported by a detailed statement of any objection to disclosure. Such statement shall:

(A) Specify that the information has not been disclosed to the public;

(B) Explain why the information is contended to be a trade secret or confidential commercial information;

(C) Explain how the information is capable of competitive damage if disclosed;

(D) State that the submitter will provide NACIC and the Department of Justice with such litigation defense as requested; and

(E) Be certified by an officer authorized to legally bind the corporation or similar entity.

(ii) It should be noted that information provided by a submitter pursuant to this provision may itself be subject to disclosure under the FOIA.

(4) *Decision and notice of intent to disclose.* (i) NACIC shall consider

carefully a submitter's objections and specific grounds for nondisclosure prior to its final determination. If NACIC decides to disclose a document over the objection of a submitter, NACIC shall provide the submitter a written notice which shall include:

(A) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(B) A description of the information to be disclosed; and

(C) A specified disclosure date which is seven (7) days after the date of the instant notice.

(i) When notice is given to a submitter under this section, NACIC shall also notify the requester and, if NACIC notifies a submitter that it intends to disclose information, then the requester shall be notified also and given the proposed date for disclosure.

(5) *Notice of FOIA lawsuit.* If a requester initiates a civil action seeking to compel disclosure of information asserted to be within the scope of this section, NACIC shall promptly notify the submitter. The submitter, as specified above, shall provide such litigation assistance as required by NACIC and the Department of Justice.

(6) *Exceptions to notice requirement.* The notice requirements of this section shall not apply if NACIC determines that:

(i) The information should not be disclosed in light of other FOIA exemptions;

(ii) The information has been published lawfully or has been officially made available to the public;

(iii) The disclosure of the information is otherwise required by law or federal regulation; or

(iv) The designation made by the submitter under this section appears frivolous, except that, in such a case, NACIC will, within a reasonable time prior to the specified disclosure date, give the submitter written notice of any final decision to disclose the information.

§ 1800.32 Procedures for information concerning other persons.

(a) *In general.* Personal information concerning individuals other than the requester shall not be disclosed under the Freedom of Information Act if the proposed release would constitute a clearly unwarranted invasion of personal privacy. See 5 U.S.C. 552(b)(6). For purposes of this section, the following definitions apply:

Personal information means any information about an individual that is not a matter of public record, or easily discernible to the public, or protected from disclosure because of the implications that arise from Government possession of such information.

Public interest means the public interest in understanding the operations and activities of the United States Government and not simply any matter which might be of general interest to the requester or members of the public.

(b) *Determination to be made.* In making the required determination under this section and pursuant to exemption (b)(6) of the FOIA, NACIC will balance the privacy interests that would be compromised by disclosure against the public interest in release of the requested information.

(c) *Otherwise.* A requester seeking information on a third person is encouraged to provide a signed affidavit or declaration from the third person waiving all or some of their privacy rights. However, all such waivers shall be narrowly construed and the Coordinator, in the exercise of his discretion and administrative authority, may seek clarification from the third party prior to any or all releases.

§ 1800.33 Allocation of resources; agreed extensions of time.

(a) *In general.* NACIC components shall devote such personnel and other resources to the responsibilities imposed by the Freedom of Information Act as may be appropriate and reasonable considering:

(1) The totality of resources available to the component,

(2) The business demands imposed on the component by the Director of NACIC or otherwise by law,

(3) The information review and release demands imposed by the Congress or other governmental authority, and

(4) The rights of all members of the public under the various information review and disclosure laws.

(b) *Discharge of FOIA responsibilities.* Components shall exercise due diligence in their responsibilities under the FOIA and must allocate a reasonable level of resources to requests under the Act in a strictly "first-in, first-out" basis and utilizing two or more processing queues to ensure that smaller as well as larger (i.e., project) cases receive equitable attention. The Information and Privacy Coordinator is responsible for management of the NACIC-wide program defined by this part and for establishing priorities for cases consistent with established law. The Director, NACIC shall provide policy and resource direction as necessary and render decisions on administrative appeals.

(c) *Requests for extension of time.* When NACIC is unable to meet the statutory time requirements of the FOIA, it will inform the requester that the request cannot be processed within the statutory time limits, provide an opportunity for the requester to limit the scope of the request so that it can be processed within the statutory time limits, or arrange with the requester an agreed upon time frame for processing the request, or determine that exceptional circumstances mandate additional time in accordance with the definition of "exceptional circumstances" per section 552(a)(6)(C) of the Freedom of Information Act, as amended, effective October 2, 1997. In such instances NACIC will, however, inform a requester of his or her right to decline our request and proceed with an administrative appeal or judicial review as appropriate.

§ 1800.34 Requests for expedited processing.

(a) *In general.* All requests will be handled in the order received on a strictly "first-in, first-out" basis. Exceptions to this section will only be made in accordance with the following procedures. In all circumstances, however, and consistent with established judicial precedent, requests more properly the scope of requests under the Federal Rules of Civil or Criminal Procedure (or other federal, state, or foreign judicial or quasi-judicial rules) will not be granted expedited processing under this or related (e.g., Privacy Act) provisions unless expressly ordered by a federal court of competent jurisdiction.

(b) *Procedure.* Requests for expedited processing will be approved only when a compelling need is established to the satisfaction of NACIC. A requester may make such a request with a certification of "compelling need" and, within ten (10) days of receipt, NACIC will decide whether to grant expedited processing and will notify the requester of its decision. The certification shall set forth with specificity the relevant facts upon which the requester relies and it appears to NACIC that substantive records relevant to the stated needs may exist and be deemed releasable. A "compelling need" is deemed to exist:

(1) When the matter involves an imminent threat to the life or physical safety of an individual; or

(2) When the request is made by a person primarily engaged in disseminating information and the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity.

Subpart E–NACIC Action On FOIA Administrative Appeals

§ 1800.41 Appeal authority.

The Director, NACIC will make final NACIC decisions from appeals of initial adverse decisions under the Freedom of Information Act and such other information release decisions made under parts 1801, 1802, and 1803 of this chapter. Matters decided by the Director, NACIC will be deemed a final decision by NACIC.

§ 1800.42 Right of appeal and appeal procedures.

(a) *Right of Appeal.* A right of administrative appeal exists whenever access to any requested record or any portion thereof is denied, no records are located in response to a request, or a request for a fee waiver is denied. NACIC will apprise all requesters in writing of their right to appeal such decisions to the Director, NACIC through the Coordinator.

(b) *Requirements as to time and form.* Appeals of decisions must be received by the Coordinator within forty-five (45) days of the date of NACIC's initial decision. NACIC may, for good cause and as a matter of administrative discretion, permit an additional thirty (30) days for the submission of an appeal. All appeals shall be in writing and addressed as specified in § 1800.3. All appeals must identify the documents or portions of documents at issue with specificity and may present such information, data, and argument in support as the requester may desire.

(c) *Exceptions.* No appeal shall be accepted if the requester has outstanding fees for information services at this or another federal agency. In addition, no appeal shall be accepted if the information in question has been the subject of a review within the previous two (2) years or is the subject of pending litigation in the federal courts.

(d) *Receipt, recording, and tasking.* NACIC shall promptly record each request received under this part, acknowledge receipt to the requester in writing, and thereafter effect the necessary taskings to the office(s) which originated or has an interest in the record(s) subject to the appeal.

(e) *Time for response.* NACIC shall attempt to complete action on an appeal within twenty (20) days of the date of receipt. The volume of requests, however, may require that NACIC request additional time from the requester pursuant to § 1800.33. In such event, NACIC will inform the requester of the right to judicial review.

§ 1800.43 Determination(s) by Office Chief(s).

Each Office Chief in charge of an office which originated or has an interest in any of the records subject to the appeal, or designee, is a required party to any appeal; other interested parties may become involved through the request of the Coordinator when it is determined that some or all of the information is also within their official cognizance. These parties shall respond in writing to the Coordinator with a finding as to the exempt status of the information. This response shall be provided expeditiously on a "first-in, first-out" basis taking into account the business requirements of the parties and consistent with the information rights of members of the general public under the various information review and release laws.

§ 1800.44 Action by appeals authority.

(a) *Preparation of docket.* The Coordinator shall provide a summation memorandum for consideration of the Director, NACIC; the complete record of the request consisting of the request, the document(s) (sanitized and full text) at issue, and the findings of concerned Office Chiefs or designee(s).

(b) *Decision by the Director, NACIC.* The Director, NACIC shall personally decide each case; no personal appearances shall be permitted without the express permission of the Director, NACIC.

§ 1800.45 Notification of decision and right of judicial review.

The Coordinator shall promptly prepare and communicate the decision of the Director, NACIC to the requester. With respect to any decision to deny information, that correspondence shall state the reasons for the decision, identify the officer responsible, and include a notice of a right to judicial review.

PART 1801—PUBLIC RIGHTS UNDER THE PRIVACY ACT OF 1974

Subpart A–General

Sec.

Subpart B–Filing Of Privacy Act Requests

Subpart C–Action On Privacy Act Requests

Subpart D–Additional Administrative Matters

Subpart E–Action On Privacy Act Administrative Appeals

Subpart F–Prohibitions

Subpart G–Exemptions

Authority: 5 U.S.C. 552a.

Subpart A–General

§ 1801.1 Authority and purpose.

(a) *Authority.* This part is issued under the authority of and in order to implement the Privacy Act of 1974 (5 U.S.C. 552a) and section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403).

(b) *Purpose in general.* This part prescribes procedures for a requester, as defined herein:

(1) To request notification of whether the National Counterintellingence Center (NACIC) maintains a record concerning them in any non-exempt portion of a system of records or any non-exempt system of records;

(2) To request a copy of all non-exempt records or portions of records;

(3) To request that any such record be amended or augmented; and

(4) To file an administrative appeal to any initial adverse determination to deny access to or amend a record.

(c) *Other purposes.* This part also sets forth detailed limitations on how and to whom NACIC may disclose personal information and gives notice that certain actions by officers or employees of the United States Government or members of the public could constitute criminal offenses.

§ 1801.2 Definitions.

For purposes of this part, the following terms have the meanings indicated:

NACIC means the United States National Counterintelligence Center acting through the NACIC Information and Privacy Coordinator;

Days means calendar days when NACIC is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

Control means ownership or the authority of NACIC pursuant to federal statute or privilege to regulate official or public access to records;

Coordinator means the NACIC Information and Privacy Coordinator who serves as the NACIC manager of the information review and release program instituted under the Privacy Act;

Federal agency means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

Interested party means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of NACIC, has a subject matter or physical interest in the documents or information at issue;

Maintain means maintain, collect, use, or disseminate;

Originator means the U.S. Government official who originated the document at issue or successor in office or such official who has been delegated release or declassification authority pursuant to law;

Privacy Act or *PA* means the statute as codified at 5 U.S.C. 552a;

Record means an item, collection, or grouping of information about an individual that is maintained by NACIC in a system of records;

Requester or *individual* means a citizen of the United States or an alien lawfully admitted for permanent residence who is a living being and to whom a record might pertain;

Responsive record means those documents (records) which NACIC has determined to be within the scope of a Privacy Act request;

Routine use means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which the record is maintained;

System of records means a group of any records under the control of NACIC from which records are retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to that individual.

§ 1801.3 Contact for general information and requests.

For general information on this part, to inquire about the Privacy Act program at NACIC, or to file a Privacy Act request, please direct your communication in writing to the Information and Privacy Coordinator, Executive Secretariat Office, National Counterintelligence Center, 3W01 NHB, Washington, DC 20505. Requests with the required identification statement pursuant to § 1801.13 must be filed in original form by mail. Subsequent communications and any inquiries will be accepted by mail or facsimile at (703) 874–5844 or by telephone at (703) 874–4121. Collect calls cannot be accepted.

§ 1801.4 Suggestions and complaints.

NACIC welcomes suggestions or complaints with regard to its administration of the Privacy Act. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. NACIC will respond to all substantive communications and take such actions as determined feasible and appropriate.

Subpart B—Filing Of Privacy Act Requests

§ 1801.11 Preliminary information.

Members of the public shall address all communications to the contact specified at § 1801.3 and clearly delineate the communication as a request under the Privacy Act and this regulation. Requests and administrative appeals on requests, referrals, and coordinations received from members of the public who owe outstanding fees for information services at this or other federal agencies will not be accepted and action on existing requests and appeals will be terminated in such circumstances.

§ 1801.12 Requirements as to form.

(a) *In general.* No particular form is required. All requests must contain the identification information required at § 1801.13.

(b) *For access.* For requests seeking access, a requester should, to the extent possible, describe the nature of the record sought and the record system(s) in which it is thought to be included. Requesters may find assistance from information described in the Privacy Act Issuances Compilation which is published biennially by the **Federal Register**. In lieu of this, a requester may simply describe why and under what circumstances it is believed that NACIC maintains responsive records; NACIC will undertake the appropriate searches.

(c) *For amendment.* For requests seeking amendment, a requester should identify the particular record or portion subject to the request, state a justification for such amendment, and provide the desired amending language.

§ 1801.13 Requirements as to identification of requester.

(a) *In general.* Individuals seeking access to or amendment of records concerning themselves shall provide their full (legal) name, address, date and place of birth, and current citizenship status together with a statement that such information is true under penalty of perjury or a notarized statement swearing to or affirming identity. If NACIC determines that this information is not sufficient, NACIC may request additional or clarifying information.

(b) *Requirement for aliens.* Only aliens lawfully admitted for permanent residence (PRAs) may file a request pursuant to the Privacy Act and this part. Such individuals shall provide, in addition to the information required under paragraph (a) of this section, their Alien Registration Number and the date that status was acquired.

(c) *Requirement for representatives.* The parent or guardian of a minor individual, the guardian of an individual under judicial disability, or an attorney retained to represent an individual shall provide, in addition to establishing the identity of the minor or individual represented as required in paragraph (a) or (b) of this section, evidence of such representation by submission of a certified copy of the minor's birth certificate, court order, or representational agreement which establishes the relationship and the requester's identity.

(d) *Procedure otherwise.* If a requester or representative fails to provide the information in paragraph (a), (b), or (c) of this section within forty-five (45) days of the date of our request, NACIC will deem the request closed. This action, of course, would not prevent an individual from refiling his or her Privacy Act request at a subsequent date with the required information.

§ 1801.14 Fees.

No fees will be charged for any action under the authority of the Privacy Act, 5 U.S.C. 552a, irrespective of the fact that a request is or may be processed under the authority of both the Privacy Act and the Freedom of Information Act.

Subpart C–Action On Privacy Act Requests

§ 1801.21 Processing requests for access to or amendment of records.

(a) *In general.* Requests meeting the requirements of § 1801.11 through § 1801.13 shall be processed under both the Freedom of Information Act. 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a, and the applicable regulations, unless the requester demands otherwise in writing. Such requests will be processed under both Acts regardless of whether the requester cites one Act in the request, both, or neither. This action is taken in order to ensure the maximum possible disclosure to the requester.

(b) *Receipt, recording and tasking.* Upon receipt of a request meeting the requirements of §§ 1801.11 through 1801.13, NACIC shall within ten (10) days record each request, acknowledge receipt to the requester, and thereafter effect the necessary taskings to the office(s) reasonably believed to hold responsive records.

(c) *Effect of certain exemptions.* In processing a request, NACIC shall decline to confirm or deny the existence or nonexistence of any responsive records whenever the fact of their existence or nonexistence is itself classified under Executive Order 12958 and that confirmation of the existence of a record may jeopardize intelligence sources and methods protected pursuant to section 103(c)(6) of the National Security Act of 1947. In such circumstances, NACIC, in the form of a final written response, shall so inform the requester and advise of his or her right to an administrative appeal.

(d) *Time for response.* Although the Privacy Act does not mandate a time for response, our joint treatment of requests under both the Privacy Act and the FOIA means that the NACIC should provide a response within the FOIA statutory guideline of ten (10) days on initial requests and twenty (20) days on administrative appeals. However, the volume of requests may require that NACIC seek additional time from a requester pursuant to § 1801.33. In such event, NACIC will inform the requester in writing and further advise of his or her right to file an administrative appeal.

§ 1801.22 Action and determination(s) by originator(s) or any interested party.

(a) *Initial action for access.* NACIC offices tasked pursuant to a Privacy Act access request shall search all relevant record systems within their cognizance. They shall:

(1) Determine whether responsive records exist;

(2) Determine whether access must be denied in whole or part and on what legal basis under both Acts in each such case;

(3) Approve the disclosure of records for which they are the originator; and

(4) Forward to the Coordinator all records approved for release or necessary for coordination with or referral to another originator or interested party as well as the specific determinations with respect to denials (if any).

(b) *Initial action for amendment.* NACIC offices tasked pursuant to a Privacy Act amendment request shall review the official records alleged to be inaccurate and the proposed amendment submitted by the requester. If they determine that NACIC's records are not accurate, relevant, timely or complete, they shall promptly:

(1) Make the amendment as requested;

(2) Write to all other identified persons or agencies to whom the record has been disclosed (if an accounting of the disclosure was made) and inform of the amendment; and

(3) Inform the Coordinator of such decisions.

(c) *Action otherwise on amendment request.* If the NACIC office records manager declines to make the requested amendment (or declines to make the requested amendment) but agrees to augment the official records, that manager shall promptly:

(1) Set forth the reasons for refusal; and

(2) Inform the Coordinator of such decision and the reasons therefore.

(d) *Referrals and coordinations.* As applicable and within ten (10) days of receipt by the Coordinator, any NACIC records containing information originated by other NACIC offices shall be forwarded to those entities for action in accordance with paragraphs (a), (b), or (c) of this section and return. Records originated by other federal agencies or NACIC records containing other federal information shall be forwarded to such agencies within ten (10) days of our completion of initial action in the case for action under their regulations and direct response to the requester (for other NACIC records) or return to NACIC (for NACIC records).

(e) *Effect of certain exemptions.* This section shall not be construed to allow access to systems of records exempted by the Director, NACIC pursuant to subsections (j) and (k) of the Privacy Act or where those exemptions require that NACIC can neither confirm nor deny the existence or nonexistence of responsive records.

§ 1801.23 Notification of decision and right of appeal.

Within ten (10) days of receipt of responses to all initial taskings and subsequent coordinations (if any), and dispatch of referrals (if any), NACIC will provide disclosable records to the requester. If a determination has been made not to provide access to requested records (in light of specific exemptions) or that no records are found, NACIC shall so inform the requester, identify the denying official, and advise of the right to administrative appeal.

Subpart D—Additional Administrative Matters

§ 1801.31 Special procedures for medical and psychological records.

(a) *In general.* When a request for access or amendment involves medical or psychological records and when the originator determines that such records are not exempt from disclosure, NACIC will, after consultation with the Director of Medical Services, CIA, determine:

(1) Which records may be sent directly to the requester and

(2) Which records should not be sent directly to the requester because of possible medical or psychological harm to the requester or another person.

(b) *Procedure for records to be sent to physician.* In the event that NACIC determines, in accordance with paragraph (a)(2) of this section, that records should not be sent directly to the requester, NACIC will notify the requester in writing and advise that the records at issue can be made available only to a physician of the requester's designation. Upon receipt of such designation, verification of the identity of the physician, and agreement by the physician:

(1) To review the documents with the requesting individual,

(2) To explain the meaning of the documents, and

(3) To offer counseling designed to temper any adverse reaction, NACIC will forward such records to the designated physician.

(c) *Procedure if physician option not available.* If within sixty (60) days of paragraph (a)(2) of this section, the requester has failed to respond or designate a physician, or the physician fails to agree to the release conditions, NACIC will hold the documents in abeyance and advise the requester that this action may be construed as a technical denial. NACIC will also advise the requester of the responsible official and of his or her rights to administrative appeal and thereafter judicial review.

§ 1801.32 Requests for expedited processing.

(a) All requests will be handled in the order received on a strictly "first-in, first-out" basis. Exceptions to this rule will only be made in circumstances that NACIC deems to be exceptional. In making this determination, NACIC shall consider and must decide in the affirmative on all of the following factors:

(1) That there is a genuine need for the records; and

(2) That the personal need is exceptional; and

(3) That there are no alternative forums for the records sought; and

(4) That it is reasonably believed that substantive records relevant to the stated needs may exist and be deemed releasable.

(b) In sum, requests shall be considered for expedited processing only when health, humanitarian, or due process considerations involving possible deprivation of life or liberty create circumstances of exceptional urgency and extraordinary need. In accordance with established judicial precedent, requests more properly the scope of requests under the Federal Rules of Civil or Criminal Procedure (or equivalent state rules) will not be granted expedited processing under this or related (e.g., Freedom of Information Act) provisions unless expressly ordered by a federal court of competent jurisdiction.

§ 1801.33 Allocation of resources; agreed extensions of time.

(a) *In general.* NACIC components shall devote such personnel and other resources to the responsibilities imposed by the Privacy Act as may be appropriate and reasonable considering:

(1) The totality of resources available to the component,

(2) The business demands imposed on the component by the Director, NACIC or otherwise by law,

(3) The information review and release demands imposed by the Congress or other governmental authority, and

(4) The rights of all members of the public under the various information review and disclosure laws.

(b) *Discharge of Privacy Act responsibilities.* Offices shall exercise due diligence in their responsibilities under the Privacy Act and must allocate a reasonable level of resources to requests under the Act in a strictly "first-in, first-out" basis and utilizing two or more processing queues to ensure that smaller as well as larger (i.e., project) cases receive equitable attention. The Information and Privacy Coordinator is responsible for management of the NACIC-wide program defined by this part and for establishing priorities for cases consistent with established law. The Director, NACIC shall provide policy and resource direction as necessary and shall render decisions on administrative appeals.

(c) *Requests for extension of time.* While the Privacy Act does not specify time requirements, our joint treatment of requests under the FOIA means that when NACIC is unable to meet the statutory time requirements of the FOIA, NACIC may request additional time from a requester. In such instances NACIC will inform a requester of his or her right to decline our request and proceed with an administrative appeal or judicial review as appropriate.

Subpart E—Action On Privacy Act Administrative Appeals

§ 1801.41 Appeal authority.

The Director, NACIC will make final NACIC decisions from appeals of initial adverse decisions under the Privacy Act and such other information release decisions made under 32 CFR parts 1800, 1802, and 1803 of this chapter. Matters decided by the Director, NACIC will be deemed a final decision by NACIC.

§ 1801.42 Right of appeal and appeal procedures.

(a) *Right of Appeal.* A right of administrative appeal exists whenever access to any requested record or any portion thereof is denied, no records are located in response to a request, or a request for amendment is denied. NACIC will apprise all requesters in writing of their right to appeal such decisions to the Director, NACIC through the Coordinator.

(b) *Requirements as to time and form.* Appeals of decisions must be received by the Coordinator within forty-five (45) days of the date of NACIC's initial decision. NACIC may, for good cause and as a matter of administrative discretion, permit an additional thirty (30) days for the submission of an appeal. All appeals to the Director, NACIC shall be in writing and addressed as specified in § 1801.3. All appeals must identify the documents or portions of documents at issue with specificity, provide the desired amending language (if applicable), and may present such information, data, and argument in support as the requester may desire.

(c) *Exceptions.* No appeal shall be accepted if the requester has outstanding fees for information services at this or another federal agency. In addition, no appeal shall be accepted if the information in question has been the subject of an administrative review within the previous two (2) years or is the subject of pending litigation in the federal courts.

(d) *Receipt, recording, and tasking.* NACIC shall promptly record each administrative appeal, acknowledge receipt to the requester in writing, and thereafter effect the necessary taskings to the office chief in charge of the office(s) which originated or has an interest in the record(s) subject to the appeal.

§ 1801.43 Determination(s) by Office Chiefs.

Each Office Chief in charge of an office which originated or has an interest in any of the records subject to the appeal, or designee, is a required party to any appeal; other interested parties may become involved through the request of the Coordinator when it is determined that some or all of the information is also within their official cognizance. These parties shall respond in writing to the Coordinator with a finding as to the exempt or non-exempt status of the information including citations to the applicable exemption and/or their agreement or disagreement as to the requested amendment and the reasons therefore. Each response shall be provided expeditiously on a "first-in, first-out" basis taking into account the business requirements of the parties and consistent with the information rights of members of the general public under the various information review and release laws.

§ 1801.44 Action by appeals authority.

(a) *Preparation of docket.* The Coordinator shall provide a summation memorandum for consideration of the Director, NACIC; the complete record of the request consisting of the request, the document(s) (sanitized and full text) at issue, and the findings of any concerned office chiefs or designee(s).

(b) *Decision by the Director, NACIC.* The Director, NACIC shall personally decide each case; no personal appearances shall be permitted without the express permission of the Director, NACIC.

§ 1801.45 Notification of decision and right of judicial review.

(a) *In general.* The Coordinator shall promptly prepare and communicate the decision of the Director, NACIC to the requester. With respect to any decision to deny information or deny amendment, that correspondence shall

state the reasons for the decision, identify the officer responsible, and include a notice of the right to judicial review.

(b) *For amendment requests.* With further respect to any decision to deny an amendment, that correspondence shall also inform the requester of the right to submit within forty-five (45) days a statement of his or her choice which shall be included in the official records of NACIC. In such cases, the applicable record system manager shall clearly note any portion of the official record which is disputed, append the requester's statement, and provide copies of the statement to previous recipients (if any are known) and to any future recipients when and if the disputed information is disseminated in accordance with a routine use.

Subpart F—Prohibitions

§ 1801.51 Limitations on disclosure.

No record which is within a system of records shall be disclosed by any means of communication to any individual or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be:

(a) To those officers and employees of NACIC which maintains the record who have a need for the record in the performance of their duties;

(b) Required under the Freedom of Information Act, 5 U.S.C. 552;

(c) For a routine use as defined in § 1801.02(m), as contained in the Privacy Act Issuances Compilation which is published biennially in the **Federal Register**, and as described in sections (a)(7) and (e)(4)(D) of the Act;

(d) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of U.S.C. Title 13;

(e) To a recipient who has provided NACIC with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(f) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or designee to determine whether the record has such value;

(g) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of that agency or instrumentality has made a written request to NACIC specifying the particular information desired and the law enforcement activity for which the record is sought;

(h) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(i) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(j) To the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office; or

(k) To any agency, government instrumentality, or other person or entity pursuant to the order of a court of competent jurisdiction of the United States or constituent states.

§ 1801.52 Criminal penalties.

(a) *Unauthorized disclosure.* Criminal penalties may be imposed against any officer or employee of NACIC who, by virtue of employment, has possession of or access to NACIC records which contain information identifiable with an individual, the disclosure of which is prohibited by the Privacy Act or by these rules, and who, knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive same.

(b) *Unauthorized maintenance.* Criminal penalties may be imposed against any officer or employee of NACIC who willfully maintains a system of records without meeting the requirements of section (e)(4) of the Privacy Act, 5 U.S.C. 552a. The Coordinator and the Director of NACIC are authorized independently to conduct such surveys and inspect such records as necessary from time to time to ensure that these requirements are met.

(c) *Unauthorized requests.* Criminal penalties may be imposed upon any person who knowingly and willfully requests or obtains any record concerning an individual from NACIC under false pretenses.

Subpart G—Exemptions

§ 1801.63 Specific exemptions.

Pursuant to authority granted in section (k) of the Privacy Act, the Director, NACIC has determined to exempt from section (d) of the Privacy Act those portions and only those portions of all systems of records maintained by NACIC that would consist of, pertain to, or otherwise reveal information that is:

(a) Classified pursuant to Executive Order 12958 (or successor or prior Order) and thus subject to the provisions of 5 U.S.C. 552(b)(1) and 5 U.S.C. 552a(k)(1);

(b) Investigatory in nature and compiled for law enforcement purposes, other than material within the scope of section (j)(2) of the Act; provided however, that if an individual is denied any right, privilege, or benefit to which they are otherwise eligible, as a result of the maintenance of such material, then such material shall be provided to that individual except to the extent that the disclosure would reveal the identity of a source who furnished the information to the United States Government under an express promise of confidentiality, or, prior to the effective date of this section, under an implied promise of confidentiality;

(c) Maintained in connection with providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056;

(d) Required by statute to be maintained and used solely as statistical records;

(e) Investigatory in nature and compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the United States Government under an express promise of confidentiality, or, prior to the effective date of this section, under an implied promise of confidentiality;

(f) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(g) Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the United States Government under an express promise of confidentiality, or, prior to the effective date of this section, under an implied promise of confidentiality.

PART 1802—CHALLENGES TO CLASSIFICATION OF DOCUMENTS BY AUTHORIZED HOLDERS PURSUANT TO SECTION 1.9 OF EXECUTIVE ORDER 12958

Subpart A—General

Subpart B—Filing of Challenges

Subpart C—Action on Challenges

Subpart D—Right of Appeal

Authority: Executive Order 12958, 60 FR 19825, 3 CFR 1996 Comp., p. 333–356 (or successor Orders).

Subpart A—General

§ 1802.1 Authority and purpose.

(a) *Authority.* This part is issued under the authority of and in order to implement § 1.9 of Executive Order (E.O.) 12958 and section 102 of the National Security Act of 1947.

(b) *Purpose.* This part prescribes procedures for authorized holders of information classified under the various provisions of E.O. 12958, or predecessor Orders, to seek a review or otherwise challenge the classified status of information to further the interests of the United States Government. This part and § 1.9 of E.O. 12958 confer no rights upon members of the general public, or authorized holders acting in their personal capacity, both of whom shall continue to request reviews of classification under the mandatory declassification review provisions set forth at § 3.6 of E.O. 12958.

§ 1802.2 Definitions.

For purposes of this part, the following terms have the meanings as indicated:

NACIC means the United States National Counterintelligence Center acting through the NACIC Information and Privacy Coordinator;

Authorized holders means any member of any United States executive department, military department, the Congress, or the judiciary (Article III) who holds a security clearance from or has been specifically authorized by NACIC to possess and use on official business classified information, or otherwise has Constitutional authority pursuant to their office;

Days means calendar days when NACIC is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any requirement of this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

Challenge means a request in the individual's official, not personal, capacity and in furtherance of the interests of the United States;

Control means ownership or the authority of NACIC pursuant to federal statute or privilege to regulate official or public access to records;

Coordinator means the NACIC Information and Privacy Coordinator acting in the capacity of the Director of NACIC;

Information means any knowledge that can be communicated or documentary material, regardless of its physical form, that is:

(1) Owned by, produced by or for, or under the control of the United States Government, and

(2) Lawfully and actually in the possession of an authorized holder and for which ownership and control has not been relinquished by NACIC;

Interested party means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of NACIC, has a subject matter or physical interest in the documents or information at issue;

Originator means the NACIC officer who originated the information at issue, or successor in office, or a NACIC officer who has been delegated declassification authority for the information at issue in accordance with the provisions of this Order;

This Order means Executive Order 12958 of April 17, 1995, or successor Orders.

§ 1802.3 Contact for general information and requests.

For information on this part or to file a challenge under this part, please direct your inquiry to the Director, National Counterintelligence Center, Washington, DC 20505. The commercial (non-secure) telephone is (703) 874–4117; the classified (secure) telephone for voice and facsimile is (703) 874–5829.

§ 1802.4 Suggestions and complaints.

NACIC welcomes suggestions or complaints with regard to its administration of the Executive Order. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. NACIC will respond to all substantive communications and take such actions as determined feasible and appropriate.

Subpart B–Filing Of Challenges

§ 1802.11 Prerequisites.

Prior to reliance on this part, authorized holders are required to first exhaust such established administrative procedures for the review of classified information. Further information on these procedures is available from the point of contact, § 1802.3.

§ 1802.12 Requirements as to form.

The challenge shall include identification of the challenger by full name and title of position, verification of security clearance or other basis of authority, and an identification of the documents or portions of documents or information at issue. The challenge shall also, in detailed and factual terms, identify and describe the reasons why it is believed that the information is not protected by one or more of the § 1.5 provisions, that the release of the information would not cause damage to the national security, or that the information should be declassified due to the passage of time. The challenge must be properly classified; in this regard, until the challenge is decided, the authorized holder must treat the challenge, the information being challenged, and any related or explanatory information as classified at the same level as the current classification of the information in dispute.

§ 1802.13 Identification of material at issue.

Authorized holders shall append the documents at issue and clearly mark those portions subject to the challenge. If information not in documentary form is in issue, the challenge shall state so clearly and present or otherwise refer with specificity to that information in the body of the challenge.

§ 1802.14 Transmission.

Authorized holders must direct challenge requests to NACIC as specified in § 1802.3. The classified nature of the challenge, as well as the appended documents, require that the holder transmit same in full accordance with established security procedures. In general, registered U.S. mail is approved for SECRET, non-compartmented

material; higher classifications require use of approved Top Secret facsimile machines or NACIC-approved couriers. Further information is available from NACIC as well as corporate or other federal agency security departments.

Subpart C—Action On Challenges

§ 1802.21 Receipt, recording, and tasking.

The Coordinator shall within ten (10) days record each challenge received under this part, acknowledge receipt to the authorized holder, and task the originator and other interested parties. Additional taskings, as required during the review process, shall be accomplished within five (5) days of notification.

§ 1802.22 Challenges barred by res judicata.

The Coordinator shall respond on behalf of the Director, NACIC and deny any challenge where the information in question has been the subject of a classification review within the previous two (2) years or is the subject of pending litigation in the federal courts.

§ 1802.23 Response by originator(s) and/or any interested party.

(a) *In general.* The originator of the classified information (document) is a required party to any challenge; other interested parties may become involved through the request of the Director, NACIC or the originator when it is determined that some or all of the information is also within their official cognizance.

(b) *Determination.* These parties shall respond in writing to the Director, NACIC with a mandatory unclassified finding, to the greatest extent possible, and an optional classified addendum. This finding shall agree to a declassification or, in specific and factual terms, explain the basis for continued classification including identification of the category of information, the harm to national security which could be expected to result from disclosure, and, if older than ten (10) years, the basis for the extension of classification time under §§ 1.6 and 3.4 of this Order. These parties shall also provide a statement as to whether or not there is any other statutory, common law, or Constitutional basis for withholding as required by § 6.1(c) of this Order.

(c) *Time.* The determination(s) shall be provided on a first in, first out basis with respect to all challenges pending under this section and shall be accomplished expeditiously taking into account the requirements of the authorized holder as well as the business requirements of the originator including their responsibilities under the Freedom of Information Act, the Privacy Act, or the mandatory declassification review provisions of this Order.

§ 1802.24 Designation of authority to hear challenges.

The Director, NACIC is the NACIC authority to hear and decide challenges under this part.

§ 1802.25 Action on challenge.

Action by Coordinator. The Coordinator shall provide a summation memorandum for consideration of the Director, NACIC; the complete package consisting of the challenge, the information at issue, and the findings of the originator and interested parties shall also be provided. The Director, NACIC shall personally decide each case; no personal appearances shall be permitted without the express permission of the Director, NACIC.

§ 1802.26 Notification of decision and prohibition on adverse action.

The Coordinator shall communicate the decision of NACIC to the authorized holder, the originator, and other interested parties within ten (10) days of the decision by the Coordinator. That correspondence shall include a notice that no adverse action or retribution can be taken in regard to the challenge and that an appeal of the decision may be made to the Interagency Security Classification Appeals Panel (ISCAP) established pursuant to § 5.4 of this Order.

Subpart D—Right of Appeal

§ 1802.31 Right of appeal.

A right of appeal is available to the ISCAP established pursuant to § 5.4 of this Order. Action by that body will be the subject of rules to be promulgated by the Information Security Oversight Office (ISOO).

PART 1803—PUBLIC REQUESTS FOR MANDATORY DECLASSIFICATION REVIEW OF CLASSIFIED INFORMATION PURSUANT TO § 3.6 OF EXECUTIVE ORDER 12958

Subpart A—General

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1803.2 Definitions.
1803.3 Contact for general information and requests.
1803.4 Suggestions and complaints.

Subpart B—Filing of Mandatory Declassification Review (MDR) Requests

1803.11 Preliminary information.
1803.12 Requirements as to form.
1803.13 Fees.

Subpart C—NACIC Action on MDR Requests

1803.21 Receipt, recording, and tasking.
1803.22 Requests barred by res judicata.
1803.23 Determination by originator or interested party.
1803.24 Notification of decision and right of appeal.

Subpart D–NACIC Action on MDR Appeals

1803.31 Requirements as to time and form.
1803.32 Receipt, recording, and tasking.
1803.33 Determination by NACIC Office Chiefs
1803.34 Appeal authority.
1803.35 Action by appeals authority.
1803.36 Notification of decision and right of further appeal.

Subpart E–Further Appeals

1803.41 Right of further appeal.

Authority: Section 3.6 of Executive Order 12958 (or successor Orders) and Section 102 of the National Security Act, as amended (50 U.S.C. 403).

Subpart A–General

§ 1803.1 Authority and purpose.

(a) *Authority.* This part is issued under the authority of and in order to implement § 3.6 of Executive Order (E.O.) 12958 (or successor Orders); and Section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403).

(b) *Purpose.* This part prescribes procedures, subject to limitations set forth below, for members of the public to request a declassification review of information classified under the various provisions of this or predecessor Orders. Section 3.6 of E.O. 12958 and these regulations do not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or employees.

§ 1803.2 Definitions.

For purposes of this part, the following terms have the meanings as indicated:

NACIC means the United States National Counterintelligence Center acting through the NACIC Information and Privacy Coordinator;

Days means calendar days when NACIC is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any requirement of this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

Control means ownership or the authority of NACIC pursuant to federal statute or privilege to regulate official or public access to records;

Coordinator means the NACIC Information and Privacy Coordinator who serves as the NACIC manager of the

information review and release program instituted under the mandatory declassification review provisions of Executive Order 12958;

Federal agency means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

Information means any knowledge that can be communicated or documentary material, regardless of its physical form that is owned by, produced by or for, or under the control of the United States Government; it does not include information originated by the incumbent President, White House Staff, appointed committees, commissions or boards, or any entities within the Executive Office that solely advise and assist the incumbent President;

Interested party means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of NACIC, has a subject matter or physical interest in the documents or information at issue;

NARA means the National Archives and Records Administration;

Originator means the NACIC officer who originated the information at issue, or successor in office, or a NACIC officer who has been delegated declassification authority for the information at issue in accordance with the provisions of this Order;

Presidential libraries means the libraries or collection authorities established by statute to house the papers of former Presidents Hoover, Roosevelt, Truman, Eisenhower, Kennedy, Johnson, Nixon, Ford, Carter, Reagan, Bush and similar institutions or authorities as may be established in the future;

Referral means coordination with or transfer of action to an interested party;

This Order means Executive Order 12958 of April 17, 1995 or successor Orders;

§ 1803.3 Contact for general information and requests.

For general information on this part or to request a declassification review, please direct your communication to the Information and Privacy Coordinator, National Counterintelligence Center, 3W01 NHB, Washington, DC 20505. Such inquiries will also be accepted by facsimile at (703) 874–5844. For general or status information only, the telephone number is (703) 874–4121. Collect calls cannot be accepted.

§ 1803.4 Suggestions and complaints.

NACIC welcomes suggestions or complaints with regard to its administration of the mandatory declassification review program established under Executive Order 12958. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. NACIC will respond to all substantive communications and take such actions as determined feasible and appropriate.

Subpart B—Filing of Mandatory Declassification Review (MDR) Requests

§ 1803.11 Preliminary information.

Members of the public shall address all communications to the point of contact specified above and clearly delineate the communication as a request under this part. Requests and appeals on requests received from members of the public who owe outstanding fees for information services under this Order or the Freedom of Information Act at this or another federal agency will not be accepted until such debts are resolved.

§ 1803.12 Requirements as to form.

The request shall identify the document(s) or material(s) with sufficient specificity (e.g., National Archives and Records Administration (NARA) Document Accession Number or other applicable, unique document identifying number) to enable NACIC to locate it with reasonable effort. Broad or topical requests for records on a particular subject may not be accepted under this provision. A request for documents contained in the various Presidential libraries shall be effected through the staff of such institutions who shall forward the document(s) in question for NACIC review. The requester shall also provide sufficient personal identifying information when required by NACIC to satisfy requirements of this part.

§ 1803.13 Fees.

Requests submitted via NARA or the various Presidential libraries shall be responsible for reproduction costs required by statute or regulation. Requests made directly to NACIC will be liable for costs in the same amount and under the same conditions as specified in part 1800 of this chapter.

Subpart C—NACIC Action on MDR Requests

§ 1803.21 Receipt, recording, and tasking.

The Information and Privacy Coordinator shall within ten (10) days record each mandatory declassification review request received under this part, acknowledge receipt to the requester in writing (if received directly from a requester), and shall thereafter task the originator and other interested parties. Additional taskings, as required during the review process, shall be accomplished within ten (10) days of notification.

§ 1803.22 Requests barred by res judicata.

The Coordinator shall respond to the requester and deny any request where the information in question has been the subject of a classification review within the previous two (2) years or is the subject of pending litigation in the federal courts.

§ 1803.23 Determination by originator or interested party.

(a) *In general.* The originator of the classified information (document) is a required party to any mandatory declassification review request; other interested parties may become involved through a referral by the Coordinator when it is determined that some or all of the information is also within their official cognizance.

(b) *Required determinations.* These parties shall respond in writing to the Coordinator with a finding as to the classified status of the information including the category of protected information as set forth in § 1.5 of this Order, and, if older than ten (10) years, the basis for the extension of classification time under §§ 1.6 and 3.4 of this Order. These parties shall also provide a statement as to whether or not there is any other statutory, common law, or Constitutional basis for withholding as required by § 6.1(c) of this Order.

(c) *Time.* This response shall be provided expeditiously on a first-in, first-out basis taking into account the business requirements of the originator or interested parties and consistent with the information rights of members of the general public under the Freedom of Information Act and the Privacy Act.

§ 1803.24 Notification of decision and right of appeal.

The Coordinator shall communicate the decision of NACIC to the requester within ten (10) days of completion of all review action. That correspondence shall include a notice of a right of administrative appeal to the Director, NACIC pursuant to § 3.6(d) of this Order.

Subpart D–NACIC Action on MDR Appeals

§ 1803.31 Requirements as to time and form.

Appeals of decisions must be received by the Coordinator within forty-five (45) days of the date of mailing of NACIC's initial decision. It shall identify with specificity the documents or information to be considered on appeal and it may, but need not, provide a factual or legal basis for the appeal.

§ 1803.32 Receipt, recording, and tasking.

The Coordinator shall promptly record each appeal received under this part, acknowledge receipt to the requester, and task the originator and other interested parties. Additional taskings, as required during the review process, shall be accomplished within ten (10) days of notification.

§ 1803.33 Determination by NACIC Office Chiefs.

Each NACIC Office Chief in charge of an office which originated or has an interest in any of the records subject to the appeal, or designee, is a required party to any appeal; other interested parties may become involved through the request of the Coordinator when it is determined that some or all of the information is also within their official cognizance. These parties shall respond in writing to the Coordinator with a finding as to the classified status of the information including the category of protected information as set forth in § 1.5 of this Order, and, if older than ten (10) years, the basis for continued classification under §§ 1.6 and 3.4 of this Order. These parties shall also provide a statement as to whether or not there is any other statutory, common law, or Constitutional basis for withholding as required by § 6.1(c) of this Order. This response shall be provided expeditiously on a "first-in, first-out" basis taking into account the business requirements of the parties and consistent with the information rights of members of the general public under the Freedom of Information Act and the Privacy Act.

§ 1803.34 Appeal authority.

The Director, NACIC will make final NACIC decisions from appeals of initial denial decisions under E.O. 12958. Matters decided by the Director, NACIC will be deemed a final decision by NACIC.

§ 1803.35 Action by appeals authority.

Action by the Director, NACIC. The Coordinator shall provide a summation memorandum for consideration of the Director, NACIC; the complete record of the request consisting of the request, the document(s) (sanitized and full text) at issue, and the findings of the originator and interested parties. The Director, NACIC shall personally decide each case; no personal appearances shall be permitted without the express permission of the Director, NACIC.

§ 1803.36 Notification of decision and right of further appeal.

The Coordinator shall communicate the decision of the Director, NACIC to the requester, NARA, or the particular Presidential Library within ten (10) days of such decision. That correspondence shall include a notice that an appeal of the decision may be made to the Interagency Security Classification Appeals Panel (ISCAP) established pursuant to § 5.4 of this Order.

Subpart E–Further Appeals

§ 1803.41 Right of further appeal.

A right of further appeal is available to the ISCAP established pursuant to § 5.4 of this Order. Action by that Panel will be the subject of rules to be promulgated by the Information Security Oversight Office (ISOO).

PART 1804—ACCESS BY HISTORICAL RESEARCHERS AND FORMER PRESIDENTIAL APPOINTEES PURSUANT TO § 4.5 OF EXECUTIVE ORDER 12958

Subpart A—General

Sec.

Subpart B—Requests for Historical Access

Authority: Section 4.5 of Executive Order 12958 (or successor Orders) and Presidential Decision Directive/NSC 24 "U.S. Counterintelligence Effectiveness," dated May 3, 1994.

Subpart A—General

§ 1804.1 Authority and purpose.

(a) *Authority.* This part is issued under the authority of and in order to implement § 4.5 of Executive Order 12958 (or successor Orders); and Presidential Decision Directive/NSC 24, U.S. Counterintelligence Effectiveness, dated May 3, 1994.

(b) *Purpose.* (1) This part prescribes procedures for:

(i) Requesting access to NACIC records for purposes of historical research, or

(ii) Requesting access to NACIC records as a former Presidential appointee.

(2) Section 4.5 of Executive Order 12958 and this part do not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or employees.

§ 1804.2 Definitions.

For purposes of this part, the following terms have the meanings indicated:

NACIC means the United States National Counterintelligence Center acting through the NACIC Information and Privacy Coordinator;

Days means calendar days when NACIC is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any requirement of this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

Control means ownership or the authority of NACIC pursuant to federal statute or privilege to regulate official or public access to records;

Coordinator means the NACIC Information and Privacy Coordinator who serves as the NACIC manager of the historical access program established pursuant to Section 4.5 of this Order;

Federal agency means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

Former Presidential appointee means any person who has previously occupied a policy-making position in the executive branch of the United States Government to which they were appointed by the current or former President and confirmed by the United States Senate;

Historian or historical researcher means any individual with professional training in the academic field of history (or related fields such as journalism) engaged in a research project leading to publication (or any similar activity such as academic course development) reasonably intended to increase the understanding of the American public into the operations and activities of the United States government;

Information means any knowledge that can be communicated or documentary material, regardless of its

physical form that is owned by, produced by or for, or is under the control of the United States Government;

Interested party means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of NACIC, has a subject matter or physical interest in the documents or information at issue;

Originator means the NACIC officer who originated the information at issue, or successor in office, or a NACIC officer who has been delegated declassification authority for the information at issue in accordance with the provisions of this Order;

This Order means Executive Order 12958 of April 17, 1995 or successor Orders.

§ 1804.3 Contact for general information and requests.

For general information on this part, to inquire about historical access to NACIC records, or to make a formal request for such access, please direct your communication in writing to the Information and Privacy Coordinator, Executive Secretariat, 3W01 NHB, National Counterintelligence Center, Washington, DC 20505. Inquiries will also be accepted by facsimile at (703) 874–5844. For general information only, the telephone number is (703) 874–4121. Collect calls cannot be accepted.

§ 1804.4 Suggestions and complaints.

NACIC welcomes suggestions or complaints with regard to its administration of the historical access program established pursuant to Executive Order 12958. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. NACIC will respond to all substantive communications and take such actions as determined feasible and appropriate.

Subpart B—Requests for Historical Access

§ 1804.11 Requirements as to who may apply.

(a) *Historical researchers:*—(1) *In general.* Any historian engaged in a historical research project as defined above may submit a request in writing to the Coordinator to be given access to classified information for purposes of that research. Any such request shall indicate the nature, purpose, and scope of the research project.

(2) *Additional considerations.* In light of the very limited resources for NACIC's various historical programs, it is the policy of NACIC to consider applications for historical research privileges only in those instances where the researcher's needs cannot be satisfied through requests for access to reasonably described records under the Freedom of Information Act or the mandatory declassification review provisions of Executive Order 12958 and where issues of internal resource availability and fairness to all members of the historical research community militate in favor of a particular grant.

(b) *Former Presidential appointees.* Any former Presidential appointee as defined herein may also submit a request to be given access to any classified records which they originated, reviewed, signed, or received while serving in that capacity. Such appointees may also request approval for a research associate but there is no entitlement to such enlargement of access and the decision in this regard shall be in the sole discretion of NACIC. Requests from appointees shall be in writing to the Coordinator and shall identify the records of interest.

§ 1804.12 Designations of authority to hear requests.

The Director, NACIC has designated the Coordinator, as the NACIC authority to decide requests for historical and former Presidential appointee access under Executive Order 12958 (or successor Orders) and this part.

§ 1804.13 Receipt, recording, and tasking.

The Information and Privacy Coordinator shall within ten (10) days record each request for historical access received under this part, acknowledge receipt to the requester in writing and take the following action:

(a) *Compliance with general requirements.* The Coordinator shall review each request under this part and determine whether it meets the general requirements as set forth in § 1804.11; if it does not, the Coordinator shall so notify the requester and explain the legal basis for this decision.

(b) *Action on requests meeting general requirements.* For requests which meet the requirements of § 1804.11, the Coordinator shall thereafter task the originator(s) of the materials for which access is sought and other interested parties. Additional taskings, as required during the review process, shall be accomplished within ten (10) days of notification.

§ 1804.14 Determinations by tasked officials.

(a) *Required determinations.* The tasked parties as specified below shall respond in writing to the Coordinator with recommended findings to the following issues:

(1)That a serious professional or scholarly research project by the requester is contemplated;

(2) That such access is clearly consistent with the interests of national security (by originator and interested party, if any);

(3) That a non-disclosure agreement has been or will be executed by the requester (or research associate, if any) and other appropriate steps have been taken to assure that classified information will not be disclosed or otherwise compromised;

(4) That a pre-publication agreement has been or will be executed by the requester (or research associate, if any) which provides for a review of notes and any resulting manuscript by the Deputy Director of NACIC;

(5) That the information requested is reasonably accessible and can be located and compiled with a reasonable effort (by the Deputy Director of NACIC and the originator);

(6) That it is reasonably expected that substantial and substantive government documents and/or information will be amenable to declassification and release and/or publication (by the Deputy Director of NACIC and the originator);

(7) That sufficient resources are available for the administrative support of the researcher given current mission requirements (by the Deputy Director of NACIC and the originator); and,

(8) That the request cannot be satisfied to the same extent through requests for access to reasonably described records under the Freedom of Information Act or the mandatory declassification review provisions of Executive Order 12958 (by the Coordinator, the Deputy Director of NACIC and the originator).

(b) *Time.* These responses shall be provided expeditiously on a first-in, first-out basis taking into account the business requirements of the tasked offices and consistent with the information rights of members of the general public under the Freedom of Information Act and the Privacy Act. NACIC will utilize its best efforts to complete action on requests under this part within thirty (30) days of date of receipt.

§ 1804.15 Action by hearing authority.

Action by Coordinator. The Coordinator shall provide a summation memorandum for consideration of the Director, NACIC, the complete record of the request consisting of the request and the findings of the tasked parties. The Director, NACIC shall decide requests on the basis of the eight factors enumerated at § 1804.14(a). The Director, NACIC shall personally decide

each case; no personal appearances shall be permitted without the express permission of the Director, NACIC.

§ 1804.16 Action by appeal authority.

The record compiled (the request, the memoranda filed by the originator and interested parties, and the previous decision(s)) as well as any memorandum of law or policy the referent desires to be considered, shall be certified by the Coordinator and shall constitute the official record of the proceedings and must be included in any subsequent filings. In such cases, the factors to be determined as specified in § 1804.14(a) will be considered by the Director, NACIC de novo and that decision shall be final.

§ 1804.17 Notification of decision.

The Coordinator shall inform the requester of the decision of the Director, NACIC within ten (10) days of the decision and, if favorable, shall manage the access for such period as deemed required but in no event for more than two (2) years unless renewed by the Director, NACIC in accordance with the requirements of § 1804.14(a).

§ 1804.18 Termination of access.

The Coordinator shall cancel any authorization whenever the security clearance of a requester (or research associate, if any) has been canceled or whenever the Director, NACIC determines that continued access would not be in compliance with one or more of the requirements of § 1804.14(a).

PART 1805–PRODUCTION OF OFFICIAL RECORDS OR DISCLOSURE OF OFFICIAL INFORMATION IN PROCEEDINGS BEFORE FEDERAL, STATE OR LOCAL GOVERNMENT ENTITIES OF COMPETENT JURISDICTION

Sec.
1805.1 Scope and purpose.
1805.2 Definitions.
1805.3 General.
1805.4 Procedures for production.

Authority: 5 U.S.C. 104; Presidential Decision Directive/NSC 24 "U.S. Counterintelligence Effectiveness, dated May 3, 1994; 50 U.S.C. 403g; United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951); E.O. 12333; E.O. 12356; U.S. v. Snepp 444 U.S. 507 (1980).

§ 1805.1 Scope and purpose.

This part sets forth the policy and procedures with respect to the production or disclosure of:

(a) Material contained in the files of NACIC,

(b) Information relating to or based upon material contained in the files of NACIC,

(c) Information acquired by any person while such person is an employee of NACIC as part of the performance of that person's official duties or because of that person's association with NACIC.

§ 1805.2 Definitions.

For the purpose of this part:

NACIC means the National Counterintelligence Center and includes all staff elements of the NACIC.

Demand means any subpoena, order or other legal summons (except garnishment orders) that is issued by a federal, state or local government entity of competent jurisdiction with the authority to require a response on a particular matter, or a request for appearance of an individual where a demand could issue.

Employee means any officer, any staff, contract or other employee of NACIC, any person including independent contractors associated with or acting on behalf of NACIC; and any person formerly having such relationships with NACIC.

Production or produce means the disclosure of:

(1) Any material contained in the files of NACIC; or

(2) Any information relating to material contained in the files of NACIC, including but not limited to summaries of such information or material, or opinions based on such information or material; or

(3) Any information acquired by persons while such persons were employees of NACIC as a part of the performance of their official duties or because of their official status or association with NACIC; in response to a demand upon an employee of NACIC.

NACIC Counsel is the NACIC employee designated to manage legal matters and regulatory compliance.

§ 1805.3 General.

(a) No employee shall produce any materials or information in response to a demand without prior authorization as set forth in this part. This part also applies to former employees to the extent consistent with applicable non-disclosure agreements.

(b) This part is intended only to provide procedures for responding to demands for production of documents or information, and is not intended to, does not, and may not be relied upon to, create any right or benefit, substantive or procedural, enforceable by any party against the United States.

§ 1805.4 Procedure for production.

(a) Whenever a demand for production is made upon an employee, the employee shall immediately notify NACIC Counsel, who will follow the procedures set forth in this section.

(b) NACIC Counsel and the Office Chiefs with responsibility for the information sought in the demand shall determine whether any information or materials may properly be produced in response to the demand, except that NACIC Counsel may assert any and all legal defenses and objections to the demand available to NACIC prior to the start of any search for information responsive to the demand. NACIC may, in its sole discretion, decline to begin any search for information responsive to the demand until a final and non-appealable disposition of any such defenses and objections raised by NACIC has been made by the entity or person that issued the demand.

(c) NACIC officials shall consider the following factors, among others, in reaching a decision:

(1) Whether production is appropriate in light of any relevant privilege;

(2) Whether production is appropriate under the applicable rules of discovery or the procedures governing the case or matter in which the demand arose; and

(3) Whether any of the following circumstances apply:

(i) Disclosure would violate a statute, including but not limited to the Privacy Act of 1974, as amended, 5 U.S.C. 552a;

(ii) Disclosure would reveal classified information;

(iii) Disclosure would improperly reveal trade secrets or proprietary confidential information without the owner's consent; or

(iv) Disclosure would interfere with the orderly conduct of NACIC's functions.

(d) If oral or written testimony is sought by a demand in a case or matter in which the NACIC is not a party, a reasonably detailed description of the testimony sought, in the form of an affidavit or, if that is not feasible, a written statement, by the party seeking the testimony or by the party's attorney must be furnished to the NACIC Counsel.

(e) The NACIC Counsel shall be responsible for notifying the appropriate employees and other persons of all decisions regarding responses to demands and providing advice and counsel as to the implementation of such decisions.

(f) If response to a demand is required before a decision is made whether to provide the documents or information sought by the demand, NACIC Counsel, after consultation with the Department of Justice, shall appear before and furnish the court or other competent authority with a copy of this part and

state that the demand has been or is being, as the case may be, referred for the prompt consideration of the appropriate NACIC officials, and shall respectfully request the court or other authority to stay the demand pending receipt of the required instructions.

(g) If the court or any other authority declines to stay the demand pending receipt of instructions in response to a request made in accordance with § 1805.4(g) or rules that the demand must be complied with regardless of instructions rendered in accordance with this Part not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall, if so directed by NACIC Counsel, respectfully decline to comply with the demand under the authority of *United States ex. rel. Touhy v. Ragen*, 340 U.S. 462 (1951), and this part.

(h) With respect to any function granted to NACIC officials in this part, such officials are authorized to delegate in writing their authority in any case or matter or category thereof to subordinate officials.

(i) Any non-employee who receives a demand for the production or disclosure of NACIC information acquired because of that person's association or contacts with NACIC should notify NACIC Counsel, (703) 874–4121, for guidance and assistance. In such cases, the provisions of this part shall be applicable.

PART 1806—PROCEDURES GOVERNING ACCEPTANCE OF SERVICE OF PROCESS

Sec.
1806.1 Scope and Purpose.
1806.2 Definitions.
1806.3 Procedures governing acceptance of service of process.
1806.4 Notification to NACIC Counsel.
1806.5 Authority of NACIC Counsel.

Authority: 5 U.S.C. 104; Presidential Decision Directive/NSC 24 "U.S. Counterintelligence Effectiveness", dated May 3, 1994; 50 U.S.C. 403g; E.O. 12333.

§ 1806.1 Scope and purpose.

(a) This part sets forth the authority of NACIC personnel to accept service of process on behalf of the NACIC or any NACIC employee.

(b) This part is intended to ensure the orderly execution of the NACIC's affairs and not to impede any legal proceeding.

(c) NACIC regulations concerning employee responses to demands for production of official information before federal, state or local government entities are set out in part 1805 of this chapter.

§ 1806.2 Definitions.

NACIC means the National Counterintelligence Center and include all staff elements of NACIC.

Process means a summons complaint, subpoena, or other official paper (except garnishment orders) issued in conjunction with a proceeding or hearing being conducted by a federal, state, or local government entity of competent jurisdiction.

Employee means any NACIC officer, any staff, contract, or other employee of NACIC, any person including independent contractors associated with or acting for or on behalf of NACIC, and any person formerly having such a relationship with NACIC.

NACIC Counsel refers to the NACIC employee designated by NACIC to manage legal issues and regulatory compliance.

§ 1806.3 Procedures governing acceptance of service of process.

(a) *Service of Process Upon the NACIC or a NACIC Employee in an Official Capacity.*—(1) *Personal Service.* Unless otherwise expressly authorized by NACIC Counsel, or designee, personal service of process may be accepted only by NACIC Counsel, Director, NACIC, or Deputy Director, NACIC, located at Central Intelligence Agency Headquarters, Langley, Virginia.

(2) *Mail Service.* Where service of process by registered or certified mail is authorized by law, unless expressly directed otherwise by the NACIC Counsel or designee, personal service of process may be accepted only by NACIC Counsel, Director, NACIC, or Deputy Director, NACIC. Process by mail should be addressed as follows: NACIC Counsel, National Counterintelligence Center, Washington, DC 20505.

(b) *Service of Process Upon a NACIC Employee Solely in An Individual Capacity.*—(1) *General.* NACIC will not provide the name or address of any current or former NACIC employee to individuals or entities seeking to serve process upon such employee solely in his or her individual capacity, even when the matter is related to NACIC activities.

(2) *Personal Service.* Subject to the sole discretion of appropriate officials of the CIA, where NACIC is physically located, process servers generally will not be allowed to enter CIA Headquarters for the purpose of serving process upon any NACIC employee solely in his or her individual capacity. Subject to the sole discretion of the Director, NACIC, process servers will generally not be permitted to enter NACIC office space for the purpose of serving process upon a NACIC employee solely in his or her individual capacity. The NACIC Counsel, the Director, NACIC, and the Deputy Director, NACIC are not permitted to accept service of process on behalf of a NACIC employee in his or her individual capacity.

(3) *Mail Service.* Unless otherwise expressly authorized by the NACIC Counsel, or designee, NACIC personnel are not authorized to accept or forward mailed service of process directed to any NACIC employee in his or her individual capacity. Any such process will be returned to the sender via appropriate postal channels.

(c) *Service of Process Upon a NACIC Employee in a Combined Official and Individual Capacity.*—Unless expressly directed otherwise by the NACIC Counsel, or designee, any process to be served upon a NACIC employee in his or her combined official and individual capacity, in person or by mail, can be accepted only by NACIC Counsel, Director, NACIC, or Deputy Director, NACIC, National Counterintelligence Center, Langley, Virginia.

(d) *Service of Process Upon a NACIC Counsel.* The documents for which service is accepted in official capacity only shall be stamped "Service Accepted in Official Capacity Only." Acceptance of Service of Process shall not constitute an admission or waiver with respect to jurisdiction, propriety of service, improper venue, or any other defense in law or equity available under the laws or rules applicable to the service of process.

§ 1806.4 Notification to NACIC Counsel.

A NACIC employee who receives or has reason to expect to receive service of process in an individual, official, or combined individual and official capacity, in a matter that may involve or the furnishing of documents and that could reasonably be expected to involve NACIC interests, shall promptly notify the NACIC Counsel. Such notification should be given prior to providing the requestor, personal counsel or any other representative, any NACIC information and prior to the acceptance of service of process.

§ 1806.5 Authority of NACIC Counsel.

Any questions concerning interpretation of this part shall be referred to the NACIC Counsel for resolution

PART 1807—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL COUNTERINTELLIGENCE CENTER

Sec.
1807.101 Purpose.
1807.102 Application.
1807.103 Definitions.
1807.104–1807.110 [Reserved]
1807.111 Notice.
1807.112–1807.129 [Reserved]
1807.130 General prohibitions against discrimination.
1807.131–1807.139 [Reserved]
1807.140 Employment.
1807.141–1807.148 [Reserved]
1807.149 Program accessibility: Discrimination prohibited.
1807.150 Program accessibility: Existing facilities.
1807.151 Program accessibility: New construction and alterations.
1807.152–1807.159 [Reserved]
1807.160 Communications.
1807.161–1807.169 [Reserved]
1807.170 Compliance procedures.

Authority: 5 U.S.C. 104, Presidential Decision Directive/NSC 24 U.S. Counterintelligence Effectiveness, dated May 3, 1994, 29 U.S.C. 794.

§ 1807.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of disability in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1807.102 Application.

This part applies to all programs or activities conducted by the NACIC.

§ 1807.103 Definitions.

For purposes of this part, the following terms means—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the NACIC. For example, auxiliary aids useful for persons with impaired vision include readers, materials in Braille, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices. The CIA, where NACIC is physically located, may prohibit from any of its facilities any auxiliary aid, or category of auxiliary aid that the Center for CIA Security (CCS) determines creates a security risk or potential security risk. CCS reserves the right to examine any auxiliary aid brought into the NACIC facilities at CIA Headquarters.

Complete complaint means a written statement that contains the complainant's name and address and describes the NACIC's alleged discriminatory action in sufficient detail to inform the NACIC of the nature and date of the alleged violation of section 504. It must be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties must describe or identify (by name, if possible) the alleged victims of discrimination.

Director means the Director of NACIC or an official or employee of the NACIC acting for the Director under a delegation of authority.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances or other real or personal property.

Individual with disabilities means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase—

(1) Physical or mental impairment includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Cardiovascular; Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(2) Major life activities includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(3) Has a record of such an impairment means has a history of, or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities.

(4) Is regarded as having an impairment means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the NACIC as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward the impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the NACIC as having such an impairment.

Qualified individual with disabilities means—

(1) With respect to any NACIC program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with a handicap who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the NACIC can demonstrate would result in a fundamental alteration in its nature;

(2) With respect to any other NACIC program or activity, an individual with disabilities who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(3) Qualified individual with a disability as that term is defined for purposes of employment in 29 CFR 1614.203(a)(6), which is made applicable to this part by § 1807.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–002, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this part, section 504 applies only to programs or activities conducted by the NACIC and not to federally assisted programs.

§§ 1807.104—1807.110 [Reserved]

§ 1807.111 Notice.

The NACIC shall make available to employees, applicants, participants, beneficiaries, and other interested persons, such information regarding the provisions of this part and its applicability to the programs or activities conducted by the NACIC, and make that information available to them in such manner as the Director finds necessary to apprise those persons of the protections against discrimination assured them by section 504 and the regulations in this part.

§§ 1807.112—1807.129 [Reserved]

§ 1807.130 General prohibitions against discrimination.

(a) No qualified individual with disabilities shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under, any program or activity conducted by the NACIC.

(b)(1) The NACIC, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

(i) Deny a qualified individual with disabilities the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Deny a qualified individual with disabilities an opportunity to obtain the same result, to gain the same benefit, to reach the same level of achievement as that provided to others;

(iii) Provide a qualified individual with disabilities with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless that action is necessary to provide qualified individuals with disabilities with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with disabilities the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with disabilities in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The NACIC may not deny a qualified individual with disabilities the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The NACIC may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would:

(i) Subject qualified individuals with disabilities to discrimination on the basis of disability; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(4) The NACIC may not, in determining the site or location of a facility, make selections the purpose or effect of which would:

(i) Exclude individuals with disabilities from, deny them the benefits of, or otherwise subject them to discrimination under, any program or activity conducted by the NACIC; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(5) The NACIC, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(6) The NACIC may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may the NACIC establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. However, the programs or activities of entities that are licensed or certified by the NACIC are not, themselves, covered by this part.

(c) The exclusion of persons without disabilities from the benefits of a program limited by Federal statute or Executive Order to individuals with disabilities or the exclusion of a specific class of individuals with disabilities from a program limited by Federal statute or Executive Order to a different class of individuals with disabilities is not prohibited by this part.

(d) The NACIC shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

§§ 1807.131—1807.139 [Reserved]

§ 1807.140 Employment.

No qualified individual with disabilities shall, solely on the basis of disability, be subjected to discrimination in employment under any program or activity conducted by the NACIC. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1979 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1614, shall apply to employment in federally conducted programs or activities.

§§ 1807.141—1807.148 [Reserved]

§ 1807.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1807.150, no qualified individual with disabilities shall, because the NACIC's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the NACIC.

§ 1807.150 Program accessibility: Existing facilities.

(a) *General.* The NACIC shall operate each program or activity so that the program or activity, viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This program does not:

(1) Necessarily require the NACIC to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2)(i) Require the NACIC to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

(ii) The NACIC has the burden of proving that compliance with § 1807.150(a) would result in that alteration or those burdens.

(iii) The decision that compliance would result in that alteration of those burdens must be made by the Director after considering all of the NACIC's resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion.

(iv) If an action would result in that alteration or those burdens, the NACIC shall take any other action that would not result in the alteration of burdens but would nevertheless ensure that individuals with disabilities receive the

benefits and services of the program or activity.

(b) *Methods.* (1) The NACIC may comply with the requirements of this section through such means as redesign of equipment, delivery of services at alternate accessible sites, alteration of existing facilities, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities.

(2) The NACIC is not required to make structural changes in existing facilities if other methods are effective in achieving compliance with this section.

(3) In choosing among available methods for meeting the requirements of this section, the NACIC shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate.

§ 1807.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of, the NACIC shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with disabilities in compliance with the definitions, requirements, and standards of the Americans with Disabilities Act Accessibility Guidelines, 36 CFR part 1191.

§§ 1807.152—1807.159 [Reserved]

§ 1807.160 Communications.

(a) The NACIC shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public as follows:

(1)(i) The NACIC shall furnish appropriate auxiliary aids if necessary to afford an individual with disabilities an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the NACIC.

(ii) In determining what type of auxiliary aid is necessary, the NACIC shall give primary consideration to the requests of the individual with disabilities.

(2) Where the NACIC communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The NACIC shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) This section does not require the NACIC to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where NACIC personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the NACIC has the burden of proving that compliance with § 1807.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the NACIC head or his or her designee after considering all NACIC resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the NACIC shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the program or activity.

§§ 1807.161—1807.169 [Reserved]

§ 1807.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of disability in programs and activities conducted by the NACIC.

(b) The NACIC shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director, Office of Equal Employment Opportunity, is responsible for coordinating implementation of this section. Complaints may be sent to NACIC, Director, Washington, DC 20505.

(d) The NACIC shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The NACIC may extend this time period for good cause.

(e) If the NACIC receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The NACIC shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Americans with Disabilities Act Accessibility Guidelines is not readily accessible to and usable by individuals with disabilities.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, The NACIC shall notify the complainant of the results of the investigation in a letter containing:

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the NACIC of the letter required by paragraph (g) of this section. The NACIC may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Director.

(j) The NACIC shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the NACIC determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The Director may delegate the authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

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Part V

Department of Housing and Urban Development

24 CFR Part 761
Public Housing Drug Elimination Program Formula Allocation; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 761

[Docket No. FR–4451–F–04]

RIN 2577–AB95

Public Housing Drug Elimination Program Formula Allocation

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD regulations to replace the competitive distribution of HUD's Public and Indian Housing Drug Elimination Program (PHDEP) funds with a formula allocation funding system. The purpose of this amendment is to provide a more timely, predictable and equitable allocation of PHDEP funds, and to improve program quality, effectiveness and accountability. The competitive distribution of funding through the Assisted Housing component of the Drug Elimination Program is not affected by this rule.

DATES: *Effective Date:* October 14, 1999.

Application Due Date: (for eligible PHAs listed in the preamble who have not yet submitted an application for funding): October 14, 1999.

ADDRESSES: Eligible PHAs listed in the preamble who have not yet submitted an application for funding must submit an original and two copies of the information requested in the Notice Withdrawing and Reissuing FY 1999 Notice of Funding Availability (NOFA) for the FY 1999 Public Housing Drug Elimination Program (PHDEP), published on May 12, 1999 (64 FR 25746) to the local Field Office with delegated public housing responsibilities: Attention: Director, Office of Public Housing. For a listing of Field Offices, please see the application kit, or the Appendix published in the February 26, 1999 SuperNOFA at 64 FR 9767.

FOR FURTHER INFORMATION CONTACT: Bertha M. Jones, Program Analyst, Community Safety and Conservation Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1197 x.4237; or Tracy C. Outlaw, National Office of Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202, telephone (303) 675–1600 (these are not toll-free numbers). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339. Also, please see HUD's website at http://www.hud.gov/pih/legis/titlev.html for additional PHDEP information.

SUPPLEMENTARY INFORMATION:

I. Background

Section 586 of the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105–276, 112 Stat. 2461, approved October 21, 1998) (Public Housing Reform Act) makes certain amendments to the Public and Assisted Housing Drug Elimination Act of 1990, including authorizing HUD to make renewable grants to continue or expand eligible drug elimination activities.

On February 18, 1999 (64 FR 8210), HUD published an Advance Notice of Proposed Rulemaking (ANPR) to solicit comments on possible methods and elements of a need-based formula and performance criteria. HUD received 60 comments in response to the ANPR, which were considered in the development of a proposed rule on formula funding for PHDEP. The proposed rule was published on May 12, 1999 (64 FR 25736). HUD received 26 comments on the proposed rule, which are discussed in the following section.

II. Public Comment on the Proposed Rule

This final rule takes into consideration the comments received on the proposed rule, as discussed below.

Formula Funding

Comment: Allocation of funding on formula basis is good, however factors used (applicant's share of total number of units of all applicants that qualify for funding) will result in agency experiencing a $100,000 loss of funding. Recommend a "hold harmless" provision for successful PHA performers for no less than the average funding they received in FY 96, 97, or 98. A minimum or "hold harmless" annual PHDEP funding level must be established to do adequate planning.

HUD response: As HUD discussed in the preamble to the proposed rule in response to similar comments submitted on the ANPR published on February 18, 1999, the certainty of funding over a five-year period provides compensation for problems resulting from a drop in funding from higher, though less certain, levels. Crime is a widespread problem, and one of HUD's goals in revising the funding distribution process is to make assistance to address this problem more widely available. HUD is also attempting to strike an appropriate balance to maximize the effective use of limited funds. The available funding can address only a fraction of the need across all PHAs. Increasing funding for one group decreases funding available for those outside the group, and HUD is concerned that the suggested "hold harmless" level of funding would result in a program that, overall, would be less effective.

Comment: The proposed rule assumes that drug activity and related crime in preference category applicants will remain static, not changing character or increasing over the 5-year period. This locks an applicant into a funding level that cannot be adjusted to deal with unforeseen changes.

HUD response: The certainty of funding under the formula distribution system in this rule provides a greater level of flexibility to address unforeseen changes than the previous competitive funding system did. Eligible applicants are required to submit a plan for each year of funding, and it is anticipated that each year's grant would normally cover a two year grant period, the same as under the previous funding system. Unforeseen changes arising in one year could be addressed in the next year's plan, for which funding could be used over a one-year grant period, if necessary to address the unforeseen changes. The certainty of renewable funding, combined with a PHA's ability to plan for one-or two-year grant terms, provides a wide latitude for PHAs to address their crime problems.

Comment: The proposed rule assumes that public housing in every PHA in the preference category is of a similar size, type, and geographic distribution. PHAs with higher numbers of scattered site units require different, more costly, law enforcement strategies. A formula distribution according to unit count does not adequately capture the severity of crime and related issues in and around the developments of eligible PHAs. A multiplier, directly proportional to the number of drug related crimes reported by the local police department to be related to the activity generated in or around targeted public housing units, divided by the number of drug-related crimes in the surrounding police district, would have the effect of increasing the number of units in specific developments.

HUD response: Not only the number of scattered site units, but their geographic distribution, could be considered a factor in a formula to distribute funds. This one example demonstrates the complexity that each new factor introduces to a formula and

the difficulty of addressing each factor completely and fairly. HUD is opting to follow the simplified per unit approach that many of the comments on the ANPR and proposed rule favored. If experience demonstrates that this approach is not appropriate or can be significantly improved, HUD will undertake additional rulemaking.

Comment: Although many comments favored the simplified per unit approach to the formula, several comments complained about the reduction in the per unit amount that results under the formula.

HUD response: As noted above, this rule makes the amount of assistance available to fight crime more widely available. This necessarily results in a reduction of the per unit amount that was formerly available to successful applicants, but as also noted above, this reduction in funding for a particular year is balanced by the certainty of funding over a number of years.

Minimum and Maximum Allocation

Comment: There were several comments that addressed maximum and minimum allocations, with some supporting $25,000 as the minimum funding allocation, and others recommending that the minimum amount of funding should be retained at $50,000. There was a suggestion that all PHAs that have received funding at some time in the last three years should be capped at 105 percent to prevent windfalls. One comment stated the funding cap per PHA should remain $35 million per year.

HUD response: The comments were not opposed, but were concerned with the fairness of the maximum and minimum allocations. This final rule makes one adjustment to the proposed $25,000 funding minimum. PHAs with less than 50 units are capped at $500 per unit. HUD is following this approach to prevent the unfairness of a small number of eligible PHAs being awarded up to $2,000 per unit under a $25,000 minimum.

Formula Funding and Performance Measures

Comment: There were numerous comments on performance measures and what their impact should be on formula funding: the formula should be flexible to allow for an increase in funding with demonstrated program success or innovation; measurable goals should be tailored to the local plan and not national in scope; tailoring the program evaluation and monitoring to the local level will more accurately measure its success; not only reduction of violent crime and drug use should be demonstrated, but also prevention should be considered a measurable goal; local diversity in PHDEP programs should be supported instead of a mandated set of criteria established in Washington; highly effective drug elimination and prevention programs may achieve crime levels so low that they cannot demonstrate further reductions from year to year—they might instead be asked to show that their program has reduced the overall level of violent crime and drug use in public housing to below the level of the surrounding community; HUD should include prevention activities in "measurable goals" even though we recognize the difficulty in quantifying them short term.

HUD response: The issue of increasing funding for demonstrated success or innovation raises practical difficulties, and ties in with the issue of performance measures. HUD agrees that the use of crime rates alone is not the most reliable or effective measure of a grantee's performance. HUD is also aware that reporting and analysis of crime rates lag behind the implementation of program activities, and such data may not reflect current conditions. A rise or fall in crime rates is also not an absolute measure of success or failure, as one can argue that successful implementation of activities may not have caused a decline in the crime rate, but did result in a less steep increase.

A more reliable indicator of performance results from an examination of both crime rates and implementation performance—the extent to which a grantee performs all proposed activities within the budget and timetable included in its approved Drug Elimination Program (DEP) plan. HUD will compare a grantee's implementation performance to the crime rates reported by the grantee to see if valid patterns of correspondence are present or can be developed, such as a good implementation performance corresponding to a decrease in crime rates, and a poor implementation performance corresponding to increased crime rates. Even though such a correspondence will not always be the case, this comparison would provide valuable information to improve the DEP program and measure a grantee's performance. Good implementation performance and reduced crime rates would tend to identify successful best practices and activities. Good implementation performance but increased crime rates would require additional analysis to determine if the chosen activities are not effective or appropriate to a grantee's particular circumstances. Poor performance and increased crime rates would indicate a category of grantees that would require the most immediate and highest level of increased attention and technical assistance. Poor performance and decreasing crime rates would identify a second tier of attention and assistance, but would also call into question the necessity of continued funding.

Any record of performance on this basis would have to be considered and analyzed over a period of several funding cycles before it could identify factors that would validly serve for adjusting funding levels. HUD believes, however, that such factors will emerge, and they will be the subject of future rulemaking.

Eligibility for Funding

Comment: Using "prior funding status" as a threshold of eligibility does not support a pragmatic needs-based interpretation of QHWRA. HUD only considers PHAs who actually received PHDEP funding versus all agencies that were eligible (based on need in past years) but did not receive funding. Support increasing the threshold to include as many agencies as are eligible and for whom funds are available.

HUD response: HUD agrees to expand the "needs" category of eligible applicants to include those PHAs that applied under the PHDEP competitive NOFAs for Fiscal Years (FYs) 1996, 1997, or 1998 and received scores above the threshold to qualify for funding (70 points), but were not funded because of lack of available funds. The participation of this category of PHAs in the complex and difficult process of preparing applications under the NOFAs, which would not be undertaken but for the urgency of these PHA's need for assistance, and the finding that these applications were meritorious, provide a sufficient showing to prevent them from being excluded from funding under the new process.

Comment: Several comments suggested additional or different factors to consider to determine "needs" eligibility for funding: use percentage of victimization of residents by Part I and II crimes; include assumption that family developments have higher crime rates and should receive a higher rate of funding; compare the public housing crime rates in each community to the larger community's rate, and select PHAs with rates 10% or more higher than the community's; require that crime levels within the city in which the PHA is located must exceed the state crime levels by 20% and the national crime levels by 50%; determine whether the PHA has established a self-

sufficiency program to assist in creating jobs and preventing crime; determine whether the PHA has additional unique characteristics (such as cultural demographic shifts or additional expenses); look at the changes in a community's crime statistics over a given period of time; consider that the FBI's violent crime rates are not a highly reliable measurement for making funding eligibility distinctions between cities. In addition, applicants in the "preference" category should be eligible for additional funding under the "needs" category.

HUD response: While acknowledging that the FBI statistics used in the eligibility determination formula have flaws, HUD also acknowledges them to be the only source of verified, nationwide (and therefore fairly comparable) data available. As discussed above, this rule expands the "needs" category of eligible applicants to include applicants that would have qualified for funding in FYs 1996, 1997 or 1998, but were not funded because of the unavailability of funds. HUD declines at this time to further refine or complicate the process for identifying eligible applicants. HUD believes that the eligible applicants included by the funding categories under this rule—the previously funded "preference" category, and the "formula" and "previously qualified but not funded" needs categories—constitute virtually every PHA with a serious need for this program funding.

Scope of Activities

Comment: Supports the expansion of the program scope to include violent crime. HUD should also publish a list of eligible activities that specifically meet criteria for addressing violent crime.

HUD response: Although the section 586 of the Public Housing Reform Act expanded the scope of PHDEP to specifically include a focus on violent crime, HUD has always encouraged grantees to take a broader approach to address drug-related crime and related problems under PHDEP. The current guidance, accordingly, is broad enough to provide initial guidance for addressing violent crime. As HUD and its grantees develop their expertise in this specific area, additional guidance will be developed.

Comment: The proposed rule does not take into account the additional cost of law enforcement services and accreditation for PHAs with their own police departments.

Those PHAs with police departments need additional funding to accredit and maintain this needed resource. Large PHAs spend upwards of 6 times as much per unit on security than small PHAs.

HUD response: The rule does not allocate funds on the basis of the activities an applicant chooses to undertake. Any funding system established on such a basis would soon have to be revised to prevent all of the funding from going to the applicants that proposed the most costly activities.

Set-asides

Comment: Several comments opposed the set-aside of funds appropriated for PHDEP for other programs, pointing out, for example, that set-asides decrease the amount of money available to PHAs who have consistently demonstrated need and implemented successful local programs.

HUD response: The Department is required to follow the mandates established by Congress, and where legislation directs HUD to use funds for a particular purpose, HUD must comply.

Plan Submission

Comment: Some Moving To Work (MTW) agencies were exempt from the Public Housing Assessment System (PHAS) under 24 CFR part 901 and submission of a PHA plan—this rule requires a DEP plan to be submitted with the Agency plan—need for clarification of process.

HUD response: While some (not all) MTW agencies are exempt from the PHA plan, they must submit an MTW plan that is comparable to the PHA Plan. Such agencies should submit the DEP plan required information with their MTW plan, and this rule is amended to so provide. HUD will also clarify this requirement directly with the affected agencies.

Compliance with MTCS

Comment: Until HUD fixes its internal (MTCS) data collection and reporting problems, HUD should not threaten the funding of agencies, which the Department assumes have not correctly submitted their data. The requirement that PHAs "maintain a level of compliance with MTCS reporting that is satisfactory to HUD" is arbitrary and not specific enough. It also overlooks the flaws in the MTCS reporting system.

HUD response: MTCS is a fully functional system. It is HUD's primary data system for information on public housing and Section 8 family characteristics and occupancy events. PHAs are required to submit Forms HUD–50058 for every public housing and Section 8 tenant-based assistance family. HUD issued Notice PIH 99–2 on January 28, 1999, to clarify the minimum reporting requirements and to establish a system of monitoring and technical assistance, semi-annual assessment, and formal review and sanctions. Under the Notice, HUD may impose sanctions on PHAs that do not meet the minimum 85 percent reporting level, which is determined at the semi-annual assessments (following the June and December MTCS Delinquency reports). PHAs may request forbearance from sanctions in writing. The request must include an explanation of why the PHA has not attained the minimum reporting level, steps that it plans to take to improve reporting, and monthly milestones. PHAs that do not meet the minimum reporting level and do not obtain forbearance are subject to sanction. For PHDEP, the relevant reporting rate is for public housing only. PHDEP grantees that do not meet the minimum reporting level and do not obtain forbearance from sanctions are subject to a review of their operations that would affect MTCS reporting, as well as sanctions, which may include the PHA's inability to draw down grant funds. HUD will work with PHAs to help them meet the minimum reporting rate.

Resident Survey

Comment: Formula funding was intended to reduce the cost incurred by agencies for grant writing and data gathering—however, the required (resident) survey will increase costs to agencies. Agencies in wide geographic areas will have difficulty administering and processing the survey. Housing Authorities with 400 or fewer eligible units do not have the resources to conduct the required 400-interview resident survey. They should be allowed to survey 20–30 percent of their population.

HUD response: HUD will modify the reporting requirement to require a percent, rather than an absolute number, that smaller PHAs will be responsible for surveying.

Clarification of Unit Count

Comment: The rule implies that an approved demolition/disposition unit is excluded as a source of crime. In fact, the complex process that precedes the actual removal of these units from a PHA's responsibility can take months. During this time the partially or fully vacated buildings are at greater risk.

HUD response: The final rule clarifies the unit count process by specifically stating what units will be counted and by providing that units approved for demolition/disposition continue to be counted for funding purposes until actual demolition/disposition of the unit.

Financial Incentive for Consortia

Comment: Providing a financial incentive only for consortia ignores agencies that serve broad geographic areas with diverse population and demographic needs.

HUD response: Because there were no additional comments or recommendations pertaining to consortia, this rule makes no changes from the proposed rule on this issue.

III. Separate Issues and Funding for NAHASDA Recipients

The May 12, 1999, proposed rule specifically invited comment on separate funding options for NAHASDA recipients, including the establishment of a separate funding pool to address the particular circumstances of Indian country. As a result, a substantial percentage of the comments received on the proposed rule were from Indian Tribes or Tribal Organizations. These comments unanimously supported a separate pool for Indian Country, stating such an approach was warranted because of the differences in PHAs and Indian Country. The lack of FBI data on Indian Country, for example, would penalize NAHASDA recipients because the formula uses crime statistics to determine eligibility for funding.

The comments include a number of recommendations for administering a separate funding pool, including that unit counts should reflect current unit counts under the NAHASDA funds plan, including 1937 Act units and additional units added to the inventory; that HUD apply the requirements in 24 CFR 1000.317 and 1000.327 of the NAHASDA regulations to the Indian set-aside; and that NAHASDA recipients should be allowed to use Tribal police data, court data, child welfare data, educational attainment indicators, or other comparable data when reporting activities.

HUD is conducting an ongoing consultation with the Tribes on the particulars of an appropriate DEP funding process and has forwarded information on a number of proposals for comment to each Tribe. HUD expects to implement a Drug Elimination Program with requirements that specifically address Tribal concerns and issues through a rule to be published separately in the near future.

IV. Changes in This Final Rule

As discussed below in this section and in sections II. and III., above, of this preamble, only a limited number of changes are made to the proposed rule by this final rule, as follows:

The references to NAHASDA recipients are taken out, except where they would be applicable in any subsequent rule, such as retaining the definition of "NAHASDA recipient" in § 761.10. DEP funding for NAHASDA recipients will be added by a separate rule as discussed above in section III. of this preamble.

Section 761.13(a)(1) is amended to include the cap of $500 per unit for PHAs with less than 50 units and to specifically state what units are counted, including providing that units approved for demolition/disposition continue to be counted for funding purposes until actual demolition/disposition of the unit.

Section 761.13(a)(3) is amended to make explicit the link between funding adjustments and sanctions by adding language that funding and meeting performance requirements are subject to the existing sanctions in § 761.30(f).

Section 761.15(a)(3) is amended to include the new needs funding category of PHAs that submitted FY 1996, 1997 or 1998 applications that qualified for funding but were not funded because of the unavailability of funds.

Section 761.15(a)(5) is amended to require MTW agencies to submit the DEP plan required information with their MTW plan.

V. Distribution of FY 1999 PHDEP Funding and List of PHAs Eligible for Funding

The following tables lists all of the PHAs determined to be currently eligible for PHDEP funding in accordance with this final rule. The third column, "Eligibility," gives the basis on which the PHA is eligible for funding. A designation of "N1" in the first column means the PHA was designated eligible on the basis of need as determined under the formula in § 761.15(a)(3). A designation of "N2" means the PHA is eligible on the basis of need as a PHA that qualified for funding under FYs 1996, 1997 or 1998, but was not funded because of the unavailability of funds, in accordance with § 761.15(a)(4). A designation of "R" means the PHA is eligible for funding as a "preference PHA" under § 761.15(a)(2).

An "X" in the fourth column, "Application Received," identifies PHAs that have submitted their PHDEP applications in response to the May 12, 1999, Notice Withdrawing and Reissuing the FY 1999 PHDEP NOFA (64 FR 25746). These PHAs are not required to make any additional submissions to receive FY 1999 PHDEP funding. Any PHA included in the list that has not yet submitted an application in accordance with the May 12, 1999 notice must do so within the next 30 days, up to and including the effective date of this final rule, or it will not receive FY 1999 PHDEP funding.

The total amount to be distributed is approximately $231,750,000 in FY 1999 funding. The amount to be distributed to each listed PHA that has applied or will apply within the next 30 days will be computed in accordance with the formula in § 761.13 of this final rule.

PHA code	PHA name	Eligibility	Application received
AR006	CONWAY HOUSING AUTHORITY	R	
AR015	TEXARKANA	R	
AR016	CAMDEN HOUSING AUTHORITY	R	X
AR017	PINE BLUFF HOUSING AUTHORITY	R	
AR018	MAGNOLIA	R	X
AR031	HOT SPRINGS HOUSING AUTHORITY	R	
AR037	PRESCOTT	R	
AR051	CLARKSVILLE	R	X
AR065	STEPHENS	R	X
AK001	ALASKA HOUSING FINANCE CORPORATION	R	
AL001	BIRMINGHAM	R	X
AL002	MOBILE	R	X
AL004	ANNISTON	R	X
AL005	PHENIX CITY	R	X
AL006	MONTGOMERY	R	X
AL007	DOTHAN	R	X
AL008	SELMA	R	X

PHA code	PHA name	Eligibility	Application received
AL010	FAIRFIELD	R	X
AL012	JASPER	R	X
AL014	GUNTERSVILLE	R	X
AL047	HUNTSVILLE	R	X
AL048	DECATUR	R	X
AL049	GREATER GADSDEN	R	X
AL050	AUBURN	R	X
AL054	FLORENCE	R	X
AL056	HALEYVILLE	R	
AL057	SYLACAUGA	R	X
AL060	RUSSELLVILLE	R	X
AL061	OPELIKA	R	X
AL062	LANETT	R	X
AL064	CARBON HILL	R	X
AL068	SHEFFIELD	R	X
AL069	LEEDS	R	X
AL071	GUIN	R	X
AL073	OZARK	R	X
AL077	TUSCALOOSA	R	X
AL086	JEFFERSON COUNTY	R	X
AL088	LUVERNE	R	X
AL094	GEORGIANA	R	X
AL098	ALICEVILLE	R	X
AL099	SCOTTSBORO	R	X
AL105	TALLADEGA	R	X
AL110	PIEDMONT	R	
AL112	OPP	R	X
AL114	LINEVILLE	R	X
AL115	ENTERPRISE	R	
AL116	YORK	R	X
AL118	EUFAULA	R	X
AL122	CHILDERSBURG	R	X
AL125	BESSEMER	R	X
AL128	SAMSON	R	X
AL129	WALKER COUNTY	R	X
AL131	PRATTVILLE	R	X
AL132	GOODWATER	R	
AL136	ASHLAND	R	
AL139	JACKSONVILLE	R	X
AL147	BRIDGEPORT	R	X
AL152	NORTHPORT	R	X
AL155	GREENVILLE	R	X
AL157	GREENSBORO	R	X
AL160	TUSKEGEE	R	X
AL165	FOLEY	R	X
AL166	CHICKASAW	R	X
AL167	STEVENSON	R	X
AL169	PRICHARD	R	X
AL171	UNIONTOWN	R	X
AL172	TALLASSEE	R	X
AL173	MONROEVILLE	R	X
AL174	ALEXANDER CITY	R	X
AL175	LIVINGSTON	N2	
AL177	TROY	R	X
AL178	DADEVILLE	R	
AL179	DALEVILLE	R	X
AL181	EVERGREEN	R	X
AL182	TRIANA	R	X
AL190	GREENE COUNTY	R	X
AL192	SO CENTRAL ALABAMA REGIONAL	R	
AL199	VALLEY	R	X
AL202	MOBILE COUNTY	R	
AR002	NORTH LITTLE ROCK HOUSING AUTHORITY	R	X
AR003	FORT SMITH	R	X
AR004	LITTLE ROCK HOUSING AUTHORITY	R	
AR094	MALVERN HOUSING AUTHORITY	R	
AR099	FORREST CITY	R	
AR131	JONESBORO URBAN RENEWAL HA	R	X
AR148	ENGLAND	N2	X
AZ001	PHOENIX	R	X
AZ003	GLENDALE	R	
AZ004	TUCSON	R	X
AZ006	FLAGSTAFF	R	X

PHA code	PHA name	Eligibility	Application received
AZ008	WINSLOW	R	
AZ009	MARICOPA COUNTY	R	X
AZ010	PINAL COUNTY	R	X
AZ013	YUMA COUNTY	N2	
AZ021	ELOY	R	X
AZ023	NOGALES	R	
AZ025	SOUTH TUCSON	R	X
AZ028	CHANDLER	R	X
AZ035	YUMA CITY	R	X
AZ038	PEORIA	N1	
AZ041	WILLIAMS	R	
CA001	SAN FRANCISCO HSG AUTH	R	X
CA002	LOS ANGELES COUNTY (HACOLA)	R	X
CA003	OAKLAND HOUSING AUTHORITY	R	X
CA004	LOS ANGELES CITY (HACLA)	R	X
CA005	CITY OF SACRAMENTO	R	X
CA006	CITY OF FRESNO HSG AUTH	R	X
CA007	COUNTY OF SACRAMENTO	R	
CA008	KERN COUNTY	R	X
CA009	UPLAND HOUSING	N1	
CA010	CITY OF RICHMOND HSG AUTH	R	
CA011	COUNTY OF CONTRA COSTA HSG AUT	R	X
CA019	SAN BERNARDINO COUNTY	R	X
CA021	SANTA BARBARA COUNTY	R	X
CA023	COUNTY OF MERCED HOUSING AUTHO	R	X
CA024	COUNTY OF SAN JOAQUIN HOUSING	R	X
CA025	CITY OF EUREKA HSG AUTH	R	
CA026	COUNTY OF STANISLAUS HOUSING A	R	X
CA027	RIVERSIDE COUNTY	R	X
CA028	COUNTY OF FRESNO HSG AUTH	R	X
CA030	TULARE COUNTY HOUSING AUTH	N1	
CA031	OXNARD	R	X
CA033	COUNTY OF MONTEREY HSG AUTH	R	X
CA035	SAN BUENAVENTURA CITY	N1	X
CA039	CALEXICO CITY	R	X
CA044	YOLO COUNTY HSG AUTHORITY	R	X
CA052	COUNTY OF MARIN HOUSING AUTHOR	R	X
CA058	CITY OF BERKELEY HOUSING AUTHO	N1	
CA059	COUNTY OF SANTA CLARA HOUSING	N1	
CA062	CITY OF ALAMEDA HOUSING AUTHOR	R	X
CA063	SAN DIEGO HOUSING COMMISSION	R	X
CA064	SAN LUIS OBISPO	R	
CA067	ALAMEDA COUNTY HSG AUTH	N2	
CA069	CITY OF MADERA HOUSING AUTHORI	R	X
CA076	SANTA BARBARA CITY	R	X
CA092	VENTURA COUNTY	R	X
CA108	SAN DIEGO COUNTY	N1	X
CA142	DUBLIN	N1	
CA143	IMPERIAL VALLEY HOUSING AUTHORITY	R	X
CO001	DENVER	R	X
CO002	PUEBLO	R	X
CO014	WELLINGTON	N1	
CO016	BOULDER CITY	R	X
CO028	COLORADO SPRINGS	N1	
CO035	GREELEY	N1	
CO041	FORT COLLINS	N1	
CO049	LAKEWOOD	N1	
CO052	AURORA	N1	
CO059	LOUISVILLE	N1	
CO061	BOULDER COUNTY	N1	
CT001	BRIDGEPORT HOUSING AUTHORITY	R	X
CT002	NORWALK HOUSING AUTHORITY	R	X
CT003	HARTFORD HOUSING AUTHORITY	R	X
CT004	NEW HAVEN HOUSING AUTHORITY	R	X
CT005	NEW BRITAIN HOUSING AUTHORITY	R	X
CT006	WATERBURY HOUSING AUTHORITY	R	X
CT007	STAMFORD HOUSING AUTHORITY	R	X
CT009	MIDDLETOWN HOUSING AUTHORITY	R	X
CT011	MERIDEN HOUSING AUTHORITY	R	X
CT013	EAST HARTFORD HOUSING AUTHORITY	R	X
CT015	ANSONIA HOUSING AUTHORITY	R	X
CT018	NORWICH HOUSING AUTHORITY	R	X
CT019	GREENWICH HOUSING AUTHORITY	R	X

PHA code	PHA name	Eligibility	Application received
CT020	DANBURY HOUSING AUTHORITY	R	X
CT023	BRISTOL HOUSING AUTHORITY	R	
CT026	MANCHESTER HOUSING AUTHORITY	R	X
CT027	STRATFORD HOUSING AUTHORITY	R	X
CT029	WEST HAVEN HOUSING AUTHORITY	R	X
DC001	D.C HOUSING AUTHORITY	R	X
DE001	WILMINGTON HOUSING AUTHORITY	R	
DE002	DOVER HOUSING AUTHORITY	R	X
DE004	DELAWARE STATE HSNG AUTH	R	X
FL001	JACKSONVILLE	R	
FL002	ST. PETERSBURG	R	X
FL003	TAMPA	R	X
FL004	ORLANDO	R	X
FL005	MIAMI-DADE	R	
FL006	PENSACOLA (AHC)	R	X
FL007	DAYTONA BEACH	R	X
FL008	SARASOTA	R	
FL009	WEST PALM BEACH	R	
FL010	FT. LAUDERDALE	R	X
FL011	LAKELAND	R	X
FL013	KEY WEST	R	X
FL015	NW FLORIDA REGIONAL	R	
FL016	SANFORD	R	X
FL017	MIAMI BEACH	N1	
FL018	PANAMA CITY	R	X
FL019	COCOA	R	
FL020	BREVARD COUNTY	R	
FL022	NEW SMYRNA BEACH	R	X
FL023	BRADENTON	R	X
FL025	TITUSVILLE	R	X
FL028	POMPANO BEACH	R	
FL032	OCALA	R	X
FL041	FT. PIERCE	R	X
FL046	CRESTVIEW	R	X
FL047	FT. MYERS	R	X
FL055	ARCADIA	R	
FL056	MELBOURNE	R	
FL057	PALATKA	R	X
FL060	PUNTA GORDA	R	
FL061	DUNEDIN	N1	
FL062	PINELLAS COUNTY	N1	
FL063	GAINESVILLE	R	X
FL066	HIALEAH	R	X
FL069	FORT WALTON BEACH	R	X
FL070	ALACHUA COUNTY	R	X
FL071	LAKE WALES	R	X
FL072	DELAND	R	
FL073	TALLAHASSEE	R	X
FL075	CLEARWATER	R	X
FL076	RIVIERA BEACH	R	X
FL079	BROWARD COUNTY	R	
FL080	PALM BEACH COUNTY	R	
FL081	DEERFIELD BEACH	R	
FL083	DELRAY BEACH	R	X
FL104	PASCO COUNTY	R	X
FL119	BOCA RATON	N1	
FL136	HOLLYWOOD	N1	
FL139	WINTER HAVEN	R	X
FL144	MONROE COUNTY	R	
GA001	TIFTON	R	X
GA002	SAVANNAH	R	X
GA003	ATHENS	R	X
GA004	COLUMBUS	R	X
GA005	ROME	R	X
GA006	ATLANTA	R	X
GA007	MACON	R	X
GA009	BRUNSWICK	R	X
GA010	MARIETTA	R	X
GA011	DECATUR	R	X
GA023	ALBANY	R	X
GA025	CEDARTOWN	R	X
GA028	WAYCROSS	R	X
GA059	GAINESVILLE	R	X

PHA code	PHA name	Eligibility	Application received
GA060	MOULTRIE	R	X
GA062	AMERICUS	R	X
GA063	CORDELE	R	X
GA065	WEST POINT	R	X
GA066	JESUP	R	X
GA069	DUBLIN	R	X
GA072	EATONTON	R	
GA073	MONROE	R	X
GA074	ELBERTON	R	X
GA075	TOCCOA	R	X
GA076	DOUGLAS CITY	R	X
GA077	COCHRAN	R	
GA078	EAST POINT	R	X
GA080	EASTMAN	R	X
GA081	HARTWELL	N2	
GA085	QUITMAN	R	
GA090	ROYSTON	R	X
GA093	LAWRENCEVILLE	R	X
GA094	LAVONIA	R	X
GA095	NEWNAN	R	X
GA096	CAMILLA	R	X
GA098	PELHAM	R	X
GA100	VALDOSTA	R	X
GA102	ROCKMART	R	X
GA115	CLAYTON	R	X
GA116	CARROLLTON	R	X
GA119	CALHOUN	R	X
GA120	LYONS	R	X
GA129	LEE COUNTY	N1	
GA133	ALMA	R	X
GA134	BLACKSHEAR	R	X
GA145	VIDALIA	R	X
GA147	SOCIAL CIRCLE	R	X
GA148	DALLAS	R	X
GA153	SUMMERVILLE	R	X
GA160	WARNER ROBINS	R	X
GA161	HARRIS COUNTY	N1	
GA171	LOGANVILLE	R	X
GA179	BUENA VISTA	N1	
GA182	MCDONOUGH	R	X
GA183	WINDER	R	X
GA193	MADISON	R	X
GA200	MILLEDGEVILLE	R	X
GA201	JASPER	N2	
GA204	SENOIA	R	X
GA213	CANTON	R	X
GA214	ELLAVILLE	N1	
GA226	CUTHBERT	R	
GA232	COLLEGE PARK	R	X
GA247	THOMASTON	R	
GA254	BREMEN	R	X
GA264	FULTON COUNTY	R	X
GA280	FLINT AREA CONSOLIDATED	R	X
GA281	ETOWAH AREA	R	X
GQ001	GUAM	R	X
HI001	HAWAII HOUSING AND COMMUNITY DEVELOPMENT CORPORATI	R	
IA018	SIOUX CITY	N1	
IA020	DES MOINES	R	
IA023	COUNCIL BLUFFS	N1	
IA045	DAVENPORT	N1	
IA050	WATERLOO	N1	
IA107	FORT DODGE	N2	
IA131	CENTRAL IOWA	N1	
ID013	BOISE CITY	N1	
ID020	IHFA	N1	
ID021	ADA	N1	
IL001	EAST ST. LOUIS HSG AUTH	R	X
IL002	CHICAGO HOUSING AUTHORITY	R	X
IL003	PEORIA HOUSING AUTHORITY	R	X
IL004	SPRINGFIELD HOUSING AUTHORITY	R	X
IL006	CHAMPAIGN COUNTY HSG AUTH	R	X
IL007	ALEXANDER COUNTY HSG AUTH	R	X
IL009	HENRY COUNTY HSG AUTH	R	

PHA code	PHA name	Eligibility	Application received
IL011	DANVILLE HOUSING AUTHORITY	R	X
IL012	DECATUR HOUSING AUTHORITY	R	X
IL014	LASALLE COUNTY HSG AUTH	R	X
IL015	MADISON COUNTY HSG AUTH	R	X
IL018	ROCK ISLAND CITY HSG AUTH	R	
IL022	ROCKFORD HOUSING AUTH	R	X
IL024	JOLIET HOUSING AUTHORITY	R	X
IL025	COOK COUNTY HSG AUTH	R	X
IL026	WAUKEGAN HSG AUTH	R	X
IL029	FREEPORT HOUSING AUTHORITY	R	X
IL030	ST. CLAIR CY HSG AUTH	R	X
IL039	KANKAKEE CTY HSG AUTH	R	X
IL051	BLOOMINGTON HSG AUTH	R	X
IL052	RANDOLPH CTY HSG AUTH	R	X
IL053	JACKSON CTY HSG AUTH	R	X
IL055	ALTON HSG AUTH	R	X
IL056	LAKE CTY HSG AUTH	R	X
IL059	JEFFERSON CTY HSG AUTH	R	X
IL061	FRANKLIN CTY HSG AUTH	R	X
IL078	BOND CTY HSG AUTH	R	
IL083	WINNEBAGO CTY HSG AUTH	R	X
IL085	KNOX CTY HSG AUTH	R	X
IL090	AURORA HSG AUTH	R	X
IL091	WARREN CTY HSG AUTH	R	X
IL092	ELGIN HSG AUTH	R	X
IL802	HABITAT CORP.	N1	
IN003	FORT WAYNE HOUSING AUTHORITY	R	X
IN004	DELAWARE COUNTY HOUSING AUTHORITY	N1	
IN005	MUNCIE HOUSING AUTHORITY	R	X
IN007	KOKOMO HOUSING AUTHORITY	R	X
IN010	HAMMOND HOUSING AUTHORITY	R	X
IN011	GARY HOUSING AUTHORITY	R	X
IN015	SOUTH BEND HOUSING AUTHORITY	R	
IN016	EVANSVILLE HOUSING AUTHORITY	R	X
IN017	INDIANAPOLIS HOUSING AGENCY	R	X
IN019	MICHIGAN CITY HOUSING AUTHORITY	R	X
IN020	MISHAWAKA HOUSING AUTHORITY	N1	
IN021	TERRE HAUTE HOUSING AUTHORITY	N1	
IN023	JEFFERSONVILLE HOUSING AUTHORITY	R	X
IN026	ELKHART HOUSING AUTHORITY	R	X
IN029	EAST CHICAGO HOUSING AUTHORITY	R	
KS001	KANSAS CITY, KS	R	
KS002	TOPEKA	R	
KS004	WICHITA	N1	
KS017	ATCHISON	R	X
KS038	SALINA	N1	
KS043	OLATHE	N1	
KS053	LAWRENCE	R	X
KS062	CHANUTE	R	
KS063	MANHATTAN	R	
KS068	LEAVENWORTH	N1	
KY001	HA LOUISVILLE	R	X
KY002	HA COVINGTON	R	X
KY003	HA FRANKFORT	R	X
KY004	HA LEXINGTON	R	X
KY006	HA PADUCAH	R	X
KY011	HA HOPKINSVILLE	R	X
KY012	HENDERSON H/R	R	X
KY014	DANVILLE	R	X
KY015	HA NEWPORT	N2	
KY016	RICHMOND	R	X
KY017	HA MAYSVILLE	R	X
KY020	MT STERLING	R	
KY021	HA CYNTHIANA	R	X
KY022	HA LEBANON	R	X
KY025	LYON COUNTY	R	X
KY027	HA PAINTSVILLE	R	X
KY029	CUMBERLAND	R	X
KY030	MURRAY	R	X
KY031	WILLIAMSBURG	R	X
KY033	CATLETTSBURG	R	X
KY037	HICKMAN	R	X
KY038	MARTIN	R	X

PHA code	PHA name	Eligibility	Application received
KY041	MORGANTOWN	R	X
KY043	FULTON	R	X
KY047	CAMPBELLSVILLE	R	X
KY059	FALMOUTH	R	X
KY061	HA GEORGETOWN	R	X
KY063	BOWLING GREEN	R	X
KY064	COLUMBIA	R	X
KY070	CENTRAL CITY	R	X
KY072	PRINCETON	R	X
KY099	FRANKLIN	R	X
KY105	HOUSING AUTH OF JEFFERSON COUN	R	
KY107	HA PIKEVILLE	R	X
LA001	NEW ORLEANS HOUSING AUTHORITY	R	
LA002	SHREVEPORT HSG AUTHORITY	N1	
LA003	EAST BATON ROUGE HSG AUTHORITY	R	
LA004	LAKE CHARLES HOUSING AUTHORITY	R	
LA005	LAFAYETTE (CITY) HOUSING AUTHORITY	R	
LA006	MONROE HOUSING AUTHORITY	R	X
LA012	KENNER HOUSING AUTHORITY	R	
LA023	ALEXANDRIA HOUSING AUTHORITY	N1	
LA027	NEW IBERIA HOUSING AUTHORITY	R	
LA029	CROWLEY	N2	
LA030	VILLE PLATTE HOUSING AUTHORITY	R	X
LA036	MORGAN CITY HOUSING AUTHORITY	R	X
LA042	BOSSIER CITY HOUSING AUTHORITY	N1	
LA045	ARCADIA HOUSING AUHTORITY	R	X
LA054	RUSTON HOUSING AUTHORITY	R	X
LA055	OPELOUSAS HOUSING AUTHORITY	N2	
LA070	PATTERSON HOUSING AUTHORITY	R	X
LA080	LAFOURCHE PARISH HOUSING AUTHORITY	R	X
LA086	DERIDDER HOUSING AUTHORITY	R	X
LA089	HOMER HOUSING AUTHORITY	R	X
LA090	HOUMA HOUSING AUTHORITY	N1	
LA092	ST JAMES PARISH HOUSING AUTHORITY	R	
LA095	ST. JOHN THE BAPTIST PARISH HOUSING AUTHORITY	R	X
LA103	SLIDELL HOUSING AUTHORITY	N2	
LA106	DEQUINCY HOUSING AUTHORITY	R	
LA115	NATCHITOCHES CITY HOUSING AUTHORITY	R	X
LA118	JENNINGS HOUSING AUTHORITY	R	X
LA123	WINNFIELD HOUSING AUTHORITY	N2	
LA166	NATCHITOCHES PARISH HOUSING AUTHORITY	R	X
MA001	LOWELL HOUSING AUTHORITY	R	X
MA002	BOSTON HOUSING AUTHORITY	R	X
MA003	CAMBRIDGE HOUSING AUTHORITY	R	X
MA005	HOLYOKE HOUSING AUTHORITY	R	X
MA006	FALL RIVER HOUSING AUTHORITY	R	X
MA007	NEW BEDFORD HOUSING AUTHORITY	R	X
MA008	CHICOPEE HOUSING AUTHORITY	R	
MA010	LAWRENCE HOUSING AUTHORITY	R	X
MA012	WORCESTER HOUSING AUTHORITY	R	X
MA014	REVERE HOUSING AUTHORITY	R	X
MA015	MEDFORD HOUSING AUTHORITY	R	X
MA016	CHELSEA HOUSING AUTHORITY	R	X
MA017	TAUNTON HOUSING AUTHORITY	R	
MA019	WOBURN HOUSING AUTHORITY	R	X
MA020	QUINCY HOUSING AUTHORITY	N1	X
MA022	MALDEN HOUSING AUTHORITY	R	X
MA023	LYNN HOUSING AUTHORITY	R	X
MA024	BROCKTON HOUSING AUTHORITY	R	X
MA025	GLOUCESTER HOUSING AUTHORITY	R	X
MA028	FRAMINGHAM HOUSING AUTHORITY	R	X
MA031	SOMERVILLE HOUSING AUTHORITY	R	X
MA033	BROOKLINE HOUSING AUTHORITY	R	X
MA035	SPRINGFIELD HOUSING AUTHORITY	R	X
MD001	ANNAPOLIS HOUSING AUTHORITY	R	X
MD002	BALTIMORE CITY HOUSING AUTHORITY	R	X
MD003	FREDERICK HOUSING AUTHORITY	R	X
MD004	MONTGOMERY CO HOUSING AUTHORITY	R	X
MD005	CUMBERLAND HOUSING AUTHORITY	R	X
MD006	HAGERSTOWN HOUSING AUTHORITY	R	X
MD007	ROCKVILLE HOUSING AUTHORITY	R	X
MD012	HAVRE DE GRACE HOUSING AUTHORITY	R	
MD013	ST. MICHAELS HOUSING AUTHORITY	R	X

PHA code	PHA name	Eligibility	Application received
MD015	PRINCE GEORGES COUNTY HOUSING AUTHORITY	R	
MD018	ANNE ARUNDEL COUNTY HOUSING AU	R	
ME003	PORTLAND HOUSING AUTHORITY	R	X
ME005	LEWISTON HOUSING AUTHORITY	R	X
ME006	BRUNSWICK HOUSING AUTHORITY	R	X
MI001	DETROIT HC	R	X
MI003	DEARBORN HC	N1	
MI004	HAMTRAMCK HC	R	
MI005	PONTIAC HC	R	X
MI006	SAGINAW HC	R	
MI007	ECORSE HC	R	X
MI008	RIVER ROUGE HC	R	X
MI009	FLINT HC	R	X
MI010	BENTON HARBOR HSG COMM	R	
MI014	ALBION HGS COMM	R	
MI026	YPSILANTI HC	R	X
MI027	INKSTER HC	R	X
MI028	MOUNT CLEMENS HC	R	
MI031	MUSKEGON HEIGHTS	R	
MI035	BATTLE CREEK HSG COMMISSION	N1	
MI039	PORT HURON HC	R	X
MI055	LIVONIA HC	N1	
MI058	LANSING HOUSING COMMISSION	R	X
MI064	ANN ARBOR HC	R	X
MI072	ROMULUS HC	R	X
MI073	GRAND RAPIDS HOUSING COMM	R	
MI089	TAYLOR HC	N1	
MI157	STERLING HEIGHTS HC	N1	
MN001	ST PAUL PHA	R	X
MN002	MINNEAPOLIS PHA	R	X
MN003	DULUTH HRA	R	X
MN151	OLMSTED COUNTY HRA	N2	
MN152	BLOOMINGTON HRA	N1	
MO001	ST. LOUIS HOUSING AUTHORITY	R	X
MO002	KANSAS CITY, MO	R	X
MO003	ST JOSEPH	N1	
MO004	ST. LOUIS COUNTY HOUSING AUTHO	R	X
MO005	KINLOCH HA	R	X
MO006	ST CHARLES HOUSING AUTHORITY	N1	
MO007	COLUMBIA HOUSING AUTHORITY	R	X
MO009	JEFFERSON CITY HOUSING AUTHORI	R	X
MO010	MEXICO HOUSING AUTHORITY	R	X
MO011	MOBERLY HA	R	X
MO012	CHARLESTON HA	R	X
MO014	FULTON HOUSING AUTHORITY	R	X
MO017	INDEPENDENCE	R	X
MO030	LEE'S SUMMIT	N1	
MO031	CLINTON	R	
MO058	SPRINGFIELD	R	X
MO068	RICHLAND	R	X
MO070	RICHMOND	R	
MO111	MACON HOUSING AUTHORITY	R	X
MO129	HANNIBAL HOUSING AUTHORITY	R	X
MO132	OLIVETTE HA	N1	
MO138	WELLSTON HA	R	X
MO218	PAGEDALE HA	N1	X
MO220	HILLSDALE HA	N1	X
MS001	HATTIESBURG	R	X
MS002	LAUREL	R	X
MS003	MCCOMB	R	X
MS004	MERIDIAN	R	X
MS005	HA BILOXI	R	X
MS007	CLARKSDALE	R	X
MS019	MISS REG HSG AUTH IV	R	X
MS030	HA MISSISSIPPI REGIONAL NO V	R	X
MS040	MISS REGIONAL H/A VIII	R	X
MS047	STARKVILLE	R	X
MS058	MISS REGIONAL H/A VI	R	X
MS059	WEST POINT	R	X
MS060	BROOKHAVEN	R	X
MS062	HOLLY SPRINGS	R	X
MS063	YAZOO CITY	R	X
MS064	BAY ST. LOUIS	R	X

PHA code	PHA name	Eligibility	Application received
MS066	PICAYUNE	R	X
MS071	ABERDEEN	R	X
MS072	CORINTH	R	X
MS076	COLUMBUS	R	X
MS077	TUPELO	R	X
MS079	LOUISVILLE	R	X
MS082	WINONA	R	X
MS086	VICKSBURG	R	X
MS090	SENATOBIA	R	X
MS093	OXFORD	R	X
MS099	LUMBERTON	R	X
MS101	WAVELAND	R	X
MS103	JACKSON	R	X
MS105	NATCHEZ	R	X
MS107	HSG AUTH CITY OF GREENWOOD MS	R	X
MS117	ATTALA COUNTY	R	X
MS121	ITTA BENA	R	X
MT0001	BILLINGS	R	
MT0002	GREAT FALLS	R	
MT0003	BUTTE	N2	
MT0004	HELENA	R	X
NC001	HA WILMINGTON	R	X
NC002	RALEIGH HA	R	X
NC003	HA CHARLOTTE	R	X
NC004	KINSTON H/A	R	X
NC005	NEW BERN	R	X
NC006	HA HIGH POINT	R	X
NC007	HA ASHEVILLE	R	X
NC008	CITY OF CONCORD	R	X
NC009	FAYETTEVILLE METROPOLITAN H/A	R	X
NC010	EASTERN CAROLINA REGIONAL	R	X
NC011	HA GREENSBORO	R	X
NC012	HA WINSTON-SALEM	R	X
NC013	HA DURHAM	R	X
NC014	HA LUMBERTON	R	X
NC015	HA GOLDSBORO	R	X
NC016	SALISBURY	R	X
NC017	REDEVELOPMENT COMM TARBORO	N2	
NC018	HA LAURINBURG	R	X
NC019	HA ROCKY MOUNT	R	X
NC020	HA WILSON	R	X
NC022	H/A CITY OF GREENVILLE	R	X
NC025	HA ROCKINGHAM	R	X
NC026	ELIZABETH CITY	R	X
NC027	HENDERSONVILLE	R	X
NC028	BENSON	R	X
NC031	HERTFORD	R	X
NC032	HA WASHINGTON	R	X
NC035	HA SANFORD	R	X
NC036	SELMA	R	X
NC039	HA LEXINGTON	R	X
NC040	SMITHFIELD	R	X
NC043	TROY	R	X
NC046	CHAPEL HILL	R	X
NC047	FAIRMONT	R	X
NC048	MAXTON	R	X
NC049	MORGANTON	R	X
NC052	SOUTHERN PINES	R	X
NC053	HAMLET	R	X
NC056	HA HICKORY	R	X
NC057	GASTONIA H/A	R	X
NC059	H A GRAHAM	R	
NC060	ROXBORO	R	X
NC061	BEAUFORT	R	X
NC065	HA MONROE	R	X
NC066	BURLINGTON	R	X
NC069	NORTH WILKESBORO	R	
NC070	HA LINCOLNTON	R	X
NC071	HA THOMASVILLE	R	X
NC072	HA STATESVILLE	R	X
NC073	OXFORD	R	X
NC074	LENOIR	R	X
NC075	HA ALBEMARLE	R	

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NC076	FARMVILLE	R	X
NC077	HA WILLIAMSTON	R	
NC079	DUNN	R	X
NC081	HA ASHEBORO	R	X
NC082	AYDEN	R	X
NC084	ROBESON COUNTY	R	X
NC085	AHOSKIE	R	
NC088	BELMONT	R	X
NC095	FOREST CITY	R	
NC102	HA ROWAN COUNTY	R	X
NC114	PEMBROKE	R	X
NC117	ROANOKE RAPIDS	R	
NC174	VANCE COUNTY	R	
ND014	FARGO	N1	
NE001	OMAHA HOUSING AUTHORITY	R	X
NE002	LINCOLN HOUSING AUTHORITY	N1	
NE003	HALL COUNTY HOUSING AUTHORITY	R	X
NE078	SCOTTS BLUFF HOUSING AUTHORITY	R	
NE125	NORTH PLATTE HOUSING AUTHORITY	N1	
NE153	DOUGLAS COUNTY HOUSING AUTHORI	N1	
NE174	BELLEVUE HOUSING AUTHORITY	N1	
NH001	MANCHESTER HOUSING AUTHORITY	R	X
NH002	NASHUA HOUSING AUTHORITY	R	X
NH003	DOVER HOUSING AUTHORITY	R	X
NH005	CONCORD HOUSING AUTHORITY	R	X
NH007	LACONIA HOUSING & REDEVELOPMENT AUTHORITY	R	X
NH009	LEBANON HOUSING AUTHORITY	R	X
NJ002	NEWARK HA	R	X
NJ003	ELIZABETH HA	R	X
NJ004	NORTH BERGEN HA	R	X
NJ005	TRENTON H A	R	X
NJ006	PERTH AMBOY HA	R	X
NJ007	ASBURY PARK HA	R	X
NJ008	LONG BRANCH HA	R	X
NJ009	JERSEY CITY HA	R	X
NJ010	CAMDEN H A	R	X
NJ012	BAYONNE HA	R	X
NJ013	PASSAIC HA	R	X
NJ014	ATLANTIC CITY HA	R	X
NJ015	HOBOKEN HA	R	X
NJ016	HARRISON H A	R	X
NJ021	PATERSON HA	R	X
NJ022	NEW BRUNSWICK HA	R	X
NJ023	MORRISTOWN HA	R	X
NJ025	ORANGE CITY HA	R	X
NJ026	UNION CITY HA	R	X
NJ030	WEST NEW YORK HA	R	X
NJ032	RAHWAY HA	R	X
NJ033	WOODBRIDGE HA	R	X
NJ034	GARFIELD H A	R	X
NJ037	IRVINGTON HA	R	X
NJ039	PLANFIELD HA	R	X
NJ041	HIGHLANDS H A	R	X
NJ042	FRANKLIN H A	R	X
NJ043	EDISON HA	R	X
NJ045	HIGHTSTOWN H A	R	X
NJ047	CARTERET HA	R	X
NJ048	NEPTUNE HA	R	X
NJ049	BRIDGETON HA	R	X
NJ050	EAST ORANGE HA	R	X
NJ051	GLASSBORO HA	R	X
NJ054	LAKEWOOD HA	R	X
NJ058	SALEM HA	R	X
NJ059	PLEASANTVILLE H A	R	X
NJ061	MILLVILLE HA	R	X
NJ063	VINELAND HA	R	X
NJ080	WILDWOOD H A	R	
NM001	ALBUQUERQUE HOUSING AUTHORITY	R	X
NM003	LAS CRUCES HOUSING AUTHORITY	R	X
NM004	ALAMOGORDO HOUSING AUTHORITY	R	X
NM007	LAS-VEGAS HOUSING AUTHORITY	R	X
NM009	SANTA FE CIVIC HOUSING AUTHORITY	R	X
NM020	TRUTH OR CONSEQUENCES HOUSING AUTHORITY	R	X

PHA code	PHA name	Eligibility	Application received
NM035	BERNALILLO (TOWN OF) HOUSING AUTHORITY	R	X
NM038	TAOS COUNTY HOUSING AUTHORITY	R	
NM050	SANTA FE COUNTY HSG AUTHORITY	R	X
NM057	BERNALILLO COUNTY HOUSING AUTHORITY	N1	
NM062	DONA ANA COUNTY HOUSING AUTHORITY	N1	
NM063	REGION VI HOUSING AUTHORITY	N1	
NV001	CITY OF RENO HSG AUTHORITY	R	
NV002	CITY OF LAS VEGAS HSG AUTH	R	X
NV007	NORTH LAS VEGAS HOUSING AUTHOR	R	X
NV013	COUNTY OF CLARK HOUSING AUTHOR	R	X
NY001	SYRACUSE HA	R	X
NY002	BUFFALO MUNICIPAL HA	R	X
NY003	YONKERS HA, CITY OF	R	X
NY005	NEW YORK CITY HA	R	X
NY006	UTICA HA	R	X
NY008	TUCKAHOE HA	R	X
NY009	ALBANY HA	R	X
NY011	NIAGARA FALLS HA	R	X
NY012	TROY HA	R	X
NY014	PORT CHESTER HA	R	X
NY016	BINGHAMT0ON HA	R	X
NY018	PLATTSBURGH HA	R	X
NY019	HERKIMER HA	R	
NY020	SARATOGA SPRINGS HA	R	X
NY022	COHOES HA	R	X
NY023	FREEPORT HA	R	X
NY025	WATERVLIET HA	R	X
NY028	SCHENECTADY HA	R	X
NY029	LACKAWANNA HA	R	
NY031	MASSENA HA	R	X
NY032	CATSKILL HA	R	
NY033	RENSSELAER HA	R	
NY041	ROCHESTER HA	R	X
NY044	GENEVA HA	R	X
NY045	KINGSTON HA	R	X
NY046	HEMPSTEAD HA, TOWN OF	R	X
NY050	LONG BEACH HA	R	X
NY054	ITHACA HA	R	X
NY056	SPRING VALLEY HA	R	X
NY057	GREENBURGH HA	R	X
NY059	ILION HA	R	
NY060	AMSTERDAM HA	R	X
NY061	HUDSON HA	R	
NY062	POUGHKEEPSIE HA	R	X
NY069	GLEN COVE HA	R	
NY071	MONTICELLO HA	R	X
NY077	ISLIP HA, TOWN OF	N2	
NY082	PEEKSKILL HA	R	X
NY085	HEMPSTEAD HA, VILLAGE OF	N2	
NY088	NEW ROCHELLE HA	R	X
NY089	NEWARK HA	R	X
OH001	COLUMBUS MHA	R	X
OH002	YOUNGSTOWN MHA	R	X
OH003	CUYAHOGA MHA	R	X
OH004	CINCINNATI MHA	R	X
OH005	DAYTON MHA	R	X
OH006	LUCAS MHA	R	X
OH007	AKRON MHA	R	X
OH008	TRUMBULL MHA	R	X
OH009	ZANESVILLE MHA	R	X
OH010	PORTSMOUTH MHA	R	X
OH012	LORAIN MHA	R	X
OH014	JEFFERSON MHA	R	X
OH015	BUTLER MHA	R	X
OH018	STARK MHA	R	X
OH021	SPRINGFIELD MHA	R	X
OH023	LONDON MHA	R	
OH024	CHILLICOTHE MHA	R	X
OH026	COLUMBIANA MHA	R	X
OH029	ASHTABULA MHA	R	X
OH031	PORTAGE MHA	N2	
OH037	COSHOCTON MHA	R	X
OH044	ALLEN MHA	R	X

PHA code	PHA name	Eligibility	Application received
OK002	OKLAHOMA CITY	R	X
OK004	IDABEL	R	X
OK005	LAWTON	R	X
OK044	HUGO	R	X
OK062	MC ALESTER	R	X
OK073	TULSA	R	X
OK095	SHAWNEE	R	X
OK099	MUSKOGEE	R	X
OK139	NORMAN	R	X
OK146	STILLWATER	R	X
OR001	CLACKAMAS	R	
OR002	HAP	R	
OR005	LINCOLN	R	
OR006	LANE	R	
OR009	NORTH BEND	R	X
OR011	SALEM	R	
OR014	MARION	N1	
OR015	JACKSON	N1	
PA001	HOUSING AUTH CITY OF PITTSBURG	R	
PA002	PHILADELPHIA HOUSING AUTHORITY	R	X
PA003	SCRANTON HOUSING AUTHORITY	R	
PA004	ALLENTOWN HOUSING AUTHORITY	R	
PA005	MCKEESPORT HOUSING AUTHORITY	R	X
PA006	ALLEGHENY COUNTY HOUSING AUTHO	R	X
PA007	CHESTER HOUSING AUTHORITY	R	X
PA008	HARRISBURG HOUSING AUTHORITY	R	X
PA009	READING HOUSING AUTHORITY	R	X
PA011	BETHLEHEM HOUSING AUTHORITY	R	X
PA012	MONTGOMERY COUNTY HOUSING AUTH	R	X
PA013	ERIE CITY HOUSING AUTHORITY	R	X
PA014	BEAVER COUNTY HOUSING AUTHORIT	R	X
PA015	FAYETTE COUNTY HOUSING AUTHORI	R	X
PA017	WASHINGTON COUNTY HOUSING AUTH	R	
PA018	WESTMORELAND COUNTY HSG AUTHOR	R	X
PA019	JOHNSTOWN HOUSING AUTHORITY	R	X
PA020	MERCER COUNTY HOUSING AUTHORIT	R	X
PA022	YORK CITY HOUSING AUTHORITY	R	X
PA023	DELAWARE COUNTY HOUSING AUTHOR	R	
PA024	EASTON HOUSING AUTHORITY	R	X
PA026	HOUSING AUTH CO OF LAWRENCE	R	
PA031	ALTOONA HOUSING AUTHORITY	N2	X
PA036	LANCASTER HOUSING AUTHORITY	R	X
PA038	LACKAWANNA COUNTY HOUSING AUTH	R	
PA044	HAZLETON HOUSING AUTHORITY	R	X
PA046	HOUS AUTH OF THE CO OF CHESTER	R	X
PA047	WILKES BARRE HOUSING AUTHORITY	R	
PA051	BUCKS COUNTY HOUSING AUTHORITY	R	X
PA052	LEBANON COUNTY HOUSING AUTHORI	N2	
PA057	LUZERNE COUNTY HOUSING AUTHORI	R	X
PA071	BERKS COUNTY HOUSING AUTHORITY	N1	
PA088	CENTRE COUNTY HOUSING AUTHORIT	R	X
RI001	PROVIDENCE HOUSING AUTHORITY	R	X
RI002	PAWTUCKET HOUSING AUTHORITY	R	X
RI003	WOONSOCKET HOUSING AUTHORITY	R	X
RI005	NEWPORT HOUSING AUTHORITY	R	X
RI011	WARWICK HOUSING AUTHORITY	N1	
RQ005	PRPHA	R	X
SC001	CHARLESTON	R	X
SC002	COLUMBIA	R	X
SC003	SPARTANBURG	R	X
SC004	GREENVILLE	R	X
SC007	AIKEN	R	X
SC008	SOUTH CAROLINA REGION NO 1	R	X
SC017	GAFFNEY	R	X
SC022	ROCK HILL	R	X
SC024	SOUTH CAROLINA REGION NO 3	R	X
SC025	CONWAY	R	X
SC026	BEAUFORT	R	X
SC027	FLORENCE	R	X
SC028	GEORGETOWN	R	X
SC031	CHERAW	R	
SC036	FORT MILL	R	X
SC037	ANDERSON	R	X

PHA code	PHA name	Eligibility	Application received
SC046	YORK	R	X
SC056	CHARLESTON COUNTY	N1	
SC057	NORTH CHARLESTON	R	X
SC061	CAYCE	N1	
SD016	SIOUX FALLS	N1	
SD045	PENNINGTON COUNTY	N1	
TN001	MEMPHIS	R	
TN002	JOHNSON CITY HOUSING AUTHORITY	R	X
TN003	KNOXVILLE COMMUNITY DEVEL CORP	R	X
TN004	CHATTANOOGA HOUSING AUTHORITY	R	X
TN005	MDHA	R	X
TN006	KINGSPORT HOUSING AND REDEVELOPMENT AUTHORITY	R	X
TN007	JACKSON	R	X
TN008	PARIS	N2	
TN010	CLARKSVILLE	R	X
TN011	PULASKI	R	
TN013	BROWNSVILLE	R	X
TN014	FAYETTEVILLE	R	X
TN020	MURFREESBORO	R	X
TN024	TULLAHOMA	R	X
TN027	HUMBOLDT	R	X
TN029	GALLATIN	R	
TN033	COOKEVILLE	R	X
TN035	FRANKLIN	R	X
TN036	SPRINGFIELD	R	X
TN039	SHELBYVILLE	R	X
TN041	COVINGTON	N2	
TN042	CROSSVILLE HOUSING AUTHORITY	R	X
TN048	LAWRENCEBURG	R	X
TN053	MCMINNVILLE	R	X
TN054	CLEVELAND HOUSING AUTHORITY	R	X
TN057	RIPLEY	R	X
TN065	MARYVILLE HOUSING AUTHORITY	R	X
TN075	NEWBERN	R	X
TN076	ELIZABETHTON HOUSING AND DEVELOPMENT AGENCY	N2	
TN088	OAK RIDGE HOUSING AUTHORITY	R	X
TN095	SHELBY COUNTY	N1	
TN111	KNOX COUNTY HOUSING AUTHORITY	N1	
TX001	AUSTIN HOUSING AUTHORITY	R	X
TX003	EL PASO	R	X
TX004	FORT WORTH	R	X
TX005	HOUSTON HOUSING AUTHORITY	R	X
TX006	SAN ANTONIO HOUSING AUTHORITY	R	X
TX007	BROWNSVILLE HOUSING AUTHORITY	R	X
TX008	CORPUS CHRISTI HOUSING AUTHORITY	R	X
TX009	DALLAS	R	X
TX010	WACO	R	X
TX011	LAREDO HOUSING AUTHORITY	R	
TX012	BAYTOWN HOUSING AUTHORITY	R	X
TX014	TEXARKANA	R	X
TX015	WAXAHACHIE	N2	
TX016	DEL RIO HOUSING AUTHORITY	R	
TX017	GALVESTON HOUSING AUTHORITY	R	X
TX018	LUBBOCK	R	X
TX019	EAGLE PASS HOUSING AUTHORITY	N2	X
TX020	BRYAN HOUSING AUTHORITY	N1	
TX022	WICHITA FALLS	R	X
TX023	BEAUMONT	R	X
TX024	COMMERCE	R	X
TX025	SAN BENITO HOUSING AUTHORITY	R	X
TX026	DENISON	R	
TX027	MCKINNEY	R	
TX028	MC ALLEN HOUSING AUTHORITY	R	
TX029	MERCEDES HOUSING AUTHORITY	R	X
TX030	TEMPLE	R	X
TX032	TEXAS CITY HOUSING AUTHORITY	R	
TX034	PORT ARTHUR	R	X
TX037	ORANGE	R	X
TX038	BONHAM	N2	
TX046	MISSION HOUSING AUTHORITY	R	X
TX048	PARIS	R	X
TX051	WESLACO HOUSING AUTHORITY	R	
TX054	NEW BOSTON	R	X

PHA code	PHA name	Eligibility	Application received
TX062	EDINBURG HOUSING AUTHORITY	R	
TX064	ALAMO HOUSING AUTHORITY	R	X
TX065	HARLINGEN HOUSING AUTHORITY	R	X
TX073	PHARR HOUSING AUTHORITY	R	X
TX078	SHERMAN	R	X
TX079	KILLEEN	N1	X
TX085	VICTORIA HOUSING AUTHORITY	R	
TX087	SAN MARCOS HOUSING AUTHORITY	R	X
TX092	LADONIA	N2	
TX113	ORANGE COUNTY	N2	X
TX114	KINGSVILLE HOUSING AUTHORITY	R	X
TX128	PLANO	R	X
TX163	ROBSTOWN HOUSING AUTHORITY	R	X
TX173	PORT ISABEL HOUSING AUTHORITY	N2	
TX177	DONNA HOUSING AUTHORITY	R	
TX257	SLATON	R	
TX300	CARRIZO SPRINGS HOUSING AUTHORITY	N2	X
TX327	ABILENE	R	X
TX355	EL CAMPO HOUSING AUTHORITY	R	X
TX379	MIDLAND	N1	
TX395	PORT LAVACA HOUSING AUTHORITY	R	
TX406	HUNTSVILLE HOUSING AUTHORITY	R	
TX408	MONAHANS	R	X
TX439	ANTHONY	R	
TX448	LA JOYA HOUSING AUTHORITY	R	X
TX449	ROMA HOUSING AUTHORITY	R	X
TX452	BEXAR COUNTY HOUSING AUTHORITY	N1	
TX455	ODESSA	R	X
TX470	SAN ANGELO	R	X
TX480	TRAVIS COUNTY HOUSING AUTHORITY	N1	
TX486	NACOGDOCHES	R	X
TX509	CAMERON COUNTY HOUSING AUTHORITY	R	X
TX538	EL PASO COUNTY	R	
UT002	OGDEN	N1	
UT003	SALT LAKE COUNTY	R	X
UT004	SALT LAKE CITY	R	X
UT007	PROVO CITY	R	X
UT011	UTAH COUNTY	N1	
UT025	WEST VALLEY CITY	N1	
VA001	PORTSMOUTH REDEVELOPMENT & H/A	R	X
VA002	BRISTOL REDEVELOPMENT HOUSING	R	
VA003	NEWPORT NEWS REDEVELOPMENT & H	R	X
VA004	ALEXANDRIA REDEVELOPMENT & H/A	R	X
VA005	HOPEWELL REDEVELOPMENT & H/A	R	X
VA006	NORFOLK REDEVELOPMENT & H/A	R	X
VA007	RICHMOND REDEVELOPMENT & H/A	R	X
VA010	DANVILLE REDEVELOPMENT AND H/A	R	X
VA011	ROANOKE REDEVELOPMENT & H/A	R	X
VA012	CHESAPEAKE REDEVELOPMENT & H/A	R	X
VA013	LYNCHBURG REDEVELOPMENT & H/A	N1	
VA015	NORTON REDEVELOPMENT & H/A	R	
VA017	HAMPTON REDEVELOPEMENT & HSG A	R	X
VA019	FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY	R	X
VA020	PETERSBURG REDEVELOPMENT & H/A	R	
VA022	WAYNESBORO REDEVELOPMENT & H/A	R	X
VA025	SUFFOLK REDEVELOPMENT & H/A	R	X
VA029	CUMBERLAND PLATEAU REGIONAL H/	R	X
VQ001	VIHA	R	X
VT005	BARRE HOUSING AUTHORITY	R	
WA001	SEATTLE HA	R	X
WA002	KING CO HA	R	X
WA003	BREMERTON HA	R	X
WA004	CLALLAM CO HA	R	X
WA005	TACOMA HA	R	X
WA006	EVERETT HA	N1	
WA008	VANCOUVER	R	
WA021	PASCO HA	R	X
WA025	BELLINGHAM HA	R	
WA030	SEDRO WOOLLEY HA	N1	
WA036	KITSAP CO HA	R	X
WA039	SNOHOMISH CO HA	R	X
WA041	WHATCOM CO HA	N1	
WA042	YAKIMA HA	R	

PHA code	PHA name	Eligibility	Application received
WA054	PIERCE CO HA	N1	
WA055	SPOKANE HA	N1	
WI001	SUPERIOR HA	R	X
WI002	MILWAUKEE HA	R	X
WI003	MADISON HA	R	X
WI074	GREEN BAY HA	N1	
WI183	RACINE COUNTY HA	N1	
WV001	CHARLESTON HOUSING AUTHORITY	R	X
WV003	WHEELING HOUSING AUTHORITY	R	X
WV004	HUNTINGTON HOUSING AUTHORITY	R	X
WV005	PARKERSBURG HOUSING AUTHORITY	R	X
WV006	MARTINSBURG HOUSING AUTHORITY	R	
WV008	WILLIAMSON HOUSING AUTHORITY	R	
WV009	FAIRMONT HOUSING AUTHORITY	N2	
WV011	MOUNDSVILLE HOUSING AUTHORITY	R	
WV014	BENWOOD HOUSING AUTHORITY	R	
WV018	BLUEFIELD HOUSING AUTHORITY	R	
WV022	SOUTH CHARLESTON HOUSING AUTHORITY	R	
WV027	CLARKSBURG HOUSING AUTHORITY	R	
WV036	KANAWHA COUNTY HOUSING AUTHORITY	R	X

VI. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0124. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this rule under Executive Order 12866, *Regulatory Planning and Review,* issued by the President on September 30, 1993. Any changes made in this rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities because all small entities previously funded under the program affected by this rule will continue to be funded at comparable levels. The rule will also have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW, Washington, DC 20410.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

List of Subjects in 24 CFR Part 761

Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Grant programs—low and moderate income housing, Indians, Public housing, Reporting and recordkeeping requirements.

Catalog of Domestic Assistance Numbers

The Catalog of Domestic Assistance numbers for the Public Housing Drug Elimination Program is 14.854.

Accordingly, for the reasons stated in the preamble, part 761 of title 24 of the Code of Federal Regulations is amended as follows:

PART 761—DRUG ELIMINATION PROGRAMS

1. The authority citation for 24 CFR part 761 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11901 *et seq.*

PART 761—[AMENDED]

2. In part 761, all references to "drug-related crime" are revised to read "drug-related and violent crime" and all references to "Indian housing authorities (IHAs)" are removed.

3. In § 761.1, the introductory text is revised to read as follows:

§ 761.1 Purpose and scope.

This part 761 contains the regulatory requirements for the Assisted Housing Drug Elimination Program (AHDEP) and the Public Housing Drug Elimination Program (PHDEP). The purposes of these programs are to:

* * * * *

4. Section 761.5 is revised to read as follows:

§ 761.5 Public housing; encouragement of resident participation.

For the purposes of the Public Housing Drug Elimination Program, the elimination of drug-related and violent crime within public housing developments requires the active

involvement and commitment of public housing residents and their organizations. To enhance the ability of PHAs to combat drug-related and violent crime within their developments, Resident Councils (RCs), Resident Management Corporations (RMCs), and Resident Organizations (ROs) will be permitted to undertake management functions specified in this part, notwithstanding the otherwise applicable requirements of part 964 of this title.

5. In § 761.10, the introductory text is revised, the definition of *Recipient of assistance under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA recipient)* is added in alphabetical order, and the definition of *Resident Management Corporation (RMC)* is revised, to read as follows:

§ 761.10 Definitions.

The definitions *Department, HUD,* and *Public Housing Agency (PHA)* are defined in part 5 of this title.

* * * * *

Recipient of assistance under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA recipient) shall have the same meaning as *recipient* provided in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*).

* * * * *

Resident Management Corporation (RMC), for purposes of the Public Housing Program, means the entity that proposes to enter into, or that enters into, a management contract with a PHA under part 964 of this title in accordance with the requirements of that part.

* * * * *

6. The heading of subpart B is revised to read as follows:

Subpart B—Grant Funding

7. A new § 761.13 is added to read as follows:

§ 761.13 Amount of funding.

(a) *PHDEP formula funding.* (1) *Funding share formula.* (i) *Per unit amount.* Subject to the availability of funding, the amount of funding made available each FFY to an applicant that qualifies for funding in accordance with § 761.15(a) is based upon the applicant's share of the total number of units of all applicants that qualify for funding, with a maximum award of $35 million and a minimum award of $25,000, except that qualified applicants with less than 50 units will not receive more than $500 per unit.

(ii) *Calculation of number of units.* For purposes of determining the number of units counted for purposes of the PHDEP formula, HUD shall count as one unit each existing rental and Section 23 bond-financed unit under the ACC. Units that are added to a PHA's inventory will be added to the overall unit count so long as the units are under ACC amendment and have reached DOFA by the date HUD establishes for the Federal Fiscal Year in which the PHDEP formula is being run (hereafter called tne "reporting date"). Any such increase in units shall result in an adjustment upwards in the number of units under the PHDEP formula. New units reaching DOFA after this date will be counted for PHDEP formula purposes as of the following Federal Fiscal Year. Federalized units that are eligible for operating subsidy will be counted for PHDEP formula purposes based on the unit count reflected on the PHA's most recently approved Operating Budget (Form HUD–52564) and/or subsidy calculation (Form HUD–52723), or successor form submitted for that program. Units approved for demolition/disposition continue to be counted for PHDEP formula funding purposes until actual demolition/disposition of the unit.

(2) *Consortium funding.* The amount of funding made available to a consortium will be the total of the amounts that each individual member would otherwise qualify to receive under the PHDEP funding formula in accordance with paragraph (a)(1) of this section.

(3) *Adjustments to funding.* The amount of funding made available each FFY to an applicant in accordance with paragraphs (a)(1) and (a)(2) of this section may be adjusted as follows:

(i) An applicant must submit a PHDEP plan that meets the requirements of § 761.21, as required by § 761.15(a)(5), each FFY year to receive that FFY's funding. An applicant that does not submit a PHDEP plan for a FFY as required will not receive that FFY's funding.

(ii) Ineligible activities, described at § 761.17(b), are not eligible for funding. Activities proposed for funding in an applicant's PHDEP plan that are determined to be ineligible will not be funded, and the applicant's funding for that FFY may be reduced accordingly.

(iii) In accordance with § 761.15(a)(6), an applicant that does not meet the performance requirements of § 761.23 will be subject to the sanctions listed in § 761.30(f)(2).

(iv) Both the amount of and continuing eligibility for funding is subject to the sanctions in § 761.30(f).

(v) Any amounts that become available because of adjustments to an applicant's funding will be distributed to every other applicant that qualifies for funding in accordance with paragraphs (a)(1) and (a)(2) of this section.

(b) *AHDEP funding.* Information concerning funding made available under AHDEP for a given FFY will be contained in Notices of Funding Availability (NOFAs) published in the **Federal Register.**

8. Section 761.15 is revised to read as follows:

§ 761.15 Qualifying for funding.

(a) *Qualifications for PHDEP funding.* (1) *Eligible applicants.* The following are eligible applicants for PHDEP funding:

(i) A PHA;

(ii) An RMC; and

(iii) A consortium of PHAs.

(2) *Preference PHAs.* A PHA that successfully competed for PHDEP funding under at least one of the PHDEP NOFAs for FFY 1996, FFY 1997 or FFY 1998 qualifies to receive PHDEP funding.

(3) *Needs qualification for funding.* An eligible applicant that does not qualify to receive PHDEP funding under paragraph (a)(2) of this section must be in one of the following needs categories to qualify for funding:

(i) The eligible applicant must be in the top 50% of the unit-weighted distribution of an index of a rolling average rate of violent crimes of the community, as computed for each Federal Fiscal Year (FFY). The crime rate used in this needs determination formula is the rate, from the most recent years feasible, of FBI violent crimes per 10,000 residents of the community (or communities). If this information is not available for a particular applicant's community, HUD will use the average of data from recipients of a comparable State and size category of PHA (less than 500 units, 500 to 1249 units, and more than 1250 units). If fewer than five PHAs have data for a given size category within a State, then the average of PHAs for a given size category within the census region will be used; or

(ii) The eligible applicant must have qualified for PHDEP funding, by receiving an application score of 70 or more points under any one of the PHDEP NOFAs for FFY 1996, FFY 1997 or FFY 1998, but not have received an award because of the unavailability of funds.

(4) *Consortium of eligible applicants.* Eligible applicants may join together and form a consortium to apply for funding, whether or not each member would individually qualify for PHDEP funding under paragraphs (a)(2) or (a)(3) of this section. The act of two or more eligible applicants joining together to form a consortium, and identifying related crime problems and eligible activities to address those problems pursuant to a consortium PHDEP plan, qualifies the consortium for PHDEP funding of an amount as determined under § 761.13(a)(2).

(5) *PHDEP plan requirement.* (i) *PHAs.* Except as provided in paragraph (a)(5)(ii), below, of this section, to receive PHDEP funding, a PHA that qualifies to receive PHDEP funding for Federal Fiscal Year 2000 and beyond must include a PHDEP plan that meets the requirements of § 761.21 with its PHA Plan submitted pursuant to part 903 of this title for each Federal Fiscal Year for which it qualifies for funding.

(ii) To receive PHDEP funding, a PHA that qualifies to receive PHDEP funding and is operating under an executed Moving To Work (MTW) agreement with HUD must submit a PHDEP plan that meets the requirements of § 761.21 with its required MTW plan for each Federal Fiscal Year for which it qualifies for funding.

(iii) *RMCs.* To receive PHDEP funding, an RMC operating in an PHA that qualifies to receive PHDEP funding must submit a PHDEP plan for the units managed by the RMC that meets the requirements of § 761.21 to its PHA. Upon agreement between the RMC and PHA, the PHA must submit to HUD, with its PHA Plan submitted pursuant to part 903 of this title, the RMC's PHDEP plan. The RMC will implement its plan as a subrecipient of the PHA.

(iv) *Consortia.* To receive PHDEP funding, the consortium members must prepare and submit a consortium PHDEP plan that meets the requirements of § 761.21, including the additional requirements that apply to consortia. Each member must submit the consortium plan with its PHA plan, submitted pursuant to part 903 of this title, or IHP, submitted pursuant to subpart C of part 1000 of this title, as appropriate.

(6) An otherwise qualified recipient PHA, RMC or consortium may not be funded if HUD determines, on a case-by-case basis, that it does not meet the performance requirements of § 761.23.

(b) *Qualifications for AHDEP funding.* Under AHDEP, eligible applicants are owners of federally assisted low-income housing, as the term *Federally assisted low-income housing* is defined in § 761.10. Notices of Funding Availability (NOFAs) published in the **Federal Register** will contain specific information concerning funding requirements and eligible and ineligible applicants and activities.

9. A new § 761.17 is added to subpart B to read as follows:

§ 761.17 Eligible and ineligible activities for funding.

(a) *Eligible activities.* One or more of the eligible activities described in 42 U.S.C. 11903 and in this § 761.17(a) are eligible for funding under PHDEP or AHDEP, as further explained or limited in paragraph (b) of this section and, for AHDEP, in separate annual Notices of Funding Availability (NOFAs). All personnel funded by these programs in accordance with an eligible activity must meet, and demonstrate compliance with, all relevant Federal, State, tribal, or local government insurance, licensing, certification, training, bonding, or other similar law enforcement requirements.

(1) *Employment of security personnel,* as provided in 42 U.S.C. 11903(a)(1), with the following additional requirements:

(i) *Security guard personnel.* (A) Contract security personnel funded by this program must perform services not usually performed by local law enforcement agencies on a routine basis. The applicant must identify the baseline services provided by the local law enforcement agency.

(B) The applicant, the provider (contractor) of the security personnel and, only if the local law enforcement agency is receiving any PHDEP funds from the applicant, the local law enforcement agency, are required, as a part of the security personnel contract, to enter into and execute a written agreement that describes the following:

(*1*) The activities to be performed by the security personnel, their scope of authority, and how they will coordinate their activities with the local law enforcement agency;

(*2*) The types of activities that the security personnel are expressly prohibited from undertaking.

(ii) *Employment of HA police.* (A) If additional HA police are to be employed for a service that is also provided by a local law enforcement agency, the applicant must undertake and retain a cost analysis that demonstrates the employment of HA police is more cost efficient than obtaining the service from the local law enforcement agency.

(B) Additional HA police services to be funded under this program must be over and above those that the existing HA police, if any, provides, and the tribal, State or local government is contractually obligated to provide under its Cooperation Agreement with the applying HA (as required by the HA's Annual Contributions Contract). An applicant seeking funding for this activity must first establish a baseline by describing the current level of services provided by both the local law enforcement agency and the HA police, if any (in terms of the kinds of services provided, the number of officers and equipment and the actual percent of their time assigned to the developments proposed for funding), and then demonstrate that the funded activity will represent an increase over this baseline.

(C) If the local law enforcement agency is receiving any PHDEP funds from the applicant, the applicant and the local law enforcement agency are required to enter into and execute a written agreement that describes the following:

(*1*) The activities to be performed by the HA police, their scope of authority, and how they will coordinate their activities with the local law enforcement agency;

(*2*) The types of activities that the HA police are expressly prohibited from undertaking.

(2) *Reimbursement of local law enforcement agencies for additional security and protective services,* as provided in 42 U.S.C. 11903(a)(2), with the following additional requirements:

(i) Additional security and protective services to be funded must be over and above those that the tribal, State, or local government is contractually obligated to provide under its Cooperation Agreement with the applying HA (as required by the HA's Annual Contributions Contract). An application seeking funding for this activity must first establish a baseline by describing the current level of services (in terms of the kinds of services provided, the number of officers and equipment, and the actual percent of their time assigned to the developments proposed for funding) and then demonstrate that the funded activity will represent an increase over this baseline.

(ii) Communications and security equipment to improve the collection, analysis, and use of information about drug-related or violent criminal activities in a public housing community may be eligible items if used exclusively in connection with the establishment of a law enforcement substation on the funded premises or scattered site developments of the applicant. Funds for activities under this section may not be drawn until the

grantee has executed a contract for the additional law enforcement services.

(3) *Physical improvements to enhance security,* as provided in 42 U.S.C. 11903(a)(3). For purposes of PHDEP, the following provisions in paragraphs (a)(3)(i) through (a)(3)(iv) of this section apply:

(i) An activity that is funded under any other HUD program shall not also be funded by this program.

(ii) Funding is not permitted for physical improvements that involve the demolition of any units in a development.

(iii) Funding is not permitted for any physical improvements that would result in the displacement of persons.

(iv) Funding is not permitted for the acquisition of real property.

(4) *Employment of investigating individuals,* as provided in 42 U.S.C. 11903(a)(4). For purposes of PHDEP, the following provisions in paragraphs (a)(4)(i) and (a)(4)(ii) of this section apply:

(i) If one or more investigators are to be employed for a service that is also provided by a local law enforcement agency, the applicant must undertake and retain a cost analysis that demonstrates the employment of investigators is more cost efficient than obtaining the service from the local law enforcement agency.

(ii) The applicant, the investigator(s) and, only if the local law enforcement agency is receiving any PHDEP funds from the applicant, the local law enforcement agency, are required, before any investigators are employed, to enter into and execute a written agreement that describes the following:

(A) The nature of the activities to be performed by the investigators, their scope of authority, and how they will coordinate their activities with the local law enforcement agency;

(B) The types of activities that the investigators are expressly prohibited from undertaking.

(5) *Voluntary tenant patrols,* as provided in 42 U.S.C. 11903(a)(5). For purposes of PHDEP, the following provisions in paragraphs (a)(5)(i) through (a)(5)(iv) of this section apply:

(i) The provision of training, communications equipment, and other related equipment (including uniforms), for use by voluntary tenant patrols acting in cooperation with officials of local law enforcement agencies is permitted. Grantees are required to obtain liability insurance to protect themselves and the members of the voluntary tenant patrol against potential liability for the activities of the patrol. The cost of this insurance will be considered an eligible program expense.

(ii) The applicant, the members of the tenant patrol and, only if the local law enforcement agency is receiving any PHDEP funds from the applicant, the local law enforcement agency, are required, before putting the tenant patrol into effect, to enter into and execute a written agreement that describes the following:

(A) The nature of the activities to be performed by the tenant patrol, the patrol's scope of authority, and how the patrol will coordinate its activities with the local law enforcement agency;

(B) The types of activities that a tenant patrol is expressly prohibited from undertaking, to include but not limited to, the carrying or use of firearms or other weapons, nightsticks, clubs, handcuffs, or mace in the course of their duties under this program;

(C) The type of initial tenant patrol training and continuing training the members receive from the local law enforcement agency (training by the local law enforcement agency is required before putting the tenant patrol into effect).

(iii) Tenant patrol members must be advised that they may be subject to individual or collective liability for any actions undertaken outside the scope of their authority and that such acts are not covered under a HA's or RMC's liability insurance.

(iv) Grant funds may not be used for any type of financial compensation for voluntary tenant patrol participants. However, the use of program funds for a grant coordinator for volunteer tenant foot patrols is permitted.

(6) *Drug prevention, intervention, and treatment programs,* as provided in 42 U.S.C. 11903(a)(6).

(7) *Funding resident management corporations (RMCs), resident councils (RCs), and resident organizations (ROs).* For purposes of the Public Housing Program, funding may be provided for PHAs that receive grants to contract with RMCs and incorporated RCs and ROs to develop security and drug abuse prevention programs involving site residents, as provided in 42 U.S.C. 11903(a)(7).

(8) *Youth sports.* Sports programs and sports activities that serve primarily youths from public or other federally assisted low-income housing projects and are operated in conjunction with, or in furtherance of, an organized program or plan designed to reduce or eliminate drugs and drug-related problems in and around such projects, as provided in 42 U.S.C. 11903(a)(8).

(9) *Eliminating drug-related and violent crime in PHA-owned housing,* under the Public Housing Program, as provided in 42 U.S.C. 11903(b).

(b) *Ineligible activities.* For purposes of PHDEP, funding is not permitted:

(1) For activities not included under paragraph (a) of this section;

(2) For costs incurred before the effective date of the grant agreement;

(3) For the costs related to screening or evicting residents for drug-related crime. However, investigators funded under this program may participate in judicial and administrative proceedings;

(4) For previously funded activities determined by HUD on a case-by-case basis to be unworthy of continuation.

10. Section 761.20 is revised to read as follows:

§ 761.20 Selection requirements.

(a) *PHDEP selection.* Every PHA, RMC and consortium that meets the requirements of § 761.15 in a FFY will be selected for funding in that FFY and, subject to meeting the performance requirements of § 761.23, for four additional FFYs.

(b) *AHDEP selection.* HUD will publish specific Notices of Funding Availability (NOFAs) in the **Federal Register** to inform the public of the availability of AHDEP grant amounts under this part 761. The NOFAs will provide specific guidance with respect to the grant process, including identifying the eligible applicants; deadlines for the submission of grant applications; the limits (if any) on maximum grant amounts; the information that must be submitted to permit HUD to score each of the selection criteria; the maximum number of points to be awarded for each selection criterion; the contents of the plan for addressing drug-related and violent crime that must be included with the application; the listing of any certifications and assurances that must be submitted with the application; and the process for ranking and selecting applicants. NOFAs will also include any additional information, factors, and requirements that HUD has determined to be necessary and appropriate to provide for the implementation and administration of AHDEP under this part 761.

11. A new § 761.21 is added to read as follows:

§ 761.21 Plan requirement.

(a) *General requirement.* To receive funding under this part, each PHDEP qualified recipient or AHDEP applicant must submit to HUD, for Federal Fiscal Year (FFY) 2000 and each following FFY, a plan for addressing the problem of drug-related and violent crime in and around the housing covered by the plan. If the plan covers more than one development, it does not have to

address each development separately if the same activities will apply to each development. The plan must address each development separately only where program activities will differ from one development to another. The plan must include a description of the planned activity or activities, a description of the role of plan partners and their contributions to carrying out the plan, a budget and timetable for implementation of the activities, and the funding source for each activity, identifying in particular all activities to be funded under this part. In addition, the plan must set measurable performance goals and interim milestones for the PHDEP-supported activities and describe the system for monitoring and evaluating these activities. Measurable goals must be established for each category of funded activities, including drug prevention, drug intervention, drug treatment, tenant patrols, and physical improvements. The plan under this section serves as the application for PHDEP funding, and an otherwise qualified recipient that does not submit a PHDEP plan as required will not be funded. For AHDEP funding, NOFAs published in the **Federal Register** may provide additional information on plan requirements for purposes of this section. Plans must meet the requirements of this section before grant funds are distributed. HUD will review the submitted plans for a determination of whether they meet the requirements of this section.

(b) *Additional requirements for consortia.* In addition to meeting the requirements of paragraph (a) of this section, to receive funding under this part, a consortium's plan must include a copy of the consortium agreement between the PHAs which are participating in the consortium, and a copy of the payment agreement between the consortium and HUD.

12. A new § 761.23 is added to read as follows:

§ 761.23 Grantee performance requirements.

(a) *Basic grantee requirements.* (1) *Compliance with civil rights requirements.* Grantees must be in compliance with all fair housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a). Federally recognized Indian tribes must comply with the Age Discrimination Act of 1975 and the Indian Civil Rights Act.

(2) *Adherence to the grant agreement.* The grant agreement between HUD and the grantee incorporates the grantee's application and plan for the implementation of grant-funded activities.

(3) *Compliance with "baseline" funding requirement.* Grantees may not use grant funds to reimburse law enforcement agencies for "baseline" community safety services. Grantees must adhere to § 761.17(a)(2)(i), reimbursement of local law enforcement agencies for additional security and protective services. In addition, grantees must provide to HUD a description of the baseline of services for the unit of general local government in which the jurisdiction of the agency is located.

(4) *Partnerships.* Grantees must provide HUD with evidence of partnerships—in particular, firm commitments by organizations providing funding, services, or other in-kind resources for PHDEP-funded activities (e.g., memorandum of agreement, letter of firm commitment). The partnership agreement must cover the applicable funding period.

(5) *MTCS reporting.* Grantees must maintain a level of compliance with MTCS reporting requirements that is satisfactory to HUD.

(b) *Planning and reporting requirements.* (1) *Planning consistency.* PHDEP funded activities must be consistent with the most recent HUD-approved PHA Plan or Indian Housing Plan, as appropriate. AHDEP funded activities must be consistent with the most recent Consolidated Plan under part 91 of this title for the community.

(2) *Demonstration of coordination with other law enforcement efforts.* Each grantee must consult with local law enforcement authorities and other local entities in the preparation of its plan for addressing the problem of drug-related and violent crime under § 761.21 and must maintain documentation of such consultation. Furthermore, a grantee must coordinate its grant-funded activities with other anti-crime and anti-drug programs, such as Operation Safe Home, Operation Weed and Seed, and the Safe Neighborhoods Action Program operating in the community, if applicable and maintain documentation of such coordination.

(3) *Compliance with reporting requirements.* Grantees must provide periodic reports consistent with this part at such times and in such form as is required by HUD.

(4) *Reporting on drug-related and violent crime.* Grantees must report any change or lack of change in crime statistics—especially drug-related crime and violent crime—or other relevant indicators drawn from the applicant's or grantee's evaluation and monitoring plan, IHP or PHA Plan. The grantee must also indicate, if applicable, how it is adequately addressing any recommendations emanating from other anti-crime and anti-drug programs, such as Operation Safe Home, Operation Weed and Seed, and the Safe Neighborhoods Action Program, operating in the community and is taking appropriate actions, in view of available resources, such as post-enforcement measures, to take full advantage of these programs.

(c) *Funding and evaluation requirements.* (1) *Timely obligation and expenditure of grant funds.* The HA must obligate and expend funds in compliance with all funding notifications, regulations, notices, and grant agreements. In addition, the HA must obligate at least 50 percent of funds under a particular grant within 12 months of the execution of the grant agreement, and must expend at least 25 percent of funds under a particular grant within 12 months of the execution of the grant agreement.

(2) *Operational monitoring and evaluation system.* The grantee must demonstrate that it has a fully operational system for monitoring and evaluating its grant-funded activities. A monitoring and evaluation system must collect quantitative evidence of the number of persons and units served, including youth served as a separate category, types of services provided, and the impact of such services on the persons served. Also, the monitoring and evaluation system must collect quantitative and qualitative evidence of the impact of grant-funded activities on the public housing or other housing, the community and the surrounding neighborhood.

(3) *Reduction of violent crime and drug use.* The grantee must demonstrate that it has established, and is attaining, measurable goals including the overall reduction of violent crime and drug use.

(d) *Other requirements.* HUD reserves the right to add additional performance factors consistent with this rule and other related statutes and regulations on a case-by-case basis.

(e) *Sanctions.* A grantee that fails to satisfy the performance requirements of this section will be subject to the sanctions listed in § 761.30(f)(2).

13. In § 761.40, paragraphs (f) and (g) are revised to read as follows:

§ 761.40 Other Federal requirements.

* * * * *

(f) *Intergovernmental Review.* The requirements of Executive Order 12372 (3 CFR, 1982 Comp., p. 197) and the regulations issued under the Order in part 52 of this title, to the extent provided by **Federal Register** notice in

accordance with 24 CFR 52.3, apply to these programs.

(g) *Environmental review.* Certain eligible activities under this part 761 are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and are not subject to review under related laws, in accordance with 24 CFR 50.19(b)(4), (b)(12), or (b)(13). If the PHDEP plan proposes the use of grant funds to assist any non-exempt activities, HUD will perform an environmental review to the extent required by 24 CFR part 50, prior to grant award.

Dated: September 8, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–23698 Filed 9–13–99; 8:45 am]

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federal register

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September 14, 1999

Part VI

Department of Housing and Urban Development

24 CFR Part 905

Allocation of Funds Under the Capital Fund; Capital Fund Formula; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 905

[Docket No. FR–4423–P–06]

RIN 2577–AB87

Allocation of Funds under the Capital Fund; Capital Fund Formula; Proposed Rule

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement, as required by statute, a new formula system for allocation of funds to public housing agencies for their capital needs. As also required by statute, this proposed rule was developed through negotiated rulemaking procedures.

DATES: *Comments Due Date.* October 14, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: William Flood, Director, Office of Capital Improvements, Public and Indian Housing, Room 4134, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–1640 ext. 4185 (this telephone number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 519 of the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105–276, approved October 21, 1998) (referred to as the "Public Housing Reform Act") amends section 9 of the U.S. Housing Act of 1937 to provide a "Capital Fund," to be established by HUD for the purpose of making assistance available to public housing agencies (PHAs) to carry out capital and management activities. Amended section 9 requires HUD to develop a formula for determining the amount of assistance provided to PHAs from the Capital Fund for a Federal fiscal year, and the formula is to include a mechanism to reward performance. The statute also requires that the Capital Fund formula is to be developed through negotiated rulemaking procedures.

On March 19, 1999 (64 FR 13533), HUD published a notice of its intent to establish a negotiated rulemaking committee for the Capital Fund, and in this notice identified a list of possible interested individuals and organizations to serve on the negotiated rulemaking committee. The list of possible interested individuals and organizations included public housing agencies, national organizations representing public housing agencies, residents organizations, advocates for low-income housing, and other housing experts.

On April 26, 1999 (64 FR 20234), HUD published the list of members of the negotiated rulemaking committee and announced its first set of meetings. The members participating in the negotiated rulemaking procedure for the Capital Fund formula are:

- *National Housing Associations*

Council of Large Public Housing Authorities (CLPHA)
National Association of Housing and Redevelopment Officials (NAHRO)
Public Housing Authorities Directors Association (PHADA)
National Organization of African Americans in Housing (NOAAH)
National Low Income Housing Coalition

- *Housing Authorities*

Philadelphia Housing Authority, Philadelphia, PA
Chicago Housing Authority, Chicago, IL
Dallas Housing Authority, Dallas, TX
Puerto Rico Public Housing Administration, San Juan, PR
Seattle Housing Authority, Seattle, WA
New York City Housing Authority, New York, NY
Dayton Metropolitan Housing Authority, Dayton, OH
Jersey City Housing Authority, Jersey City, NJ
San Diego Housing Commission, San Diego, CA
Macon Housing Authority, Macon, GA
Sanford Housing Authority, Sanford, ME
Housing Authority of the City of San Benito, San Benito, TX
City of La Junta Housing Authority, La Junta, CO
Housing Authority of the Town of Laurinburg, Laurinburg, NC
Madison Housing Authority, Madison, NJ

- *Tenant and Community Organizations*

Guinotte Manor Tenant Association, Kansas City, MO
Center for Community Change, Washington, DC
Hillside Family Resource Center, Milwaukee, WI
Mount Pleasant Estates Tenant Association, Newark, NJ

- *Other Groups*

National Housing Conference
Fannie Mae

- *Federal Government*

U.S. Department of Housing and Urban Development

The negotiated rulemaking committee ("the committee") first convened on April 28 and 29, 1999. Additional committee meetings were held on May 11–12, May 25–26, June 17–18, June 23–24, July 8–9, July 26–27, and August 3–4, 1999.

As part of its deliberation of formula models and formula components, the committee considered at length a study conducted on capital needs in public housing by a consulting firm. The study included physical inspections of public housing at 219 PHAs throughout the country including 684 developments containing 229,973 units. The study found that the existing modernization needs of public housing remain well over twenty billion dollars.

The formula proposed by the committee in this rule is based, in part, on this study. The study, however, contained some limitations in scope, required inspector judgment regarding the necessity of modest upgrades, was not designed to cover some aspects of modernization such as the reconfiguration of units where needed, necessarily had to estimate future needs based on experience with respect to other housing stock rather than direct observations, and could not, in itself, answer the question how the formula should address differences in needs among individual housing authorities. Given the limitations of the study, the committee decided to limit any funding reductions in going from the old to the new formula to six percent of a PHA's Federal Fiscal Year 1999 formula share for comparable units.

The Capital Fund formula proposed in this rule fulfills the statute's mandate of including a mechanism to reward performance. The proposed formula also provides for a replacement housing factor, in recognition that funding for this purpose will facilitate demolition of obsolete housing and allow some of the remaining housing needs in the affected communities to be addressed.

In its development of the proposed formula, the committee discussed at substantial length the importance of resident participation to the success of public housing, including a PHA's capital programs. The committee noted that the Public Housing Reform Act places value on resident participation by requiring at least one resident on the PHA Board of Commissioners, resident involvement in the PHA Plan process (through Resident Advisory Boards) and additional involvement as reflected in HUD's resident participation regulations (24 CFR part 964). Accordingly, measures to promote more effective resident participation will be categorized as eligible Capital Fund management improvement expenses, and also will be categorized as eligible public housing operating expenses under the appropriate regulations. Examples of eligible capital fund management improvement expenses include but are not limited to reasonable: staff support, outreach, training, meeting and office space, childcare, transportation, access to computers, provided all such expenses are directly related to Capital Fund activities. HUD may provide more specifics in further regulations or notices.

The Committee went further and recommended the need for additional standards for resident participation which can be enforced by HUD. Additional standards need to be adopted through a separate rule. HUD has committed to undertake a rulemaking process regarding additional standards for resident participation and promulgate any necessary rules during the coming fiscal year. To further promote effective public housing programs including resident participation, HUD will: conduct training for resident organizations and housing authorities on the new Public Housing Reform Act; and clarify in the PHA Plan regulation that reasonable resources for the Resident Advisory Boards must provide reasonable means for them to become informed on programs covered by the PHA Plan, to communicate in writing and by telephone with assisted families and hold meetings with those families, and to access information regarding covered programs on the internet, taking into account the size and resources of the PHA.

II. Overview of the Capital Fund Formula

The following provides an overview of the key components of the Capital Fund Formula.

(1) The proposed Capital Fund formula contains a provision for emergency funding, as did the formula for allocation of funds under section 14 of the U.S. Housing Act of 1937 (USHA) (section 14 funds). Section 519(k) of the Public Housing Reform Act (section 9(k) of the USHA) provides for a set-aside of up to two percent of the available Capital Fund and Operating Fund dollars for emergencies, other disasters, and housing needs related to the settlement of litigation, and additional funds that the Secretary may reserve for purposes specified in section 9(k). (See § 905.10(b) of proposed rule.)

(2) The proposed rule also provides for formula allocation based on relative need, similar to that provided by the formula for allocation of section 14 funds. (See § 905.10(c) of proposed rule.)

(3) The formula for allocation of section 14 funds included allocation for "backlog needs." The proposed Capital Fund formula contains an allocation for "existing modernization needs." (See § 905.10(d) of proposed rule.)

(4) The proposed Capital Fund formula contains an allocation for "accrual needs," which is modeled on the "accrual needs" provision of the section 14 formula. (See § 905.10(e) of proposed rule.)

(5) The proposed Capital Fund formula provides for calculation of the number of units, as did the prior formula for allocation of section 14 funds. (See § 905.10(f) of the proposed rule.)

(6) The proposed Capital Fund formula sets out the method for computation of formula shares under the CFF. (See § 905.10(g) of the proposed rule.)

(7) The proposed Capital Fund formula provides for a limit or "cap" on the amount of capital funding that a PHA may lose as a result of the transition to the new CFF from the former formula for section 14 funds. The proposed rule provides that for comparable units, no PHA can lose more than 6% of its formula share in going from the old to the new formula. (See § 905.10(h) of the proposed rule.)

(8) The proposed Capital Fund formula also provides a replacement housing factor. The proposed rule provides that for units that are lost from the formula system because of demolition, disposition or conversion, these units will be funded only for purposes of replacement housing for 5 years and then for another 5 years if the planning, leveraging, obligation and expenditure requirements are met. The proposed rule provides that as a prior condition of a PHA's receipt of additional funds for replacement housing, provided for the second 5-year period or any portion of the second 5-year period, the PHA must obtain a firm commitment of substantial additional funds other than public housing funds for replacement housing. (See § 905.10(i) of the proposed rule.)

The proposed rule provides that PHAs are required to obligate assistance received for replacement housing within: (1) 24 months from the date that funds become available to the PHA; or (2) with specific HUD approval, 24 months from the date that the PHA accumulates adequate funds to undertake replacement housing. The proposed rule also provides that to the extent the PHA has not obligated any funds provided as a result of the replacement housing factor within the times specified by the rule or expended such funds within a reasonable time, the amount of funds to be provided to the PHA as a result of the application of the second 5 years of the replacement housing factor shall be reduced. (See § 905.10(i)(7) of the proposed rule.)

(9) Under the proposed CFF, the results of the new formula (the CFF) and the old formula (the formula for section 14 funds), the capping, and the replacement housing factor yield a base formula amount. The base formula for each PHA is then adjusted depending on whether the PHA is a high performer. The proposed rule includes a performance reward factor that provides PHAs that are designated high performers under the Public Housing Assessment System (PHAS) will receive 3% above their base formula amount in the first five years these performance rewards are given, and 5% above their base formula amount in future years. This methodology anticipates that any new performance measurement system will mature over time. This increase above the base formula amount is subject to the condition that for each year a performance reward increase is provided, non-high performers lose no more than 5% of their base formula amount in the redistribution of formula funds from non-high performers to high performers. (See § 905.10(j) of the proposed rule.)

III. Justification for Reduced Public Comment Period

It is the general practice of the Department to provide a 60-day public comment period on all proposed rules. The Department, however, is reducing its usual 60-day public comment period to 30 days for this proposed rule. The Public Housing Reform Act contemplates that the new Capital Fund formula will be effective Federal Fiscal

Year 2000. In an effort to have a final formula in place as close to beginning of that fiscal year as possible, and given that the formula was developed through the negotiated rulemaking process, in which representatives of all affected parties participated, the Department believes that a 30-day public comment period is justified under these circumstances.

IV. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Regulatory Planning and Review

The Office of Management and Budget has reviewed this proposed rule under Executive Order 12866 (captioned "Regulatory Planning and Review") and determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary has reviewed this proposed rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would implement a new system for formula allocation of funds to PHAs for their capital needs. The new system is established to provide minimum impact on all PHAs, small and large. The new formula provides that no PHA can lose more than 6% of its formula share for comparable units in going from the old to the new formula. Accordingly, the formula will not have a significant economic impact on any PHA. Notwithstanding HUD's determination that this proposed rule would not have a significant economic impact on small entities, HUD specifically invites comments regarding alternatives to this proposed rule that would meet HUD's objectives as described in this preamble.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule would not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule would provide a new system of formula allocation of assistance to PHAs for their capital needs. As a result, the proposed rule is not subject to review under the Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

List of Subjects in 24 CFR Part 905

Grant programs—housing and community development, Modernization, Public housing, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, part 905 is proposed to be added to title 24 of the Code of Federal Regulations as follows:

PART 905—THE PUBLIC HOUSING CAPITAL FUND PROGRAM

Authority: 42 U.S.C. 1437g and 3535(d).

§ 905.10 Capital Fund formula (CFF).

(a) *General.* This section describes the formula for allocation of capital funds to PHAs. The formula is referred to as the Capital Fund formula (CFF).

(b) *Emergency reserve and use of amounts.* (1) In each Federal fiscal year after Federal Fiscal Year (FFY) 1999, from amounts approved in the appropriation act for funding under this part, HUD shall reserve an amount not to exceed that authorized by 42 U.S.C. 1437g(k), for use for assistance in connection with emergencies and other disasters, and housing needs resulting from any settlement of litigation, and may reserve such other amounts for other purposes authorized by 42 U.S.C. 1437g(k).

(2) Amounts set aside under paragraph (b) of this section may be used for assistance for any eligible use under the Capital Fund, Operating Fund, or tenant-based assistance in accordance with section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f).

(3) The use of any amounts as provided under paragraph (b) of this section relating to emergencies (other than disasters and housing needs resulting from settlement of litigation) shall be announced through **Federal Register** notice.

(c) *Formula allocation based on relative needs.* After determining the amounts to be reserved under paragraph (b) of this section, HUD shall allocate the amount remaining in accordance with the CFF. The CFF measures the existing modernization needs and accrual needs of PHAs.

(d) *Allocation for existing modernization needs under the CFF.* HUD shall allocate half of the available Capital Fund amount based on the relative existing modernization needs of PHAs, determined in accordance with this paragraph (d) of this section.

(1) *Determination of existing modernization need.* (i) *Statistically reliable data are available.* Where HUD determines that statistically reliable data concerning the existing modernization need identified in paragraph (d) of this section are available for individual PHAs, HUD will base its allocation of the Capital Fund amount on direct estimates of the existing modernization need, based on the most recently available, statistically reliable data. The PHAs of the cities of New York City and Chicago are covered by paragraph (d)(1)(i) of this section.

(ii) *Statistically reliable data are unavailable.* Where HUD determines that statistically reliable data concerning the existing modernization need identified in paragraph (d) of this section are not available for individual PHAs, HUD will base its allocation on estimates of the existing modernization need using the factors described in paragraph (d)(2) of this section.

(2) *For PHAs greater than or equal to 250 or more units in FFY 1999,* estimates of the existing modernization need will be based on the following:

(i) Objective measurable data concerning the following PHA, community and development

characteristics applied to each development:

(A) The average number of bedrooms in the units in a development. (Equation co-efficient: 4604.7);

(B) The total number of units in a development as of FFY 1999. (Equation co-efficient: 10.17);

(C) The proportion of units in a development in buildings completed in 1978 or earlier. In the case of acquired developments, HUD will use the Date of Full Availability (DOFA) date unless the PHA provides HUD with the actual date of construction. When provided with the actual date of construction, HUD will use this date (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation co-efficient: 4965.4);

(D) The rolling three-year average of the cost index of rehabilitating property in the area. (Equation co-efficient: −10608);

(E) The extent to which the units of a development were in a non-metropolitan area as defined by the Census Bureau during FFY 1996. (Equation co-efficient: 2703.9);

(F) The PHA is located in the southern census region, as defined by the Census Bureau. (Equation co-efficient: −269.4);

(G) The PHA is located in the western census region, as defined by the Census Bureau. (Equation co-efficient: −1709.5);

(H) The PHA is located in the midwest census region as defined by the Census Bureau. (Equation co-efficient: 246.2)

(ii) An equation constant of 13851.

(A) *Newly constructed units.* Units with a DOFA date of October 1, 1999, or thereafter, will be considered to have a zero existing modernization need.

(B) *Acquired developments.* Developments acquired by a PHA with a DOFA date of October 1, 1999, or thereafter, will be considered by HUD to have a zero existing modernization need.

(3) *For PHAs with less than 250 units in FFY 1999,* estimates of the existing modernization need will be based on the following:

(i) Objective measurable data concerning the following PHA, community and development characteristics applied to each development:

(A) The average number of bedrooms in the units in a development. (Equation co-efficient: 1427.1);

(B) The total number of units in a development as of FFY 1999. (Equation co-efficient: 24.3);

(C) The proportion of units in a development in buildings completed in 1978 or earlier. In the case of acquired developments, HUD will use the DOFA date unless the PHA provides HUD with the actual date of construction, in which case HUD will use the actual date of construction (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation co-efficient: −1389.7);

(D) The rolling three-year average of the cost index of rehabilitating property in the area. (Equation co-efficient: −20163);

(E) The extent to which the units of a development were in a non-metropolitan area as defined by the Census Bureau during FFY 1996. (Equation co-efficient: 6157.7);

(F) The PHA is located in the southern census region, as defined by the Census Bureau. (Equation co-efficient: 4379.2);

(G) The PHA is located in the western census region, as defined by the Census Bureau. (Equation co-efficient: 3747.7);

(H) The PHA is located in the midwest census region as defined by the Census Bureau. (Equation co-efficient: −2073.5)

(ii) An equation constant of 24762.

(A) *Newly constructed units.* Units with a DOFA date of October 1, 1999, or thereafter, will be considered to have a zero existing modernization need.

(B) *Acquired developments.* Developments acquired by a PHA with a DOFA date of October 1, 1999, or thereafter, will be considered by HUD to have a zero existing modernization need.

(4) *Calibration of existing modernization need for the rolling three-year average of the cost index of rehabilitating property in the area.* The estimated existing modernization need, as determined under paragraphs (d)(1) (d)(2) or (d)(3) of this section, shall be adjusted by the values of the rolling three-year average of the cost index of rehabilitating property in the area.

(e) *Allocation for accrual needs under the CFF.* HUD shall allocate the other half remaining under the Capital Fund based upon the relative accrual needs of PHAs, determined in accordance with paragraph (e) of this section.

(1) *Determination of accrual need.* (i) *Statistically reliable data are available.* Where HUD determines that statistically reliable data concerning accrual need identified in paragraph (e) of this section are available for individual PHAs, HUD will base its allocation of the Capital Fund amount on direct estimates of accrual need, based on the most recently available, statistically reliable data. The PHAs of the cities of New York City and Chicago are covered by paragraph (e)(1)(i) of this section.

(ii) *Statistically reliable data are unavailable.* Where HUD determines that statistically reliable data concerning accrual need identified in paragraph (e) of this section are not available for individual PHAs, HUD will base its allocation on estimates of accrual need using the factors described in paragraph (e)(2) of this section.

(2) *For PHAs greater than or equal to 250 or more units,* estimates of the accrual need will be based on the following:

(i) Objective measurable data concerning the following PHA, community and development characteristics applied to each development:

(A) The average number of bedrooms in the units in a development. (Equation co-efficient: 324.0);

(B) The extent to which the buildings in a development average fewer than 5 units. (Equation co-efficient: 93.3);

(C) The age of a development as of FFY 1998, as determined by the DOFA date (date of full availability). In the case of acquired developments, HUD will use the DOFA date unless the PHA provides HUD with the actual date of construction, in which case HUD will use the actual date of construction (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation co-efficient: −7.8);

(D) Whether the development is a family development. (Equation co-efficient: 184.5);

(E) The rolling three-year average of the cost index of rehabilitating property in the area. (Equation co-efficient: −252.8);

(F) The extent to which the units of a development were in a non-metropolitan area as defined by the Census Bureau during FFY 1996. (Equation co-efficient: −121.3);

(G) PHA size of 6600 or more units in FFY 1999. (Equation co-efficient: −150.7);

(H) The PHA is located in the southern census region, as defined by the Census Bureau. (Equation co-efficient: 28.4);

(I) The PHA is located in the western census region, as defined by the Census Bureau. (Equation co-efficient: −116.9);

(J) The PHA is located in the midwest census region as defined by the Census Bureau. (Equation co-efficient: 60.7)

(ii) An equation constant of 1371.9,

(3) *For PHAs with less than 250 units,* estimates of the accrual need will be based on the following:

(i) Objective measurable data concerning the following PHA, community and development

characteristics applied to each development:

(A) The average number of bedrooms in the units in a development. (Equation co-efficient: 325.5);

(B) The extent to which the buildings in a development average fewer than 5 units. (Equation co-efficient: 179.8);

(C) The age of a development as of FFY 1998, as determined by the DOFA date (date of full availability). In the case of acquired developments, HUD will use the DOFA date unless the PHA provides HUD with the actual date of construction. When provided with the actual date of construction, HUD will use this date (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation co-efficient: −9.0);

(D) Whether the development is a family development. (Equation co-efficient: 59.3);

(E) The rolling three-year average of the cost index of rehabilitating property in the area. (Equation co-efficient: −1570.5);

(F) The extent to which the units of a development were in a non-metropolitan area as defined by the Census Bureau during FFY 1996. (Equation co-efficient: −122.9);

(G) The PHA is located in the southern census region, as defined by the Census Bureau. (Equation co-efficient: −564.0);

(H) The PHA is located in the western census region, as defined by the Census Bureau. (Equation co-efficient: −29.6);

(I) The PHA is located in the midwest census region as defined by the Census Bureau. (Equation co-efficient: −418.3)

(ii) An equation constant of 3193.6.

(4) *Calibration of accrual need for the rolling three year average of the cost index of rehabilitating property in the area.* The estimated accrual need, as determined under either paragraph (e)(2) or (e)(3) of this section, shall be adjusted by the values of the rolling three-year average of the cost index of rehabilitation.

(f) *Calculation of number of units.* (1) *General.* For purposes of determining the number of a PHA's public housing units, and the relative modernization needs of PHAs, HUD shall count as one unit each public housing and section 23 bond-financed unit under the ACC, except that it shall count as one-fourth of a unit each existing unit under Turnkey III program. In addition, HUD shall count as one unit each existing unit under the Mutual Help program. Units that are added to an PHA's inventory will be added to the overall unit count so long as the units are under ACC amendment and have reached DOFA by the date HUD establishes for the Federal Fiscal Year in which the CFF is being run (hereafter called the "reporting date"). Any such increase in units shall result in an adjustment upwards in the number of units under the CFF. New units reaching DOFA after the reporting date will be counted for CFF purposes as of the following Federal Fiscal Year.

(2) *Conversion of units.* (i) Increases in the number of units resulting from the conversion of existing units will be added to the overall unit count so long as the units are under ACC amendment by the reporting date;

(ii) For purposes of calculating the number of converted units, HUD shall regard the converted size of the unit as the appropriate unit count (e.g., a unit that originally was counted as one unit under paragraph (f)(1) of this section, but which later was converted into two units, shall be counted as two units under the ACC);

(iii) For purposes of calculating the number of converted units, HUD shall make no adjustments prior to the first 10 units lost or gained as a result of conversion in a development.

(3) *Reduction of units.* For developments losing units as a result of demolition, disposition or conversion, the number of units on which capital funding is based will be the number of units reported as eligible for capital funding as of the reporting date. Units are eligible for funding until they are removed due to demolition, disposition or conversion in accordance with a schedule approved by HUD.

(g) *Computation of formula shares under the CFF.* (1) *Total estimated existing modernization need.* The total estimated existing modernization need of a PHA under the CFF is the result of multiplying for each development the PHA's total number of formula units by its estimated existing modernization need per unit, as determined by paragraph (d) of this section, and calculating the sum of these estimated development needs.

(2) *Total accrual need.* The total accrual need of a PHA under the CFF is the result of multiplying for each development the PHA's total number of formula units by its estimated accrual need per unit, as determined by paragraph (e) of this section, and calculating the sum of these estimated accrual needs.

(3) *PHA's formula share of existing modernization need.* A PHA's formula share of existing modernization need under the CFF is the PHA's total estimated existing modernization need divided by the total existing modernization need of all PHAs.

(4) *PHA's formula share of accrual need.* A PHA's formula share of accrual need under the CFF is the PHA's total estimated accrual need divided by the total existing accrual need of all PHAs.

(5) *PHA's formula share of capital need.* A PHA's formula share of capital need under the CFF is the average of the PHA's share of existing modernization need and its share of accrual need (by which method each share is weighted 50%).

(h) *CFF capping.* (1) For units that are eligible for funding under the CFF (including replacement housing units discussed below) a PHA's CFF share will be its share of capital need, as determined under the CFF, subject to the condition that no PHA's CFF share for units funded under CFF can be less than 94% of its formula share had the FFY 1999 formula system been applied to these CFF eligible units. The FFY 1999 formula system is based upon the FFY 1999 Comprehensive Grant formula system for PHAs that were 250 or more units in FFY 1999 and upon the FFY 1999 Comprehensive Improvement Assistance Program (CIAP) formula system for PHAs that were less than 250 units in FFY 1999.

(2) For a Moving to Work PHA whose agreement provides that its capital formula share is to be calculated in accordance with the previously existing formula, the PHA's CFF share, during the term of the agreement, may be the formula share that the PHA would have received had the FFY 1999 formula funding system been applied to the CFF eligible units.

(i) *Replacement housing factor to reflect formula need for developments with demolition, disposition, or conversion occurring on or after October 1, 1998.* (1) *Replacement housing factor generally.* PHAs that have a reduction in units attributable to demolition, disposition, or conversion of units during the period (reflected in data maintained by HUD) that lowers the formula unit count for the CFF calculations qualify for application of a replacement housing factor, subject to satisfaction of criteria stated in paragraph (i)(5) of this section.

(2) *When applied.* The replacement housing factor will be added, where applicable, for the first 5 years after the reduction in units described in paragraph (i)(1) of this section, and will be added for an additional 5 years if the planning, leveraging, obligation and expenditure requirements are met. As a prior condition of a PHA's receipt of additional funds for replacement housing, provided for the second 5-year period or any portion thereof, a PHA must obtain a firm commitment of

substantial additional funds other than public housing funds for replacement housing, as determined by HUD.

(3) *Computation of replacement housing factor.* The replacement housing factor consists of the difference between the CFF share without the CFF share reduction of units attributable to demolition. disposition or conversion, and the CFF share that resulted after the reduction of units attributable to demolition, disposition or conversion.

(4) *Replacement housing funding in FFY 1998 and 1999.* Units that received replacement housing funding in FFY 1998 will be treated as if they had received two years of replacement housing funding by FFY 2000. Units that received replacement housing funding in FFY 1999 will be treated as if they had received one year of replacement housing funding as of FFY 2000.

(5) *PHA eligibility for replacement housing factor.* A PHA is eligible for application of this factor only if the PHA satisfies the following criteria:

(i) The PHA requests the application of the replacement factor;

(ii) The PHA will use the funding in question only for replacement housing;

(iii) The restored funding that results from the use of the replacement factor is used to provide replacement housing in accordance with the PHA's five-year PHA plan, as approved by HUD in accordance with part 903 of this chapter;

(iv) The PHA has not received funding for public housing units that will replace the lost units under the public housing development, Major Reconstruction of Obsolete Public Housing, HOPE VI programs, or programs that otherwise provide for replacement with public housing units;

(v) A PHA that has been determined by HUD to be troubled that is not already under the direction of HUD or a court-appointed receiver, in accordance with part 902 of this chapter, must use an Alternative Management Entity as defined in part 902 of this chapter for development of replacement housing and must comply with any applicable provisions of its Memorandum of Agreement executed with HUD under that part; and

(vi) Any development of replacement housing by any PHA must be done in accordance with applicable HUD requirements and regulations.

(6) *Failure to provide replacement housing in a timely fashion.* If the PHA does not use the restored funding that results from the use of the replacement housing factor to provide replacement housing in a timely fashion, as outlined in paragraph (i)(7)(i) of this section and in accordance with applicable HUD requirements and regulations, and make reasonable progress on such use of the funding, in accordance with HUD requirements and regulations, HUD will require appropriate corrective action under these regulations; may recapture and reallocate the funds; or may take other appropriate action.

(7) *Requirement to obligate and expend replacement housing factor funds within specified period.* (i) In addition to the requirements otherwise applicable to obligation and expenditure of funds, PHAs are required to obligate assistance received as a result of the replacement housing factor within:

(A) 24 months from the date that funds become available to the PHA; or

(B) With specific HUD approval, 24 months from the date that the PHA accumulates adequate funds to undertake replacement housing.

(ii) To the extent the PHA has not obligated any funds provided as a result of the replacement housing factor within the times required by this paragraph, or expended such funds within a reasonable time, the amount of funds to be provided to the PHA as a result of the application of the second 5 years of the replacement housing factor shall be reduced.

(j) *Performance reward factor.* PHAs that are determined as high performers under the Public Housing Assessment System (PHAS) for their most recent fiscal year can receive 3% in the first five years these awards are given (for any year in this 5-year period in which the performance reward is earned), and 5% above their base formula amount in future years (for any year in which the performance reward is earned), subject only to the condition each year that no PHA will lose more than 5% of its base formula amount as a result of the redistribution of funding from non-high performers to high performers. The first performance awards will be given based upon PHAS scores for PHA fiscal years ending December 31, 1999, March 31, 2000, June 30, 2000, and September 30, 2000, with PHAs typically having received those PHAS scores within approximately 3 months after the end of those fiscal years.

Dated: September 8, 1999.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

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federal register

Tuesday
September 14, 1999

Part VII

Department of Housing and Urban Development

24 CFR Part 906
Public Housing Homeownership Programs; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 906

[Docket No. FR–4504–P–01]

RIN 2577–AC15

Public Housing Homeownership Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would set forth the requirements and procedures governing a new statutory homeownership program to be administered by public housing agencies (PHAs). Under this rule, a PHA makes public housing dwelling units, public housing projects, and other housing projects available for purchase by low-income families as their principal residences.

DATES: *Comments Due Date:* Comments on the proposed rule are due on or before November 15, 1999.

ADDRESSES: Interested persons are invited to submit written comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: David Sowell, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4138, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 401–8812, ext. 4641 (this is not a toll-free number). Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 536 of the Quality Housing and Work Responsibility Act of 1998 (Title V of Public Law 105–276, 112 Stat. 2461, approved October 21, 1998) ("Public Housing Reform Act") amended Title I of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act) by adding a new section 32, which authorized a new public housing homeownership program. The new homeownership program replaces the public housing agency homeownership program that was authorized under section 5(h) of the 1937 Act. Section 518 of the Public Housing Reform Act repealed the 5(h) homeownership program, and section 566 of the Public Housing Reform Act added a new section 5(h) that deals with audit requirements.

This rule would revise 24 CFR part 906, which currently contains the regulations for the 5(h) homeownership program. Many of the 5(h) program requirements would be retained under the new section 32 (of the 1937 Act) homeownership program. The authorizing statutory language for the 5(h) program was very brief, and the regulatory requirements at part 906 substantially fleshed out the program. Section 32, which provides many more explicit statutory requirements than section 5(h) did, adopted several of the regulatory requirements promulgated at part 906 for the 5(h) program. For example, section 32 addresses the protection of nonpurchasing residents and the use of the proceeds from a sale. Similar provisions were provided in the 5(h) regulation. In addition, the 5(h) regulation permitted sales to residents through another entity, rather than directly from the PHA, and section 32 permits sales directly to residents or to another entity for resale to residents.

There is legislative history that indicates the similarities between the new, statutory section 32 program requirements and the section 5(h) program requirements at part 906 are deliberate. In reporting out S. 462, a bill entitled, "The Public Housing Reform and Responsibility Act of 1997", which was the model for the Public Housing Reform Act, the Senate Committee on Banking, Housing, and Urban Affairs stated: "The Committee patterned the new homeownership provision according to the section 5(h) program which has proven to be a highly successful program for assisting public housing residents in becoming homeowners." (S. Rept. 105–21, at 28). This statement supports the retention of the 5(h) program requirements that HUD is proposing in this rulemaking.

Part 906 is reorganized by this rule into five subparts according to the subjects covered: a general statement of the program; basic program requirements; purchaser requirements; program administration; and program submission and approval. The new statutory homeownership requirements are integrated with the 5(h) requirements that HUD has determined are appropriate to retain, such as proposed § 906.39, which is based upon § 906.20 of the 5(h) rule and covers what must be contained in a homeownership program.

In order to make the new program more flexible than the 5(h) program, we have omitted some of the 5(h) program requirements, including the detailed eligibility and affordability requirements for purchasers found in § 906.8, the nonroutine maintenance reserve requirement of § 906.11, and the purchase price and financing provisions of § 906.12. We specifically invite comments on whether HUD should specify underwriting standards or the types of documents to be used to secure that HUD's investment in a property ultimately serves program purposes.

Section 32 gives a right of first refusal to the resident or residents occupying a public housing unit. The statute does not give that right to residents of other housing that is to be sold under the homeownership program. Section 906.13 implements this right of first refusal, noting that a prospective purchaser still must satisfy other program requirements.

Section 32 provides for three categories of eligible purchasers: (1) Low-income families assisted by a PHA; (2) other low-income families; and (3) entities formed to purchase units for re-sale to low-income families. This rule clarifies, at § 906.15, that a family purchasing a property under a PHA homeownership program must be a low-income family, as defined in section 3 of the 1937 Act, at the time the contract to purchase the property is executed. This provision eliminates the need to re-establish eligibility at the time of closing, and places no limitations on a family's future income as a condition of homeownership.

Please note that the low-income eligibility requirement applies to public housing residents, thereby making public housing residents who earn more than 80 percent of area median income ineligible to participate in the homeownership program. The Department welcomes comment on this eligibility requirement.

Section 32 also includes provisions for the protection of nonpurchasing public housing residents. One of these provisions requires that each public housing resident displaced by the sale of a unit will be offered comparable housing that is located in an area that is generally not less desirable than the location of the displaced resident's housing. (Relocation of residents of other housing that would be displaced by a homeownership program would be covered by the Uniform Relocation Act and part 42 of this title, as stated in § 906.24.) In a Senate colloquy before

passage of the Public Housing Reform Act, Senator Mack directly addressed this provision, and the way in which it was to be interpreted. The Senator stated:

> For purposes of this provision, the phrase "location of the displaced resident's housing" may be construed to mean the public housing development from which the family was vacated, rather than a larger geographic area. (Congressional Record of October 8, 1998, S.11840)

Consistent with this guidance, this proposed rule provides, in § 906.24, which deals with protections available to nonpurchasing residents, that "comparable housing" means housing that (among other factors) is located in an area that is generally not less desirable than the displaced resident's original development.

Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule provides the parameters for the use of public housing properties to create homeownership opportunities for low-income residents of public housing and other low-income families should a public housing agency choose to do so with, at most, an incidental effect on small entities.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. This finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this proposed rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule's major effects would be on individuals; any involvement of States or their political subdivisions is limited to their cooperative efforts in promoting homeownership among public and housing residents and other low-income families.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Paperwork Reduction Act Statement

The information collection requirements contained in this rule, as described in §§ 906.17, 906.19, 906.23, 906.27, 906.33, 906.39, 906.41, and 906.49 have been submitted to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Estimates of the total reporting and recordkeeping burden that will result from the collection of information are as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of parties	Annual freq. of requirement	Est. avg. time for requirement (hours)	Est. annual burden (hrs.)
906.17	5,000	1	4	20,000
906.19	30	1	40	1,200
906.23	2,000	1	1	2,000
906.27	50	1	.50	25
906.33	50	1	10	500
906.39	50	1	40	2,000
906.41	50	1	20	1,000
906.49	50	1	.25	12
Total Reporting and Recordkeeping Burden (Hours)				25,737

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR–4504) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

and

Millie Hamman, Reports Liaison Officer, Office of the Assistant Secretary for Public and Indian Housing, Department of Housing & Urban Development, 451—7th Street, SW, Room 4238, Washington, DC 20410

List of Subjects in 24 CFR Part 906

Grant programs—housing and community development, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, HUD proposes to revise part 906 of title 24 to read as follows:

PART 906—PUBLIC HOUSING HOMEOWNERSHIP PROGRAMS

Subpart A—General

Sec.

Subpart B—Basic Program Requirements

Subpart C—Purchaser Requirements

Subpart D—Program Administration

Subpart E—Program Submission and Approval

Authority: 42 U.S.C. 14372–4 and 3535(d).

Subpart A—General

§ 906.1 What is the purpose of this part?

(a) This part sets forth the requirements and procedures governing public housing homeownership programs carried out by public housing agencies (PHAs), as authorized by (42 U.S.C. 1437z–4) section 32 of the United States Housing Act of 1937 ("1937 Act"). A PHA may only transfer public housing units for homeownership under a homeownership program approved by HUD under this part, except as provided under § 906.3.

(b) Under a public housing homeownership program, a PHA makes available for purchase by low-income families for use as their principal residences public housing dwelling units, public housing projects, and other housing units or projects owned, assisted, or operated, or otherwise acquired by the PHA for sale under a homeownership program in connection with the use of assistance provided under the 1937 Act ("1937 Act funds"). A PHA may sell all or a portion of a property for purposes of homeownership in accordance with a HUD-approved homeownership program, and in accordance with the PHA's annual plan under part 903 of this title.

§ 906.3 What requirements are applicable to homeownership programs previously approved by HUD?

(a) Any existing section 5(h) or Turnkey III homeownership program continues to be governed by the requirements of part 906 or part 904 of this title, respectively, as it existed before [*effective date of Homeownership Program final rule*] (contained in the April 1, 1999 edition of 24 CFR, parts 700 to 1699). The use of other program income for homeownership activities continues to be governed by agreements executed with HUD.

(b) A PHA may convert an existing homeownership program to a homeownership program under this part with HUD approval.

Subpart B—Basic Program Requirements

§ 906.5 What dwelling units and what types of assistance may a PHA make available under a homeownership program under this part?

(a) A homeownership program under this part may provide for sale of:

(1) Units that are public housing units; and

(2) Other units owned, operated, assisted, or acquired for homeownership sale that have received the benefit of 1937 Act funds or are to be sold with the benefit of 1937 Act funds ("non-public housing units").

(b) A homeownership program under this part may provide for financing to eligible families (see § 905.15) purchasing dwelling units under the program, or for acquisition of housing units or projects by the PHA for sale under the program.

(1) Under this part, a PHA may use assistance from amounts it receives under the Capital Fund under section 9(d) of the 1937 Act or from other income earned from its 1937 Act programs to provide financing assistance to public housing residents only. Public housing residents may use such assistance to purchase the unit in which they reside, another public housing unit, or a residence not located in a public housing development.

(2) A PHA may provide financing assistance for other eligible purchasers from other income, i.e., income not from 1937 Act programs, such as proceeds from selling public housing units, loan repayments, and public housing debt forgiveness funding not already committed to another purpose.

(c) A PHA must not use 1937 Act funds to rehabilitate units that are not public housing units.

§ 906.7 What physical requirements must a property offered for sale meet?

A property offered for sale under a homeownership program must meet local code requirements (or, if no local code exists, the housing quality standards established by HUD for the Section 8 Housing Assistance Payments Program for Existing Housing, under part 882 of this title) and the requirements for elimination of lead-based paint hazards in HUD-associated housing, under part 35, subpart C of this title. When a prospective purchaser

with disabilities requests accessible features, the features must be added in accordance with part 8 of this title. Further, the property must be in good repair, with the major components having a remaining useful life that is sufficient to justify a reasonable expectation that homeownership will be affordable by the purchasers. These standards must be met as a condition for conveyance of a dwelling to an individual purchaser.

§ 906.9 What effect do existing restrictions and encumbrances have on the sale of a property?

(a) If the property is subject to indebtedness under the Annual Contributions Contract (ACC), HUD will continue to make any debt service contributions for which it is obligated under the ACC, and the property sold will not be subject to the encumbrance of that indebtedness.

(b) Upon sale of a public housing unit, in accordance with the HUD-approved homeownership program, HUD will execute a release of the title restrictions prescribed by the ACC. Because the property will no longer be subject to the ACC after sale, it will cease to be eligible for public housing Operating Fund or Capital Fund payments.

Subpart C—Purchaser Requirements

§ 906.11 Who is eligible to purchase housing under a homeownership program?

Low-income families and entities that purchase units from the PHA for resale to low-income families ("purchase and resale entities" or PREs) are eligible to purchase properties made available for sale under a PHA homeownership program.

§ 906.13 Do current residents have a right of first refusal on units made available for sale?

(a) Yes, in selling a public housing unit under a homeownership program, the PHA must initially offer the unit to the resident occupying the unit, if any, or to an organization serving as a conduit for sales to any such resident. (See § 906.19.) The resident must qualify to purchase the unit under the requirements specified by the PHA, in accordance with § 906.15.

(b) No, this program does not require the PHA, when selling a unit that is a non-public housing unit, to offer the unit for sale first to the current resident under the program.

§ 906.15 What requirements apply to a family purchasing a property under a homeownership program?

(a) *Low-income requirement.* A family purchasing a property under a PHA homeownership program must be a low-income family, as defined in section 3 of the 1937 Act (42 U.S.C. 1437a), at the time the contract to purchase the property is executed.

(b) *Principal residence requirement.* The dwelling unit sold to an eligible family must be used as the principal residence of the family.

(c) *Financial capacity requirement.* Eligibility must be limited to families who are capable of assuming the financial obligations of homeownership, under minimum income standards for affordability, taking into account the unavailability of public housing operating subsidies and modernization funds after conveyance of the property by the PHA. A homeownership program may, however, take account of any available subsidy from other sources.

(d) *Down payment requirement.* (1) Each family purchasing housing under a homeownership program must provide a downpayment in connection with any loan for acquisition of the housing, in an amount determined by the PHA or PRE, in accordance with an approved homeownership program. Except as provided in paragraph (d)(2) of this section, the PHA or PRE must permit the family to use grant amounts, gifts from relatives, contributions from private sources, and other similar amounts in making the downpayment.

(2) The family must use its own resources other than grants, gifts, contributions, or similar amounts, to contribute an amount of the downpayment that is not less than one percent of the purchase price of the housing. The PHA or PRE must take reasonable steps, and maintain records, that are verifiable by HUD through audits to verify the source of this one percent contribution.

(e) *Other requirements established by the PHA.* A PHA may establish requirements or limitations for families to purchase housing under a homeownership program, including requirements or limitations regarding:

(1) Employment or participation in employment counseling or training activities;

(2) Criminal activity;

(3) Participation in homeownership counseling programs;

(4) Evidence of regular income; and

(5) Other requirements.

§ 906.17 How does a family apply to purchase a unit under a homeownership program?

Families who are interested in purchasing a unit must submit applications to the PHA or PRE for that specific purpose, and those applications must be handled separately from applications for other PHA programs. Application for homeownership must not affect an applicant's place on any other PHA waiting list for rental units.

§ 906.19 What requirements apply to a PRE (purchase and resale entity), an entity formed for the purpose of purchasing units for resale to low-income families?

(a) *In general.* In the case of a purchase of units for resale to low-income families by a PRE, the PHA must have an approved homeownership program that describes the use of a PRE to sell the units to low-income families within 5 years from the date of the PRE's acquisition of the units.

(b) *PRE requirements.* The PHA must demonstrate in its homeownership program that the PRE has the necessary legal capacity and practical capability to carry out its responsibilities under the program. The PHA's homeownership program also must contain a written agreement that specifies the respective rights and obligations of the PHA and the PRE and which include:

(1) Assurances that the PRE will comply with all provisions of the HUD-approved homeownership program;

(2) Assurances that the PRE will be subject to a title restriction providing that the property may be resold or otherwise transferred only by conveyance of individual dwellings to eligible families, in accordance with the HUD-approved homeownership program, or by reconveyance to the PHA, and that the property will not be encumbered by the PRE without the written consent of the PHA;

(3) Protection against fraud or misuse of funds or other property on the part of the PRE, its employees, and agents;

(4) Assurances that the resale proceeds will be used only for the purposes specified by the HUD-approved homeownership program;

(5) Limitation of the PRE's administrative and overhead costs, and of any compensation or profit that may be realized by the PRE, to amounts that are reasonable in relation to its responsibilities and risks;

(6) Accountability to the PHA and residents for the recordkeeping, reporting and audit requirements of § 906.33;

(7) Assurances that the PRE will administer its responsibilities under the plan on a nondiscriminatory basis, in accordance with the Fair Housing Act and implementing regulations; and

(8) Adequate legal remedies for the PHA and residents, in the event of the PRE's failure to perform in accordance with the agreement.

(c) *Sale to low-income families.* The requirement for a PRE to sell units

under a homeownership program only to low-income families must be recorded as a deed restriction at the time of purchase by the PRE.

(d) *Resale within five years.* A PRE must agree that, with respect to any units it acquires under a homeownership program under this part, it will transfer ownership to the PHA if the PRE fails to resell the unit to a low-income family within 5 years of the PRE's acquisition of the unit.

(e) *Required notices to families.* A PRE must provide the notices to purchasing families that are required by the PHA, in accordance with the environmental and other requirements referenced in § 906.47.

Subpart D—Program Administration

§ 906.23 What protections are available to nonpurchasing public housing residents?

(a) If a public housing resident does not exercise the right of first refusal under § 906.13, the PHA:

(1) Must notify the resident residing in the unit 90 days prior to the displacement date, except in cases of imminent threat to health or safety, that:

(i) The public housing unit will be sold;

(ii) The transfer of possession of the unit will not occur until the resident is relocated; and

(iii) Each resident displaced by such action will be offered comparable housing (as defined in paragraph (b) of this section);

(2) Must provide for the payment of the actual costs and reasonable relocation expenses of the resident to be displaced;

(3) Must ensure that the resident is offered comparable housing under paragraph (a)(1)(iii) of this section;

(4) Must provide counseling for displaced residents of their rights to comparable housing, including their rights under the Fair Housing Act to choice of a unit on a nondiscriminatory basis, without regard to race, color, religion, national origin, disability, age, sex, or familial status; and

(5) Must not transfer possession of the unit until the resident is relocated.

(b) For purposes of this section, the term "comparable housing" means housing:

(1) That meets housing quality standards;

(2) That is located in an area that is generally not less desirable than the displaced resident's original development; and

(3) Which may include:

(i) Tenant-based assistance (tenant-based assistance must only be provided upon the relocation of the resident to the comparable housing);

(ii) Project-based assistance; or

(iii) Occupancy in a unit owned, operated, or assisted by the PHA at a rental rate paid by the resident that is comparable to the rental rate applicable to the unit from which the resident is vacated.

§ 906.24 What protections are available to nonpurchasing residents of housing other than public housing?

Residents of non-public housing that would be displaced by a homeownership program are eligible for assistance under the Uniform Relocation Act and part 42 of this title. For purposes of this part, a family that was over-income at the time of admission to public housing and was admitted in accordance with section 3(a)(5) of the 1937 Act, is treated as a nonpurchasing resident of non-public housing.

§ 906.25 What ownership interest is conveyed to a purchaser?

A homeownership program may provide for sale to the purchasing family of any ownership interest that the PHA considers appropriate under the homeownership program, including:

(a) Ownership in fee simple;

(b) A condominium interest;

(c) An interest in a limited dividend cooperative; or

(d) A shared appreciation interest with a PHA providing financing.

§ 906.27 What limitations apply to net proceeds on the sale of a property acquired through a homeownership program?

(a) A PHA must establish such limitations (by an appropriate form of title restriction) on the resale of property acquired through a homeownership program as the PHA considers appropriate for the PHA to recapture:

(1) Some or all of the economic gain derived from any such resale (i.e., appreciation) occurring during the 5-year period beginning upon purchase of the dwelling unit by the eligible family, in addition to some or all of the assistance provided under the homeownership program to the family; and

(2) After the expiration of such 5-year period, only such amounts as are equivalent to the assistance provided under the homeownership program to the family.

(b) In establishing the limitations described in paragraph (a)(1) of this section, the PHA may consider:

(1) The aggregate amount of assistance provided under the homeownership program to the family;

(2) The contribution of equity by the purchasing family;

(3) The period of time elapsed between purchase by the homebuyer under the homeownership program and resale by the homebuyer;

(4) The reason for resale;

(5) Any improvements made by the family purchasing under the homeownership program;

(6) Any appreciation in the value of the property; and

(7) Any other factors that the PHA considers appropriate.

(c) For the purposes of this section, the value of the property must be determined by a certified appraiser within one month before the resale.

§ 906.31 What requirements are applicable to net proceeds?

(a) *PHA use of net proceeds.* The PHA must use any net proceeds of any sales under a homeownership program remaining after payment of all costs of the sale for purposes relating to low-income housing and in accordance with the PHA plan of the PHA carrying out the program.

(b) *PRE use of resale net proceeds.* The PHA may require the PRE to return the net proceeds from the resale and from managing the units to the PHA. If the PHA permits the PRE to retain the net proceeds, the PRE must use these proceeds for low-income housing purposes.

§ 906.33 What reporting and recordkeeping requirements apply to homeownership programs?

The PHA is responsible for the maintenance of records (including sale and financial records) for all activities incident to implementation of the HUD-approved homeownership program. Where a PRE is responsible for the sale of units, the PHA must ensure that the PRE's responsibilities include proper recordkeeping and accountability to the PHA, sufficient to enable the PHA to monitor compliance with the approved homeownership program and to meet its audit responsibilities. All books and records must be subject to inspection and audit by HUD and the General Accounting Office (GAO). The PHA must report annually to HUD on the progress of each program approved under this part.

§ 906.35 Are the disposition provisions of section 18 of the United States Housing Act of 1937 applicable to a homeownership program?

The provisions of section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) do not apply to disposition of public housing dwelling units under a homeownership program approved by HUD.

§ 906.37 What Davis-Bacon and HUD wage rate requirements apply to homeownership programs?

(a) *Type of activities covered.* Rehabilitation, repairs and accessibility modifications performed pursuant to § 906.7 are subject to Davis-Bacon or HUD-determined wage rate requirements when involving units that are:

(1) Public housing units that will be sold under a homeownership program; and

(2) Non-public housing units owned or acquired by a PHA with the intent to use 1937 Act funds to rehabilitate the units, finance the sale of the units, or otherwise provide assistance to purchasers of the units.

(b) *Type of workers covered.* These prevailing wage requirements cover laborers and mechanics involved in the construction work and technical workers, such as architects, technical engineers, draftsmen, and technicians. See §§ 968.110(e) and 968.105 of this title for further guidance concerning Davis-Bacon and HUD-determined wage rates.

Subpart E—Program Submission and Approval

§ 906.38 Does a PHA require HUD approval to implement a homeownership program under this part?

A PHA must obtain HUD approval before implementing a homeownership program. A homeownership program must be carried out in accordance with the requirements of this part and the PHA's plan submitted under part 903 of this title.

§ 906.39 What must a homeownership program include?

A homeownership program must include the following matters, as applicable to the particular factual situation:

(a) *Property description.* (1) If the program involves only financing assistance to the family purchasing the unit, the PHA need not specify property addresses, but it must describe the area in which the assistance is to be used.

(2) If the PHA is selling existing public housing, it must describe the property, including identification of the property by project number, or street address if there is no project number, and the specific dwellings to be sold, with bedroom distribution by size and type broken down by project.

(3) If the PHA is acquiring units with 1937 Act funds to sell under the program, it must comply with the provisions of § 906.40 concerning this element of the program.

(b) *Repair or rehabilitation.* If applicable, a plan for any repair or rehabilitation required under § 906.7, based on the assessment of the physical condition of the property that is included in the supporting documentation.

(c) *Purchaser eligibility and selection.* The standards and procedures to be used for homeownership applications and the eligibility and selection of purchasers, consistent with the requirements of § 906.15. If the homeownership program allows application for purchase of units by families who are not presently public housing or Section 8 residents and not already on the PHA's waiting lists for those programs, the program must include an affirmative fair housing marketing strategy for such families, including specific steps to inform them of their eligibility to apply, and to solicit applications from those in the housing market who are least likely to apply for the program without special outreach.

(d) *Sale and financing.* Terms and conditions of sale and financing.

(e) *Consultation with residents and purchasers.* A description of resident input obtained during the resident consultation process required by the PHA plan under part 903 of this title, and a plan for consultation with purchasers during the implementation stage to help insure program solvency.

(f) *Counseling.* Counseling, training, and technical assistance to be provided to purchasers.

(g) *Sale via PRE.* If the plan contemplates sale to residents by an entity other than the PHA, a description of that entity's responsibilities and information demonstrating that the requirements of § 906.19 have been met or will be met in a timely fashion.

(h) *Nonpurchasing residents.* If applicable, a plan for nonpurchasing residents, in accordance with § 906.23.

(i) *Sale proceeds.* An estimate of the sale proceeds and an explanation of how they will be used, in accordance with § 906.31.

(j) *Administration.* An administrative plan, including estimated staffing requirements and a listing of staff positions that will be responsible for the day-to-day implementation and monitoring of the program, the percentage of time each staff member will spend on homeownership activities and the funding source for staff salaries.

(k) *Records, accounts and reports.* A description of the recordkeeping, accounting and reporting procedures to be used, including those required by § 906.33.

(l) *Budget.* A budget estimate, showing any rehabilitation or repair cost, any financing assistance, and the costs of implementing the program, and the sources of the funds that will be used.

(m) *Timetable.* An estimated timetable for the major steps required to carry out the plan.

§ 906.40 What requirements apply to acquisition of non-public housing?

(a) *Proposal contents.* The PHA must submit an acquisition proposal to the HUD Field Office for review and approval before its homeownership plan containing acquisition of non-public housing can be approved. This proposal must contain the following:

(1) *Project description.* A description of the housing, including the number of units, unit types and number of bedrooms, and any nondwelling facilities of the project to be acquired;

(2) *Certification.* Certification by the PHA that the property was not constructed or is not being constructed with the intent that it would be sold to the PHA;

(3) *Site information.* A description of the proposed general location of the property to be acquired, or where specific properties have been identified, street addresses of the properties;

(4) *Project costs.* The detailed budget of costs for acquiring the project, including relocation and closing costs, and an identification of the sources of funding;

(5) *Appraisal.* An appraisal of the proposed property by an independent, state-certified appraiser (when the sites have been identified);

(6) *Project acquisition schedule.* A copy of the PHA acquisition schedule;

(7) *Environmental information.* All available environmental information on the properties to be acquired (when sites have been identified), to expedite the environmental review under part 58 of this title (if a responsible entity has assumed environmental responsibility for the project) or under part 50 of this title (if HUD is performing the environmental review);

(8) *Additional HUD-requested information.* Any additional information that may be needed for HUD to determine whether it can approve the proposal.

(b) *Cost limit.* The acquisition cost of the project is limited by the housing cost cap limit, as described in HUD Notice PIH 99–17, issued on March 15, 1999.

§ 906.41 What supporting documentation must be submitted to HUD with the homeownership program?

The following supporting documentation must be submitted to

HUD with the proposed homeownership program, as appropriate for the particular program:

(a) *Property value estimate.* An estimate of the fair market value of the property, including the range of fair market values of individual dwellings, with information to support the reasonableness of the estimate. (The purpose of this data is merely to assist HUD in determining whether, taking into consideration the estimated fair market value of the property, the plan adequately addresses any risks of fraud and abuse and of windfall profit upon resale, pursuant to § 906.27. A formal appraisal need not be submitted with the proposed homeownership program.)

(b) *Physical assessment.* An assessment of the physical condition of the property, based on the standards specified in § 906.7.

(c) *Workability.* An itemized statement demonstrating the practical workability of the program, based on analysis of data on such elements as purchase prices, costs of repair or rehabilitation, homeownership costs, family incomes, availability of financing, and the extent to which there are eligible residents who are expected to be interested in purchase. (See § 906.45(a).)

(d) *PHA performance in homeownership.* A statement of the commitment and capability of the PHA (and any other entity with substantial responsibility for implementing the homeownership program) to successfully carry out the homeownership program. The statement must describe the PHA's (and other entity's) past experience in carrying out homeownership programs for low income families, and (if applicable) its reasons for considering such programs to have been successful. A PHA that has not previously implemented a homeownership program for low income families instead must submit a statement describing its experience in carrying out public housing modernization and development projects under parts 941 and 968 of this title, respectively.

(e) *Nondiscrimination certification.* The PHA's or PRE's certification that it will administer the plan on a nondiscriminatory basis, in accordance with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Executive Order 11063, and implementing regulations, and will assure compliance with those requirements by any other entity that may assume substantial responsibilities for implementing the program.

(f) *Legal opinion.* An opinion by legal counsel to the PHA, stating that counsel has reviewed the program and finds it consistent with all applicable requirements of Federal, State, and local law, including regulations as well as statutes. At a minimum, the attorney must certify that the documents to be used will fully implement the sale to a low-income family restriction of § 906.41(e), the resale reverter of § 906.41(d), and the restriction of use of resale proceeds of § 906.27.

(g) *Board resolution.* A resolution by the PHA's Board of Commissioners, evidencing its approval of the program.

(h) *Other information.* Any other information that may reasonably be required for HUD review of the program. Except for the PHA-HUD implementing agreement under § 906.49, HUD approval is not required for documents to be prepared and used by the PHA in implementing the program (such as contracts, applications, deeds, mortgages, promissory notes, and cooperative or condominium documents), if their essential terms and conditions are described in the program. Consequently, those documents need not be submitted as part of the program or the supporting documentation.

§ 906.43 Where does a PHA submit a homeownership program for HUD approval?

A PHA must submit its proposed homeownership program together with supporting documentation, in a format prescribed by HUD, to the Special Applications Center, 77 W. Jackson Street, Chicago, Illinois, with a copy to the appropriate HUD Field Office.

§ 906.45 What criteria will HUD use to review a homeownership program?

HUD will use the following criteria in reviewing a homeownership program:

(a) *Workability.* The program must be practically workable, with sound potential for long-term success. Financial viability, including the capability of purchasers to meet the financial obligations of homeownership, is a critical requirement.

(b) *Legality.* The program must be consistent with law, including the requirements of this part and any other applicable Federal, State, and local statutes and regulations, and existing contracts. Subject to the other two criteria stated in this section, any provision that is not contrary to those legal requirements may be included in the program, at the discretion of the PHA, whether or not expressly authorized in this part.

(c) *Documentation.* The program must be clear and complete enough to serve as a working document for implementation, as well as a basis for HUD review.

(d) *PHA performance in homeownership.* The PHA (and any other entity with substantial responsibility for implementing the homeownership program) must have demonstrated the commitment and capability to successfully implement the homeownership program based upon the criteria stated in 906.41(d).

§ 906.47 What environmental provisions apply?

(a) Generally, the environmental provisions applicable to HUD-financed programs are found in part 58 of this title (if a responsible entity has assumed environmental review responsibility for the project) and part 50 of this title (if HUD is performing the environmental review).

(b) Where the PHA's homeownership program involves no acquisition or rehabilitation of units in anticipation of the sale but assistance to the homebuyer will be provided with 1937 Act funds, an environmental review is not required under part 58 or part 50 of this title. However, the requirements of § 58.6 or § 50.19(b)(15) of this title are still applicable.

§ 906.49 How is HUD approval and authorization indicated?

HUD may approve a homeownership program as submitted or return it to the PHA for revision and resubmission. Upon HUD notification to the PHA that the homeownership program is approvable (in final form that satisfies all applicable requirements of this part), the PHA and HUD will execute a written implementing agreement, in a form prescribed by HUD, to evidence HUD approval and authorization for implementation. The program itself, as approved by HUD, must be incorporated in the implementing agreement. Any of the items of supporting documentation may also be incorporated, if agreeable to the PHA and HUD. The PHA is obligated to carry out the approved homeownership program and other provisions of the implementing agreement without modification, except with written approval by HUD.

Dated: August 27, 1999.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

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Part VIII

Department of Housing and Urban Development

24 CFR Part 943

Consortia of Public Housing Agencies and Joint Ventures; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 943

[Docket No. FR–4474–P–01]

RIN 2577–AC00

Consortia of Public Housing Agencies and Joint Ventures

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a new statutory provision specifically authorizing public housing agencies (PHAs) to administer any or all of their housing programs through a consortium of PHAs. It also authorizes PHAs to use subsidiaries, joint ventures, partnerships or other business arrangements to administer its housing programs or to provide supportive or social services. The proposed rule specifies minimum requirements relating to formation and operation of consortia and minimum contents of consortium agreements, as required by the statute.

DATES: *Comments Due Date:* November 15, 1999.

ADDRESSES: Submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Rod Solomon, Deputy Assistant Secretary for Policy, Program, and Legislative Initiatives, Office of Public and Indian Housing, U.S. Department of Housing and Urban Development, at (202) 708–0713 or e-mail him at the following address: RodSolomon@hud.gov. The preceding telephone number is not toll-free. Persons with hearing or speech impairments may access the above telephone number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Statutory Basis

Section 515 of the Quality Housing and Work Responsibility Act of 1998 (Pub L. 105–276, 112 Stat. 2549, approved October 21, 1998) (Public Housing Reform Act) repealed the existing section 13 of the United States Housing Act of 1937 (42 U.S.C. 1437k) dealing with energy conservation, replacing it with a new section 13 authorizing PHAs to operate in consortia and joint ventures. The statute requires that HUD specify minimum requirements relating to the formation and operation of consortia and minimum contents of consortium agreements.

New section 13 provides authority for PHAs to form consortia, joint ventures, affiliates, and subsidiaries for the purposes set out in the statute. Before enactment of section 13, some PHAs had established cooperative arrangements for carrying out some of their responsibilities. A principal difference between such arrangements and consortia as authorized under section 13, is that under section 13 funding may be directed to a representative of the consortium on behalf of several PHAs instead of being paid to the PHAs separately. Another major difference is that under a section 13 consortium, a joint PHA plan is submitted on behalf of participating PHAs. Enactment of section 13, however, does not restrict the ability of PHAs to continue to establish cooperative arrangements under which they receive funding separately and submit separate PHA plans.

II. Regulatory Interpretations

A. Consortia

1. HUD Programs Covered

Generally, this rule covers the public housing program, PHA-administered Section 8 housing assistance programs, and related programs. Programs not covered are other housing owned by the PHA and two categories of project-based Section 8 projects:

- PHA-administered project-based section 8 under the Request for Proposals published on May 19, 1999, 64 FR 27358 (HUD invited response by specially created consortia that could qualify as PHAs.); and
- Section 8 projects that are the subject of financing restructuring under the finance restructuring "Mark to Market" program, where Participating Administrative Entities are designated to administer the program (see 42 U.S.C. 1437f note).

2. General

HUD encourages PHAs to take advantage of the new authority to create consortia to operate their programs. This type of coordination may be particularly helpful for PHAs with small programs or ones whose location is not convenient to access planning resources. Acting together, PHAs should be able to access expertise not otherwise readily available and obtain significant cost savings. In addition, joint planning by PHAs in adjacent geographic areas will permit a metropolitan or regional perspective to be set out in a single PHA Annual Plan. This may facilitate reaching deconcentration and mobility goals for very low income families. Consequently, HUD has placed very few limits on the exercise of PHA discretion in implementing this statutory provision. Nothing in this rule, however, precludes PHAs from making other contractual arrangements for administration of their programs, consistent with program regulations and provisions of their Annual Contributions Contracts (ACCs) with HUD.

This rule provides for reporting by the consortium to HUD on behalf of participating PHAs (see § 943.124). HUD invites comments on whether all reports should be combined reports.

Under the Section 8 Voucher program, program regulations (24 CFR 982.4) already provide for using a consortium of PHAs and having a separate ACC with an entity authorized to act as legal representative of the consortium.

3. PHA Inclusion of Programs in a Consortium

The statute specifies that "any or all of the housing programs of [the PHAs]" may be administered by a consortium. HUD interprets the coverage to include a PHA's public housing and Section 8 programs, and related programs, such as the drug elimination program. When a PHA participates, it must decide which categories of its programs to include. For this purpose, the categories are as follows:

- Public housing;
- Section 8 voucher;
- Section 8 Moderate Rehabilitation, including Single Room Occupancy;
- All project-based Section 8 programs administered by a PHA under an ACC with HUD, except for Moderate Rehabilitation and Certificates and Vouchers;
- Grant programs associated with public housing and Section 8 housing programs (such as drug elimination)—unless use of a consortium would be inconsistent with the terms of the grant program.

The participating PHAs will designate a lead agency in the consortium agreement. The consortium agreement will specify the responsibilities of the

lead PHA and other participating PHAs for administration of the consortium and for administration of the covered programs. To assure competency in the operation of the consortium, the rule requires that the lead agency for the consortium may not be one designated as troubled by HUD or one that fails the funding threshold on satisfaction of civil rights requirements.

4. Relationship of PHAs in Consortium

The period of existence of a consortium and the terms under which a PHA may withdraw from it before the end of that period must be specified in the consortium agreement. To provide for orderly transition, a PHA's withdrawal from a consortium or its natural termination date must take effect at the end of the consortium's fiscal year. Nothing in this rule affects HUD's authority to intervene, as necessary, to enforce its rights under the Annual Contributions Contract, if the actions of a consortium result in a default by a PHA.

5. HUD's Relationship to Consortium

The relationship between HUD and the consortium is to be specified in a payment agreement with the lead agency and the other participating PHAs. This agreement will specify the agreement for direct payment of program funds to the lead agency on behalf of the consortium and requirements for use of the funds in accordance with HUD regulations and requirements, and remedies for any breach of the obligation of the lead agency and participating PHAs to administer the combined program in accordance with HUD requirements.

B. Joint Ventures, Partnerships, Affiliates, and Subsidiaries

1. HUD Programs Covered

Although section 13 authorizes joint ventures, partnerships, affiliates, subsidiaries, and other business arrangements for all of a PHA's programs, this rule covers only the public housing program. PHAs engaged in Section 8 program administration are free to engage in such arrangements without any new regulatory restrictions. (In the Section 8 programs, the PHA is paid a fixed fee for administration of assistance to owners and is responsible for delivering the contract administration services, without either increase or reduction of the fixed fee). In the public housing program, special protections are imposed where physical assets are at risk, as in Part 941, Subpart F, for mixed finance development. This rule does not override those protections.

Section 13 authorizes the use of joint ventures, partnerships, or other business arrangements with persons or entities "with respect to administration of the programs of the [PHA]." In this proposed rule, HUD has chosen to limit the applicability of the joint venture subpart (Subpart C) and its associated special procurement flexibility to the public housing program. PHAs do not need the flexibility granted by this subpart for their Section 8 operations because they already have it. For example, Section 8 operations are not subject to the procurement provisions of 24 CFR part 85.

2. Procurement Provisions

To encourage PHAs to select the most qualified partners for joint ventures in administration of public housing, the rule clarifies the applicability of public housing procurement requirements (found in 24 CFR part 85) to these partners. For procurement of (a) supportive and social services, and (b) administrative functions, this rule provides that the standard requirements are applicable to the procurement of goods and services, but a PHA may consider factors other than price in selecting a partner under the conditions that would warrant sole source selection. (See § 943.150(b)). The rule also clarifies that a joint venture partner is not subject to standard procurement requirements in its activities unless the partner is a subsidiary, affiliate, or identity of interest party of the PHA. In that case, HUD may exempt the joint venture partner from compliance with the standard procurement requirements if the joint venture partner has an acceptable alternative procurement plan. A wholly owned subsidiary or affiliate of a PHA is not exempt in any way.

3. Impact on Existing Joint Venture Authority

This statute does not attempt to regulate a PHA's use of joint ventures, as may be permitted under State law, when using non-1937 Act funds. The rule (§ 943.140(c)) makes that clear.

Findings and Certifications

Public Reporting Burden

The proposed information collection requirements contained in §§ 943.124, 943.126, and 943.128 have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Submit comments on the information collections by November 15, 1999, referring to the title and docket number of the rule. Comments should be addressed to Mildred Hamman, Reports Liaison Officer, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

Comments are solicited from members of the public and affected entities concerning the proposed collection of information specifically to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The burden of information is estimated as follows:

Section of CFR	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total annual hours
943.124 Consortium Agreement	40	1	40	8	320
943.126 Payment Agreement	40	1	40	4	160
943.128(a) Consolid. Plan;	Already included in burden estimates for PHA Plan under Part 903				

Section of CFR	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total annual hours
943.128(b) Consortium Reporting	40	1	40	8	320
Total					800

Impact on Small Entities

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that an agency analyze the impact of a rule on small entities whenever it determines that the rule is likely to have a significant impact on a substantial number of small entities. Based on HUD's experience and contacts with representatives of PHAs and HUD field offices, we expect a relatively small number of PHAs to form consortia—certainly fewer than 100. While there would be savings and efficiencies in the long run for small PHAs, forming a consortium also would require some work for these PHAs—to enter consortium agreements—and would required them to overcome resistance to giving up local control of their programs. Consequently, we conclude that the rule will not have a significant impact on a substantial number of small entities. We encourage small entities to submit comments, however, on ways that the impact of the rule on them could be made more advantageous.

Environmental Finding

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Regulations Division at the above address.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose a Federal mandate that will result in the expenditure by State, local, or tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. On the contrary, it adds new options for PHA operations.

Regulatory Review

The Office of Management and Budget (OMB) has reviewed this proposed rule under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made in this proposed rule after its submission to OMB are identified in the docket file, which is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Catalog

The Catalog of Federal Domestic Assistance number for the programs covered by this rule are 14.850, 14.855, and 14.857.

List of Subjects in 24 CFR 943

Low and moderate income housing, Reporting and recordkeeping requirements.

Accordingly, HUD proposes to add a new part 943 to title 24 of the Code of Federal Regulations as follows:

PART 943— PUBLIC HOUSING AGENCY CONSORTIA AND JOINT VENTURES

Sec.

Authority: 42 U.S.C. 1437k and 3535(d).

Subpart A—General

§ 943.100 What is the purpose of this part?

This part authorizes public housing agencies (PHAs) to form consortia, joint ventures, affiliates, subsidiaries, partnerships, and other business arrangements under section 13 of the United States Housing Act of 1937 (42 U.S.C. 1437k). Under this authority, participating PHAs submit joint PHA plans to HUD and combine their funding and program administration. This part does not preclude a PHA from entering cooperative arrangements to operate its programs under other authority, as long as they are consistent with other program regulations and requirements.

Subpart B—Consortia

§ 943.115 What programs are covered under this subpart?

(a) Except as provided in paragraph (b) of this section, this subpart applies to the following:

(1) PHA administration of public housing or Section 8 programs under an ACC with HUD; and

(2) PHA administration of grants to the PHA in connection with its public housing or Section 8 programs.

(b) This subpart does not apply to the following:

(1) PHA administration of Section 8 projects assigned to a PHA for contract administration pursuant to an ACC entered under the Request for Proposals published May 19, 1999 (64 FR 27358);

(2) Section 8 contract administration of a restructured subsidized multifamily project by a Participating Administrative Entity in accordance with part 401 of this title; or

(3) A PHA in its capacity as owner of a Section 8 project.

§ 943.118 What is a consortium?

A consortium consists of two or more PHAs that join together to perform planning, reporting, and other administrative functions for participating PHAs, as specified in a consortium agreement. The lead agency collects the assistance funds from HUD that would be paid to the participating PHAs for the elements of their operations that are administered by the consortium and allocates them according to the consortium agreement. A consortium also submits a joint PHA plan.

§ 943.120 What programs of a PHA are included in a consortium's functions?

(a) A PHA may enter a consortium under this subpart for administration of any of the following program categories:

(1) The PHA's public housing program;

(2) The PHA's Section 8 voucher and certificate program (including the project-based certificate and voucher programs);

(3) The PHA's Section 8 Moderate Rehabilitation program, including Single Room Occupancy program;

(4) All other project-based Section 8 programs administered by the PHA under an Annual Contributions Contract (ACC) with HUD, except for Moderate Rehabilitation and Certificates and Vouchers; and

(5) Any grants to the PHA in connection with its Section 8 or public housing programs, to the extent not inconsistent with the terms of the governing documents for the grant's funding source.

(b) If a PHA elects to enter a consortium with respect to a program category specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this section, the consortium must cover the PHA's whole program under the ACC with HUD for that program category, including all dwelling units and all funding for that program under the ACC with HUD.

§ 943.122 How is a consortium organized?

(a) PHAs that elect to form a consortium enter into a consortium agreement among the participating PHAs, specifying a lead agency (see § 943.124). HUD enters into a payment agreement with the lead agency and the other participating PHAs (see § 943.126).

(b) The lead agency must not be a PHA that is designated as a "troubled PHA" by HUD or that has been determined by HUD to fail the civil rights compliance threshold for new funding. The lead agency is designated to receive HUD program payments on behalf of participating PHAs, to administer HUD requirements for administration of the funds, and to apply the funds in accordance with the consortium agreement and HUD regulations and requirements.

§ 943.124 What elements must a consortium agreement contain?

(a) The consortium agreement among the participating PHAs governs the formation and operation of the consortium. It must be consistent with the consortium's payment agreement with HUD and must specify the following:

(1) The names of the participating PHAs and the program categories each PHA is including under the consortium agreement;

(2) The name of the lead agency;

(3) The functions to be performed by the lead agency and the other participating PHAs during the term of the payment agreement;

(4) The allocation of funds among participating PHAs and responsibility for administration of funds paid to the consortium under the payment agreement; and

(5) The period of existence of the consortium and the terms under which a PHA may withdraw from it before the end of that period. To provide for orderly transition, the consortium's termination date or a PHA's withdrawal from the consortium must take effect at the end of the consortium's fiscal year.

(b) The agreement must acknowledge that the participating PHAs are subject to the requirements of the joint PHA Plan.

(c) The agreement must be signed by an authorized representative of each participating PHA.

§ 943.126 What is the relationship between HUD and a consortium?

(a) HUD has a direct relationship with the consortium through a payment agreement, executed in the form prescribed by HUD. The payment agreement specifies the conditions under which HUD agrees to pay program funds to the lead agency on behalf of the participating PHAs. It specifies the requirements for use of the funds in accordance with HUD regulations and requirements.

(b) Under the payment agreement, the participating PHAs agree that HUD will pay the consortium all assistance payments otherwise payable to the PHAs for the program categories they have included under the consortium agreement. The combined amount is paid to the lead agency on behalf of the consortium.

§ 943.128 How does a consortium carry out planning and reporting functions?

(a) During the term of the payment agreement, the consortium must complete a joint five-year Plan and a joint Annual Plan for all participating PHAs, in accordance with part 903 of this chapter.

(b) The consortium must submit reports to HUD, in accordance with HUD regulations and requirements, for all of the participating PHAs. All PHAs will be bound by plans and reports submitted to HUD by the consortium for programs covered by the consortium.

(c) Each PHA must keep a copy of the consortium agreement on file for inspection.

§ 943.130 What are the responsibilities of participating PHAs?

Despite participation in a consortium, each participating PHA remains responsible for its own obligations under its ACC with HUD. This means that it has an obligation to assure that all program funds, including funds paid to the lead agency for administration by the consortium, are used in accordance with HUD regulations and requirements, and that the PHA program is administered in accordance with HUD regulations and requirements. Any breach of program requirements with respect to a program covered by the consortium agreement is a breach of the ACC with each of the participating PHAs, so each PHA is responsible for the performance of the consortium.

Subpart C—Subsidiaries, Affiliates, Joint Ventures in Public Housing

§ 943.140 What programs and activities are covered by this subpart?

(a) This subpart applies to the provision of a PHA's public housing administrative functions, and to the provision (or arranging for the provision) of supportive and social services in connection with public housing. It does not apply to activities of a PHA that are subject to the

requirements of part 941, subpart F, of this title.

(b) For purposes of this subpart, the term "joint venture partner" means a participant (other than a PHA) in a joint venture, partnership, or other business arrangement or contract for services with a PHA.

(c) This part does not affect a PHA's authority to use joint ventures, as may be permitted under State law, when using non-1937 Act funds.

§ 943.142 In what types of operating organizations may a PHA participate?

(a) A PHA may create and operate a wholly owned or controlled subsidiary or other affiliate; may enter into joint ventures, partnerships, or other business arrangements with individuals, organizations, entities, or governmental units. A subsidiary or affiliate may be a nonprofit corporation. It may be an organization controlled by the same persons who serve on the governing board of the PHA or who are employees of the PHA.

(b) The purpose of any of these operating organizations would be to administer programs of the PHA.

§ 943.144 What financial impact do operations of a subsidiary, affiliate, or joint venture have on a PHA?

Income generated by subsidiaries, affiliates, or joint ventures formed under the authority of this subpart is to be used for low-income housing or to benefit the residents assisted by the PHA. This income will not cause a decrease in funding provided under the public housing program except as otherwise provided under the Operating Fund and Capital Fund formulas.

§ 943.146 What impact does the use of a subsidiary, affiliate, or joint venture have on financial accountability to HUD and the Federal government?

None. The subsidiary, affiliate, or joint venture is subject to the same authority of HUD, HUD's Inspector General, and the General Accounting Office to audit its conduct.

§ 943.148 What procurement standards apply to PHAs selecting partners for a joint venture?

(a) The requirements of part 85 of this title (generally requiring a request for proposals or "RFP") are applicable to a PHA's procurement of goods and services under this subpart in connection with the PHA's public housing program.

(b) A PHA may use competitive proposal procedures for qualifications-based procurement (request for qualifications or "RFQ") or may solicit a proposal from only one source ("sole source") to select a joint venture partner to perform an administrative function of its public housing program or to provide or arrange to provide supportive or social services covered under this part under the following circumstances:

(1) The proposed joint venture partner has under its control and will make available to the partnership substantial, unique and tangible resources or other benefits that would not otherwise be available to the PHA on the open market (e.g., planning expertise, program experience, or financial or other resources). In this case, the PHA must maintain documentation to substantiate both the cost reasonableness of its selection of the proposed partner and the unique qualifications of the partner: or

(2) A resident group or a PHA subsidiary is willing and able to act as the PHA's partner in performing administrative functions or to provide supportive or social services. This entity must comply with the requirements of part 85 of this title with respect to its selection of the members of the team and the members must be paid on a cost-reimbursement basis only.

§ 943.150 What procurement standards apply to a PHA's joint venture partner?

(a) *General.* A joint venture partner is not a grantee or subgrantee and, accordingly, is not required to comply with part 85 of this title in its procurement of goods and services under this part. The partner must comply with all applicable State and local procurement and conflict of interest requirements with respect to its selection of entities to assist in PHA program administration.

(b) *Exception.* If the joint venture partner is a subsidiary, affiliate, or identity of interest party of the PHA, it is subject to the requirements of part 85 of this title. HUD may, on a case-by-case basis, exempt such a joint venture partner from the need to comply with requirements under part 85 of this title if it determines that the joint venture has developed an acceptable alternative procurement plan.

(c) *Contracting with identity-of-interest parties.* A joint venture partner may contract with an identity-of-interest party for goods or services, or a party specified in the selected bidder's response to a RFP or RFQ (as applicable), without the need for further procurement if:

(1) The PHA can demonstrate that its original competitive selection of the partner clearly anticipated the later provision of such goods or services;

(2) Compensation of all identity-of-interest parties is structured to ensure there is no duplication of profit or expenses; and

(3) The PHA can demonstrate that its selection is reasonable based upon prevailing market costs and standards, and that the quality and timeliness of the goods or services is comparable to that available in the open market. For purposes of this paragraph (c), an "identity-of-interest party" means a party that is wholly owned or controlled by, or that is otherwise affiliated with, the partner or the PHA. The PHA may use an independent organization experienced in cost valuation to determine the cost reasonableness of the proposed contracts.

§ 943.151 What procurement standards apply to a joint venture itself?

(a) When the joint venture as a whole is controlled by the PHA or an identity of interest party of the PHA, the joint venture is subject to the requirements of part 85 of this title.

(b) If a joint venture is not controlled by the PHA or an identity of interest party of the PHA, then the rules that apply to the other partners apply. See § 943.150.

Dated: August 27, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–23701 Filed 9–13–99; 8:45 am]

BILLING CODE 4210–33–P

Federal Register

Tuesday
September 14, 1999

Part IX

Department of Housing and Urban Development

Notice of Opportunity To Apply To Serve on the U.S.-China Residential Building Council; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4534–N–01]

Notice of Opportunity to Apply to Serve on the U.S.-China Residential Building Council

AGENCY: Office of International Affairs, HUD.

ACTION: Notice.

SUMMARY: In June, 1998, President Clinton announced the formation of the U.S.-China Residential Building Council to support the U.S.-China Housing Initiative. This notice announces the opportunity for individuals to apply to serve on the U.S.-China Residential Building Council and announces the Council's selection and eligibility requirements.

DATES: In order to receive full consideration, requests must be received by HUD no later than September 24, 1999.

ADDRESSES: Please send your requests for consideration to U.S.-China Residential Building Council, U.S. Department of Housing and Urban Development, Office of International Affairs, Room 8118, 451 Seventh Street, SW, Washington, DC 20410. You may fax your request to (202) 708–5536 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Daisy Gordon or John Geraghty, U.S. Department of Housing and Urban Development, Office of International Affairs, Room 8118, 451 Seventh Street, SW, Washington, DC 20410, (202) 708–0770 telephone, (202) 708–5536 fax (these are not toll-free numbers). Hearing or speech-impaired persons may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

The U.S.-China Housing Initiative was designed to facilitate cooperation between U.S. and Chinese housing practitioners in the privatization and development of the Chinese housing sector. To guide and support the U.S.-China Housing Initiative, President Clinton announced the formation of the U.S.-China Residential Building Council during the U.S. China Presidential Summit in June of last year. Since that announcement, U.S. and Chinese officials have agreed on a structure for the Council and on the mutually beneficial areas of cooperation.

The Department of Housing and Urban Development is seeking individuals who would like to serve on the U.S.-China Residential Building Council. Applicants may represent U.S. companies, associations or non-governmental organizations actively engaged in the housing industry. The Council will be made up of U.S. and Chinese representatives of the housing policy, finance, and construction sectors. The work of the Council will focus on the development of residential housing markets, construction and mortgage industries, and housing finance systems, and on formulating innovative policies and practices in the areas of community development and urban design.

Members will serve on the Council for a two-year term at the discretion of the appointing officials. Members are expected to participate fully in defining the agenda for the Initiative and in implementing its work programs. It is expected that individuals chosen for the Council will attend at least 75 percent of Council meetings, which will be held in the United States and China. Members are fully responsible for travel, accommodation, and personal expenses associated with their participation in the Residential Building Council. The members will serve in a representative capacity presenting the views and interests of the particular business or housing sector in which they operate.

The U.S.-China Residential Building Council encourages the development of a housing industry in China and increased bilateral educational exchange, trade and investment including, but not limited to, the following:

—Implementing housing finance, planning, design, and building technology seminars, technical exchange, and pilot tests to support reform efforts.
—Adopting sectoral or project oriented approaches to support China's residential housing reform efforts.
—Implementing trade/business development and promotion programs including trade missions, technical assistance, conferences, exhibits, seminars, and other events.

Selection and Eligibility Requirements

There are twelve available positions on the U.S. side of the Residential Business Council. This notice is seeking individuals to fill all twelve positions. The number of Council positions may be expanded, should the need arise.

Applicants must:

—Be a U.S. citizen residing in the United States or a permanent United States resident;
—Be a CEO or other senior management employee of a U.S. company, association, or nonprofit organization involved in the residential housing construction, supply, finance, community development, or urban planning sectors; and
—Not be a registered foreign agent under the Foreign Agents Registration Act of 1938.

In reviewing eligible applicants, the Department of Housing and Urban Development will consider:

—The applicant's expertise in construction building materials, housing policy, mortgage finance, urban planning or community development;
—Readiness to initiate and be responsible for the activities the Council proposes to take on;
—An ability to contribute in light of overall Council composition; and
—Diversity of company or organization size, type, location, and demographics.

To be considered for membership, please provide the following:

—Name and title of the individual requesting consideration;
—Name and address of the company or association that the individual will represent;
—The company or organization's specific product or service area;
—Size of the company or organization; and
—The company or organization's international expertise and major countries of operation.

Please also provide:

—A brief statement on why each candidate should be considered for membership on the Council;
—The individual's international expertise and major countries of operation;
—The particular segment of the housing industry each candidate would represent;
—A personal resume; and
—A statement that the applicant is not a registered foreign agent under the Foreign Agents Registration Act.

This notice supplements the application process initiated by the **Federal Register** notice of March 5, 1999 (64 FR 10621). Applications from individuals who applied to the Council in response to that notice remain active, and those individuals do not need to re-apply.

Dated: September 9, 1999.

Xavier Briggs,

Deputy Assistant Secretary for Research, Evaluation, and Monitoring.

[FR Doc. 99–23894 Filed 9–13–99; 8:45 am]

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Federal Register

Tuesday
September 14, 1999

Part X

Department of Defense General Services Administration National Aeronautics and Space Administration

48 CFR Parts 8 and 38
Federal Acquisition Regulation; Federal Supply Schedules Small Business Opportunities; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8 and 38

[FAR Case 98–609]

RIN 9000–AI48

Federal Acquisition Regulation; Federal Supply Schedules Small Business Opportunities

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to enhance the participation of small business concerns under the Federal Supply Schedules Program.

DATES: Comments should be submitted on or before November 15, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Address e-mail comments submitted via the Internet to farcase.98–609@gsa.gov.

Please cite FAR case 98–609 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAR case 98–609.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule recommends amending FAR Part 8 to encourage ordering offices to consider small businesses when conducting evaluations before placing an order. The rule also recognizes the recent change made by the Small Business Administration whereby agencies are required, beginning in fiscal year 1999, to include in their procurement base and goals, the dollar value of orders expected to be placed against the General Services Administration's (GSA) Federal Supply Service (FSS) Schedules, and to report accomplishments against these goals. The rule also proposes to amend FAR Part 38 to reaffirm that the General Services Administration and agencies delegated the authority to establish a Federal Supply Schedule must comply with all statutory and regulatory requirements before a solicitation is issued. In addition, the rule proposes several minor revisions.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This proposed rule is 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.*, because more orders placed against Federal Supply Schedules may be awarded to small business concerns. Since this may result in a positive impact on small entities, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

The objective of the rule is to ensure that small business concerns have the maximum practicable opportunity to compete in Federal Supply Schedule acquisitions. According to statistical data maintained by the General Services Administration's Federal Supply Service, there are 4,900 Federal Supply Schedule contracts that are in effect with small business concerns out of a population of 7,000 national scope schedule contracts. Approximately 70 percent of the schedule contractors are small business concerns. In fiscal year 1998, small business schedule contractors received approximately $2.5 billion, or 33 percent, of total schedule sales. The proposed rule encourages ordering offices to consider the availability of small business concerns under the schedule and encourages the consideration of such firms when conducting evaluations before placing an order.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Subparts 8 and 38 in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 98–609), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 8 and 38:

Government procurement.

Dated: September 7, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR Parts 8 and 38 be amended as set forth below:

1. The authority citation for 48 CFR parts 8 and 38 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Revise section 8.402 to read as follows:

8.402 Applicability.

Procedures in this subpart apply to orders placed against Federal Supply Schedules. Occasionally, GSA may establish special ordering procedures. The affected Federal Supply Schedules will outline these procedures.

3. In section 8.404—

a. Revise paragraph (a);

b. Remove from paragraph (b)(1) "Ordering Offices can place" and add "Place" in its place;

c. Revise the introductory text of paragraph (b)(2);

d. Revise paragraph (b)(2)(i);

e. Remove from the introductory text of paragraph (b)(3) ", ordering offices shall";

f. Revise paragraph (b)(3)(i);

g. Revise the first sentence in paragraph (b)(3)(iii); and

h. Revise paragraphs (b)(4), (b)(5), and (b)(6) to read as follows:

§ 8.404 Using schedules.

(a) General. Parts 13 and 19 do not apply to orders placed against Federal Supply Schedules, except for the provision at 13.303–2(c)(3). Orders placed against a Multiple Award Schedule (MAS), using the procedures in this subpart, are considered to be issued using full and open competition (see 6.102(d)(3)). Therefore, ordering offices need not seek further competition, synopsize the requirement, make a separate determination of fair and reasonable pricing, or consider

small business programs. GSA has already determined the prices of items under schedule contracts to be fair and reasonable. By placing an order against a schedule using the procedures in this section, the ordering office has concluded that the order represents the best value and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the Government's needs.

(b) * * *

(2) *Orders exceeding the micro-purchase threshold but not exceeding the maximum order threshold.* Place orders with the schedule contractor that can provide the supply or service that represents the best value. Consider reasonably available information about the supply or service offered under MAS contracts by using the "GSA Advantage!" on-line shopping service, or by reviewing the catalogs or pricelists of at least three schedule contractors (see 8.404(b)(6)). Select the delivery and other options available under the schedule that meet the agency's needs. When selecting the supply or service representing the best value, consider—

(i) Special features of the supply or service required for effective program performance;

* * * * *

(3) * * *

(i) Review additional schedule contractors' catalogs or pricelists, or use the "GSA Advantage!" on-line shopping service;

* * * * *

(iii) After seeking price reductions, place the order with the schedule contractor that provides the best value and results in the lowest overall cost alternative (see 8.404(a)). * * *

(4) *Blanket purchase agreements (BPAs).* Agencies may establish BPAs (see 13.303–2(c)(3)) when following the ordering procedures in this subpart. All schedule contracts contain BPA provisions. Ordering offices may use BPAs to establish accounts with contractors to fill recurring requirements. BPAs should address ordering frequency, invoicing, discounts, and delivery locations and times.

(5) *Price reductions.* In addition to the circumstances in paragraph (b)(3) of this section, there may be other reasons to request a price reduction. For example, seek a price reduction when the supply or service is available elsewhere at a lower price or when establishing a BPA to fill recurring requirements. The potential volume of orders under BPAs, regardless of the size of the individual order, offer the opportunity to secure greater discounts. Schedule contractors are not required to pass on to all schedule users a price reduction extended only to an individual agency for a specific order.

(6) *Small business.* When conducting evaluations and before placing an order, consider including, if available, one or more small, small women-owned and or small disadvantaged business schedule contractor(s). Orders placed against the schedules may be credited toward the ordering agency's small business goals. For orders exceeding the micro-purchase threshold, ordering offices should give preference to the items of small business concerns when two or more items at the same delivered price will satisfy the requirement.

* * * * *

PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING

4. Revise section 38.101 to read as follows:

38.101 General.

(a) The Federal Supply Schedule program, pursuant to 41 U.S.C. 259(b)(3), provides Federal agencies with a simplified process of of acquiring commonly used supplies and services in varying quantities while obtaining volume discounts. Indenfinite-delivery contracts (including requirements contracts) are awarded using competitive procedures to commercial firms. The firms provide supplies and services at stated prices for given periods of time, for delivery within a stated geographic area such as the 48 continguous states, the District of Columbia, Alaska, Hawaii, and overseas. The schedule contracting office issues Federal Supply Schedules that contain information needed for placing orders.

(b) Each schedule identifies agencies that are required to use the contracts as primary sources of supply.

(c) Federal agencies not identified in the schedules as mandatory users (see 8.404–2) may issue orders under the schedules. Contractors are encouraged to accept the orders.

(d) Although GSA awards most Federal Supply contracts, it may authorize other agencies to award schedule contracts and publish schedules. For example, the Department of Veterans Affairs awards schedule contracts for certain medical and nonperisable subsistence items.

(e) When establishing Federal Supply Schedules, GSA, or an agency delegated that authority, is responsible for complying with all applicable statutory and regulatory requirements (*e.g.*, parts 5, 6, and 19). The requirements of parts 5, 6, and 19 apply at the acquisition planning stage prior to issuing the schedule soliciation and do not apply to orders and BPAs placed under resulting schedule contracts (see 8.404).

[FR Doc. 99–23828 Filed 9–13–99; 8:45 am]

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federal register

Tuesday
September 14, 1999

Part XI

Department of Justice

28 CFR Part 32

Public Safety Officers' Educational Assistance Program; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance; Public Safety Officers' Educational Assistance Program

28 CFR Part 32

[OJP(BJA)–1216f]

RIN 1121–AA51

AGENCY: Office of Justice Programs, Bureau of Justice Assistance, Public Safety Officers' Benefits Office, Justice.

ACTION: Final rule.

SUMMARY: The Bureau of Justice Assistance (BJA) is amending the regulation on Federal Law Enforcement Dependents Assistance (FLEDA) to effectuate changes made to FLEDA's underlying statutory authority by the Police, Fire, and Emergency Officers' Educational Assistance Act of 1998. These amendments expand the FLEDA program to authorize financial educational assistance to the dependents of all public safety officers whose deaths or permanent disabilities resulted in the payment of benefits under the Public Safety Officers' Benefits (PSOB) Program.

EFFECTIVE DATE: September 14, 1999.

FOR FURTHER INFORMATION CONTACT: Ashton Flemmings, Chief, Public Safety Officers' Benefits Office, 810 7th Street, N.W., Washington, D.C. 20531. Telephone: (202) 307–0635 or toll free at 1–888–744–6513.

SUPPLEMENTARY INFORMATION:

The Bureau of Justice Assistance (BJA) is amending the regulation governing the Federal Law Enforcement Dependents' Assistance (FLEDA) program, found at 28 CFR Part 32, Subpart B, to comply with the amendments to Title I of the Omnibus Crime Control and Safe Streets Act its authorizing statute, 42 U.S.C. 3796 *et seq.*, by the Police, Fire, and Emergency Officers' Educational Assistance Act of 1998, Public Law 104–238, 112 Stat. 3495, (November 13, 1998), (hereinafter the Public Safety Officers' Educational Assistance Act or PSOEA Act). On May 25, 1999, in 64 FR 28123, BJA proposed these amendments, and invited comments from the public, asking that they be submitted no later than July 9, 1999. Only one comment was received. One State's Department of Corrections wrote in to offer its strongest support for the passage of the PSOEA Act. Consequently, these proposed amendments are being adopted as final with no further change.

The PSOEA Act expands the scope of eligibility for financial assistance for higher education to the dependents of all public safety officers, including Federal firefighters and state and local officers, who are killed or permanently and totally disabled in the line of duty. Previously, the FLEDA program only made available financial assistance for higher education to the dependents of Federal law enforcement officers who were killed or permanently and totally disabled in the line of duty. The amendments to this subpart, in accordance with the PSOEA Act, will allow the spouses and children of all public safety officers who are killed or permanently and totally disabled in the line of duty, and with respect to whom a claim has been approved under the Public Safety Officers' Benefits (PSOB) program, to receive these educational benefits.

This program will continue to recognize the sacrifices and invaluable contributions made to the nation's safety by all public safety officers through the availability of this assistance. The program authorizes the payment of benefits to eligible dependents for attendance only at an approved program of education at institutions for higher education. The standards regarding eligible institutions and the calculation of education benefits remain unchanged from the standards currently used under the FLEDA program, and readers are encouraged to consult the preamble to the FLEDA final rule at 62 FR 37713, July 15, 1997, for a detailed discussion of the operation and mechanics of the program.

Below is an explanation of how the regulation is changed by these amendments:

1. To reflect the expansion of the program, the name of the program is being changed from the "Federal Law Enforcement Dependents' Assistance" (FLEDA) program to the "Public Safety Officers' Educational Assistance" (PSOEA) program.

2. All references in subpart B to "Civilian federal law enforcement" or "Federal law enforcement" are changed to "public safety."

3. Section 32.37 of the regulation is changed to comply with the mandate of section 2(4) of the PSOEA Act, which requires the issuance of regulations regarding the use of "sliding scale based on financial need to ensure that an eligible dependent who is in financial need receives priority in receiving funds" under this program. In accordance with this section, BJA will calculate the amount of assistance, if needed, in such a manner so to ensure those applicants who are in the greatest financial need, *i.e.*, would be unable to attend a program of study at a qualified institution of higher education in the absence of some measure of assistance, receive an amount that would allow them to do so and to which they would otherwise be entitled to under this provision. While the PSOEA Act requires, if needed, reduction of the total amount of assistance by the amount calculated using the sliding scale, it is anticipated that no such reduction will be necessary, and that all eligible dependents will be able to receive the total amount of benefits for which they qualify. In order to do this, applicants may submit a statement of financial need, with documentation of such need, including information regarding all assets and sources of income, such as the Internal Revenue Service's form 1040. If the student is dependent on his or her parents for support, information regarding the parents' income and assets may be required. This information will only be used to give priority in awarding funds in the event that it appears that amounts appropriated for the program are not sufficient to allow for all eligible applicants to receive the total amount for which they qualify.

4. Retroactive eligibility to on or after May 1, 1992 will continue for the dependents of Federal law enforcement officers killed in the line of duty. The dependents of Federal law enforcement officers, who were permanently and totally disabled in the line of duty, are entitled to receive benefits under this program if the disability occurred on or after October 1, 1996, the date of the enactment of the original authorizing legislation for FLEDA. The dependents of all other public safety officers, consistent with the authorization, will be eligible for benefits on a retroactive basis if the public safety officer was killed in the line of duty on or after October 1, 1997. The regulations are being amended at section 32.35(a) to reflect this allowance.

Executive Order 12866

This regulation has been written and reviewed in accordance with Executive Order 12866, Sec. 1(b), Principles of Regulation. The Office of Justice Programs has determined that this rule is not a "significant regulatory action" under Executive Order 12866, Sec. 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on

distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Administrative Procedure Act

This rule expands the scope of eligibility for financial educational assistance to dependents under the PSOB program. Further, this rule imposes no new restrictions. Accordingly, the Bureau of Justice Assistance finds good cause for exempting this rule from the provision of the Administrative Procedure Act, 5 U.S.C. 553, requiring delay in effective date.

Regulatory Flexibility Act

The Office of Justice Programs, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: The FLEDA program will be administered by the Office of Justice Programs, and any funds distributed under it shall be distributed to individuals, not entities, and the economic impact is limited to the Office of Justice Program's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private section, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

The collection of information requirements contained in the regulation have been approved by the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (44 U.S.C. 3504(h)). In accordance with 5 CFR 1320.5(b), the OMB control number pertaining to the collection of information is 1121–0220.

List of Subjects in 28 CFR Part 32

Administrative practice and procedure, Claims, Disability benefits, Law enforcement officers.

For the reasons set out in the preamble, the Bureau of Justice Assistance amends 28 CFR part 32 as follows:

PART 32—PUBLIC SAFETY OFFICER'S DEATH AND DISABILITY BENEFITS

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

Authority: Part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (42 U.S.C. § 3711 *et seq.*)

Subpart B—[Amended]

2. The heading of Subpart B is amended by revising "Federal Law Enforcement Dependents" to read "Public Safety Officers' Educational".

3. Section 32.31 is revised to read as follows:

§ 32.31 Purpose.

This subpart implements the Federal Law Enforcement Dependents Assistance Act of 1996, as amended by the Police, Fire, and Emergency Assistance Act of 1998, which authorizes the payment of financial assistance for the purpose of higher education to the dependents of public safety officers who are found, under the provisions of subpart A of this part, to have died as a direct and proximate result of a personal injury sustained in the line of duty, or to have been permanently and totally disabled as the direct result of a catastrophic injury sustained in the line of duty.

4. Section 32.32 is amended by revising paragraphs (a), (b)(3), (c), (d), and (f) to read as follows:

§ 32.32 Definitions.

* * * * *

(a) The *Act* means the Federal Law Enforcement Dependents Assistance Act of 1996, Public Law 104–238, Oct. 3, 1996, as amended by the Police, Fire, and Emergency Assistance Act of 1998, Public Law 104–238, codified as Subpart 2 of Part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3796d *et seq.*

(b) * * *

(3) *PSOEA* means the Public Safety Officers' Educational Assistance program administered by the Bureau under this subpart.

(c) *Public safety officer* is an officer as defined in § 32.2(j), with respect to whom PSOB benefits have been approved under subpart A of this part on account of the officer's death or disability in the line of duty.

(d) *Child* means any person who was the biological, adopted, or posthumous child, or the stepchild, of a public safety officer at the time of the officer's death or disabling injury with respect to which PSOB benefits were approved under subpart A of this part. A step-child must meet the provisions set forth in § 32.15.

* * * * *

(f) *Dependent* means the child or spouse of any eligible public safety officer.

* * * * *

5. Section 32.33 is amended by revising paragraph(a)(1) to read as follows:

§ 32.33 Eligibility for assistance.

(a) * * *

(1) The child of any public safety officer with respect to whom PSOB benefits have been approved under subpart A of this part;

* * * * *

6. Section 32.34 is amended by revising paragraph (b)(2) to read as follows:

§ 32.34 Application for assistance.

* * * * *

(b) * * *

(2) In the case of a disabled public safety officer approved for PSOB benefits under subpart A of this part, applicants for assistance under this subpart must submit birth or marriage certificates or other proof of relationship consistent with §§ 32.12 (spouse) and 32.13 (child), if such evidence had not been submitted with respect to the PSOB claim.

* * * * *

7. Section 32.35 is amended by revising paragraph (a) to read as follows:

§ 32.35 Retroactive benefits.

(a) Each dependent of a Federal law enforcement officer killed in the line of duty on or after May 1, 1992, or permanently and totally disabled in the line of duty on or after October 3, 1996, and each dependent of a public safety officer killed in the line of duty on or after October 1, 1997, shall be eligible for assistance, on the same basis and subject to the limitations of this subpart,

for each month in which the dependent had pursued a program of education at an eligible educational institution.

* * * * *

8. Section 32.37 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 32.37 Determination of benefits.

* * * * *

(c) Benefits payable under this subpart shall be in addition to any other benefit that may be due from any other source, except that, if the PSOEA assistance in combination with other benefits would exceed the total approved costs for the applicant's program of education, the assistance under this subpart will be reduced by the amount of such excess.

(d) Benefits will be calculated in such a manner so as to ensure those applicants who qualify for benefits, and who are in financial need, i.e. would be unable to attend a program of study at a qualified institution of higher education in the absence of the total benefit for which they qualify, receive priority in receiving the authorized assistance. Those qualified applicants who are in financial need, as determined by BJA, will receive an amount of benefits to which they are entitled, and which allow them to attend the approved program of study. Those qualified applicants whose attendance at a program of study at an institution of higher education is not contingent on the award of benefits under this part, may receive a reduced amount of benefits in the event that funds appropriated under this program are not sufficient to award all qualified applicants the total amount of benefits to which they are otherwise entitled.

Nancy Gist,

Director, Bureau of Justice Assistance.

[FR Doc. 99–23854 Filed 9–13–99; 8:45 am]

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Tuesday
September 14, 1999

Part XII

Department of Housing and Urban Development

24 CFR Part 203

Sources of Homeowner Downpayment; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–4469–P–01]

RIN 2502–AH38

Sources of Homeowner Downpayment

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: HUD proposes to establish specific standards regarding the mortgagor's investment in the mortgaged property when a gift is provided by a charitable or other nonprofit organization. A gift could not be used for the mortgagor's investment if the organization received funds for the gift—directly or indirectly—from the seller of the property. The proposed rule is intended to prevent a seller from providing funds to an organization as a quid pro quo for that organization's downpayment assistance for purchases of one or more homes from the seller. In addition, HUD proposes to redraft in a more readable, accurate and up-to-date form, without substantive change in policy, the current regulation on the mortgagor's investment in the property.

DATES: *Comments Due Date:* November 15, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Home Mortgage Insurance Division, Room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000, (202) 708–2700 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

This proposed rule would accomplish two purposes. Its primary purpose is to publish for public comment a proposal to establish specific standards regarding the use of gifts by charitable or other nonprofit organizations as a source of the mortgagor's investment in the mortgaged property. Gifts could not be made from funds that the organization received—directly or indirectly—from the seller of the property. In addition, we propose to take this opportunity to redraft in a more readable, accurate and up-to-date form, without substantive change in policy, current § 203.19 on the mortgagor's investment in the property.

Section 203(b)(9) of the National Housing Act requires mortgagors (with narrow exceptions) to pay on account of the property at least 3 percent of the cost of acquisition in order for the mortgage to be eligible for insurance by FHA. The statute, and the implementing regulation at 24 CFR 203.19, are silent about permissible and/or impermissible sources of the mortgagor's investment, except that some loans are permitted sources under the statute and other sources (by implication) are not permitted sources. For example, legislation was enacted in 1996 to amend section 203(b)(9) of the National Housing Act to permit family members to provide gifts and loans to other family members.

FHA has specified through its handbooks and mortgagee letters a broad range of other permissible sources of the mortgagor's investment beyond the homebuyer's own cash savings, none of which include the seller of the property. In addition to loans permitted by statute, permissible sources include gifts from family members, the borrower's employer or labor union, governmental agencies and public entities engaged in the provision of homeownership assistance, and charitable organizations. It is this last group that is of concern.

Proposed Substantive Change

Although FHA has attempted to preclude downpayment funding derived from the seller of the property, either directly or indirectly, some charitable organizations have been able to circumvent these restrictions in various ways, including the establishment of a fund that provides the "gift" to the homebuyer. However, the fund is immediately replenished by the seller providing a "charitable donation" or paying a "service fee" to the nonprofit from the proceeds of the sale of the house and does so only if the homebuyer is using the charitable organization's downpayment assistance program. There is a clear quid pro quo between the homebuyer's purchase of the property and the seller's "contribution" or payment to the nonprofit organization.

FHA has several concerns with these programs. First, borrowers with limited cash investments into the sale transactions represent significantly greater risk to the insurance fund. In many cases, homebuyers using these downpayment assistance programs need only one percent of their own money for the downpayment. In some programs, they are not required to invest any cash at all. While many States and public entities may have similar programs regarding the homebuyer's cash investment requirements, those programs generally carry with them substantive underwriting criteria above and beyond FHA's minimum standards as well as program eligibility requirements (usually restrictions on the borrower's maximum income so that the program benefits low- and moderate-income clients); these are generally missing in the programs of the nonprofits recently reviewed by FHA. FHA's second concern is that the sales price is often increased so that the seller's net proceeds are not diminished. This increases FHA's risk that it will not recover the full amount owed if forced to acquire and resell a home purchased by a participating borrower who then defaults on the loan.

The proposed rule generally permits a mortgagor's minimum investment to come from gifts from charitable organizations and other non-profit organizations, if HUD has approved the organizations as sources of gifts. Despite HUD's approval, an organization's gift may not be used for the mortgagor's minimum investment if the organization receives from the seller of the property at any time, directly or indirectly, either the gift funds, or other consideration or reimbursement for making the gift, including service fees. This prohibition would apply to sales of existing homes by private sellers as well as sales by builders, developers, etc., involved in new construction, or any party with an identity of interest with them. HUD would not allow any form of downpayment assistance in any of its programs if those funds are derived, partially or in whole, in any manner from sellers of the property being purchased with the assistance.

The proposed rule is intended to prevent a seller from providing funds to an organization as a quid pro quo for that organization's downpayment assistance for purchases of one or more homes from the seller. The proposed rule is not intended to preclude sellers such as builders from contributing to charitable and other nonprofit

organizations that provide downpayment assistance unrelated to properties sold by the seller or that otherwise further affordable housing.

Proposed Non-Substantive Redrafting of § 203.19

The current § 203.19, entitled "Mortgagor's minimum investment", is a combination of section 203(b)(9) of the National Housing Act (as it existed before the 1996 amendment) and additional regulatory policy in two areas. First, § 203.19(a) includes a $200 minimum investment in two cases where section 203(b)(9) does not apply, due either to an express exclusion (for veterans) or an implicit exclusion (for disaster victims receiving a 100 percent mortgage under section 203(h) of the National Housing Act and § 203.18(e) of the regulations). Second, § 203.19(b) provides detailed guidance regarding the type of loan for cases (other than family member loans) where section 203(b)(9) expressly permits loans for the mortgagor's minimum investment. Regarding loans, § 203.19 does not currently recognize either family member loans or loans under State or local housing assistance programs (impliedly permitted by section 528 of the National Housing Act) although both forms of loans are recognized in FHA's mortgage credit handbook. There is nothing regarding downpayment assistance in the form of gifts in the current § 203.19. Therefore, we have considered it preferable to redraft and update § 203.19, in a non-substantive manner, instead of simply adding a new substantive discussion of restrictions for a particular type of gift.

As redrafted, § 203.19 has the following organization. Paragraph (a) requires a mortgagor to have the funds needed to complete the transaction (payment of purchase price and settlement costs) in addition to the funds provided by the insured mortgage itself. This basic policy was previously stated only in a handbook rather than a regulation, but it is a basic requirement of mortgage lending and does not represents a new substantive policy.

Paragraph (b) corresponds to the current § 203.19(a)(1) and the first part of section 203(b)(9) of the National Housing Act by stating the basic rule for a 3 percent mortgagor cash investment. The statute and the current regulation give HUD the discretion to require more than 3 percent, but it is no longer necessary to reserve this discretion in regulations. In practice, HUD has not demanded more than 3 percent except as needed to satisfy the basic requirement for cash sufficient to close the transaction (as stated in proposed new paragraph (a)). Both the statute and the current regulation except from the 3 percent requirement for veterans (who can qualify for 100 percent mortgage financing for a $ 25,000 loan under section 203(b)(2) of the Act) and disaster victims (who can qualify for 100 percent mortgage financing under section 203(h) of the National Housing Act). However, the current § 203.19(a)(2) imposes a $200 minimum cash investment requirement for those mortgagors. That $ 200 requirement is no longer meaningful in relation to vast increases in home values and mortgage amounts since the $200 requirement was adopted, and HUD proposes to delete it from the regulations in the interests of simplifying mortgage processing.

Paragraph (c) of the proposed rule would state what has long been a basic HUD policy: the mortgagor's required funds should not come from the seller of the property. This is necessary to achieve meaningful application of statutory loan-to-value requirements. Otherwise, there could be a tendency for sellers to advance funds for closing costs while inflating the purchase price to recoup the costs, with a higher mortgage amount being based on the inflated price. Using the lesser of appraised price or purchase price to determine mortgage amount can control this tendency to a degree, but additional measures are prudent. On the other hand, HUD has recognized local market practices in which sellers customarily agree to pay some of the buyer's closing costs. Beginning in the mid-1980's, HUD's administrative policies reflected in Mortgagee Letters and handbooks have permitted some seller contributions, consistent with local market practices that would be reflected in local appraisal practices, but never more that 6 percent of the purchase price. Proposed paragraph (c) would permit HUD to continue this administrative policy and make any needed adjustment without rulemaking, as long as the seller does not ever provide the statutory 3 percent mortgagor's cash investment. Funds from the seller would be broadly defined as any funds derived directly or indirectly from any gift or loan made by the seller or any party with an identity of interest with the seller.

Paragraph (d) states the general policy that funds from loans or gifts may not be used for any part of the mortgagor's minimum investment, unless otherwise provided in the rule. Paragraph (e), like current § 203.19(b), is intended to identify certain loan sources authorized by statute. The paragraph states clearly HUD's historical understanding of the Congressional intent behind section 203(b)(9) of the National Housing Act: loans are a forbidden source of the 3 percent minimum investment unless a statute provides otherwise, explicitly or implicitly. Paragraph (e) includes certain statutory authorizations that HUD relies on but which are currently not stated or referenced in regulations (family loans and government loan programs). It also handles by general reference, instead of the more specific language in current § 203.19(b), certain little-used or unused loan sources authorized by section 203(b)(9) of the National Housing Act (e.g., HOPE 3).

Although paragraph (e) only restricts the use of loans for the 3 percent minimum cash investment and does not apply to the rest of the required investment, readers should note that § 203.32 contains restrictions on secondary financing that is unsecured or secured by the home. Paragraph (e) would not supersede anything in § 203.32. Paragraph (e) omits the detail regarding the acceptable form of loan that currently appears in § 203.19(b), because these are matters more suitable for a handbook.

Finally, paragraph (f) contains the new substantive policy proposal regarding gifts discussed above, while also setting forth other acceptable gift sources permitted by current policy.

Findings and Certifications

Environmental Review

A Finding of No Significant Impact is not required for this proposed rule because it is covered by the exclusion in 24 CFR 50.19(b)(6).

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that this proposed rule is not anticipated to have a significant economic impact on a substantial number of small entities. The primary purpose of this rule, as noted in the preamble, is to establish standards regarding the use of gifts by charitable or other nonprofit organizations as a source of an FHA's mortgagor's investment in the mortgaged property. Specifically, the standards would provide that gifts could not be made from funds that the organization received, directly or indirectly, from the seller of the property. While HUD recognizes that many nonprofit or charitable organizations may be small entities, HUD does not believe that this rule would have a significant economic impact on a substantial number of small entities. HUD's proposed rule does not

preclude gifts from charitable or other nonprofit organizations. This proposed rule only precludes these gifts if these organizations receive from the seller of the property at any time, directly or indirectly, either the gift funds, or other consideration or reimbursement for making the gift, including service fees. The purpose of this restriction is to prevent a seller from providing funds to an organization as a quid pro quo for that organization's downpayment assistance for purchase of one or more homes of the seller.

While this restriction is an important one to place on the use of gifts as a source of downpayment, HUD believes that few entities, large or small, would be affected by this restriction. Nevertheless, HUD is sensitive to the fact that uniform application of requirements on entities of differing sizes often places a disproportionate burden on small entities. Therefore, small entities are specifically invited to comment on whether this proposed rule will significantly affect them, and to make any recommendations on alternatives for compliance the requirements of this rule. Comments should be submitted in accordance with the instructions in the **DATES** and **ADDRESSES** sections in the preamble of this proposed rule.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this proposed rule would not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. This proposed rule solely addresses requirements under HUD's FHA mortgage insurance programs.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995, Pub.L. 104–4, established requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number for the principal FHA single family mortgage insurance is 14.117. This proposed rule would also apply through cross-referencing to FHA mortgage insurance for condominium units (14.133), and other smaller single family programs.

List of Subjects in 24 CFR Part 203

Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the Department proposes to amend 24 CFR part 203 as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for part 203 continues to read:

Authority: 12 U.S.C. 1709, 1710, 1715b, 1715u; 42 U.S.C. 3535(d).

2. Section 203.19 is revised to read as follows:

§ 203.19 Mortgagor's investment in the property.

(a) *Required funds.* The mortgagor must have available funds equal to the difference between:

(1) The sum of the purchase price of the home and settlement costs acceptable to the Secretary; and

(2) The amount of the insured mortgage.

(b) *Minimum cash investment.* The required funds under paragraph (a) of this section must include an investment in the property by the mortgagor, in cash or cash equivalent, equal to at least 3 percent of the cost of acquisition as determined by the Secretary, unless the mortgagor is:

(1) A veteran meeting the requirements of § 203.18(a)(3); or

(2) A disaster victim meeting the requirements of § 203.18(e).

(c) *Restrictions on seller funding.* None of the required funds under paragraph (a) of this section may be provided by the seller, except as approved by the Secretary, notwithstanding paragraphs (e) and (f) of this section. For purposes of this paragraph and paragraph (f), funds are provided by the seller if they are derived directly or indirectly from any gift, loan or other payment, including a service charge, made by the seller or by any party with an identity of interest with the seller.

(d) *Gifts and loans usually prohibited for minimum cash investment.* A mortgagor may not use funds for any part of the minimum cash investment under paragraph (b) of this section if the funds were obtained through a gift or a loan from any person, except as provided in paragraphs (e) and (f) of this section.

(e) *Permissible sources of loans.* (1) *Statutory authorization needed.* A statute must authorize a loan as a source of the mortgagor's minimum cash investment under paragraph (b) of this section. The authority may be explicit or implicit.

(2) *Examples.* The following loans are authorized (explicitly or implicitly) by statute as a source for the minimum investment:

(i) A loan from a family member, a loan to a mortgagor who is at least 60 years old when the mortgage is accepted for insurance, or a loan that is otherwise expressly authorized by section 203(b)(9) of the National Housing Act;

(ii) A loan made by, or insured by, a State or local government agency or instrumentality under terms and conditions approved by the Secretary; and

(iii) A Federal disaster relief loan.

(f) *Permissible sources of gifts.* (1) *General.* The following are permissible sources of gifts or grants used for the mortgagor's minimum cash investment under paragraph (b) of this section:

(i) Family members and governmental agencies and instrumentalities that may make loans under paragraphs (e)(2)(i) and (ii) of this section;

(ii) An employer or labor union of the mortgagor;

(iii) Charitable organizations or other nonprofit organizations approved by the Secretary as a source of gifts, subject to paragraph (2) of this section;

(iv) Disaster relief grants; and

(v) Other sources approved by the Secretary.

(2) *Charitable organization and other nonprofit organization.* A gift from a charitable organization or other nonprofit organization may not be used for the minimum investment if the organization receives from the seller at any time, directly or indirectly, either the gift funds, or other consideration or reimbursement for making the gift, including service fees.

Dated: August 23, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–23921 Filed 9–13–99; 8:45 am]

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H.R. 211/P.L. 106–48
To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the "Thomas S. Foley United States Courthouse", and the plaza at the south entrance of such building and courthouse as the "Walter F. Horan Plaza". (Aug. 17, 1999; 113 Stat. 230)

H.R. 1219/P.L. 106–49
Construction Industry Payment Protection Act of 1999 (Aug. 17, 1999; 113 Stat. 231)

H.R. 1568/P.L. 106–50
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H.R. 1664/P.L. 106–51
Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act of 1999 (Aug. 17, 1999; 113 Stat. 252)

H.R. 2465/P.L. 106–52
Military Construction Appropriations Act, 2000 (Aug. 17, 1999; 113 Stat. 259)

S. 507/P.L. 106–53
Water Resources Development Act of 1999. (Aug. 17, 1999; 113 Stat. 269)

S. 606/P.L. 106–54
For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106–55
To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

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