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Contents

Federal Register
Vol. 65, No. 147
Monday, July 31, 2000

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR

Proposed Rules:
920 46658
944 46658

10 CFR

Proposed Rules:
50 46661

14 CFR
39 (5 documents) 46567, 46569, 46571, 46573, 46575

Proposed Rules:
39 (4 documents) 46666, 46667 46671, 46672

15 CFR
960 46822

17 CFR
1 46578
5 46578
241 46581
271 46581

21 CFR

Proposed Rules:
315 46674
601 46674

26 CFR
1 46588

Proposed Rules:
1 46677

29 CFR
1910 46798

33 CFR
100 46596
167 46603

40 CFR
271 46607

Proposed Rules:
271 46681

42 CFR
411 46770
413 46770
489 46770

47 CFR
21 46612
74 46612

Proposed Rules:
21 46681
73 46684
74 46681

48 CFR
208 46625
212 46625
213 46625
214 46625
215 46625
232 46625
250 46627
252 46625
1801 46627
1808 46627
1811 46627
1813 46627
1816 46627
1819 46627
1835 46627
1842 46627
1851 46627
1852 46627

49 CFR
571 46629

50 CFR
17 46643
635 46654
648 46655
679 (4 documents) 46655, 46656, 46657

Proposed Rules:
17 46684
20 46840

Rules and Regulations

Federal Register
Vol. 65, No. 147
Monday, July 31, 2000

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–40–AD; Amendment 39–11837; AD 2000–14–51]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Models AT–501, AT–502, and AT–502A Airplanes

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting emergency Airworthiness Directive (AD) 2000–14–51. The Federal Aviation Administration (FAA) previously sent emergency AD 2000–14–51 to all known U.S. owners and operators of Air Tractor Models AT–501, AT–502, and AT–502A airplanes. This AD requires you to inspect the wing lower spar cap for cracks and modify or replace any cracked lower spar cap. This AD is the result of an accident report of an Air Tractor Model AT–502A airplane where the wing separated in flight. The actions specified by this AD are intended to detect and correct fatigue cracks in the wing lower spar cap, which could result in an in-flight separation of the wing from the airplane.

DATES: The AD becomes effective August 4, 2000, to all affected persons who did not receive emergency AD 2000–14–51, issued July 3, 2000. Emergency AD 2000–14–51 contained the requirements of this amendment and became effective immediately upon receipt.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of August 4, 2000.

The FAA must receive any comments on this rule on or before September 15, 2000.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–40–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may read comments and information related to this AD at this location between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

You may get the service information referenced in this AD from Air Tractor, Incorporated, P.O. Box 485, Olney, Texas 76374. You may examine this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–40–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rob Romero, Aerospace Engineer, FAA, Fort Worth ACO, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5102; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Discussion

What Has Happened So Far?

The FAA has received a report of an accident of an Air Tractor Model AT–502A airplane where the wing separated in flight. Investigation revealed that the wing lower spar cap was cracked at the wing center splice connection. We surveyed the Air Tractor Models AT–501, AT–502, and AT–502A airplane fleet and discovered 2 other airplanes that have had similar cracks in the lower spar caps.

On July 3, 2000, we issued emergency AD 2000–14–51. This AD directed the following:

—Repetitively inspect each wing lower spar cap for cracks; and

—Modify or replace any cracked lower spar cap, as specified in the service information.

Accomplishment of this action is required in accordance with the procedures in Snow Engineering Co. Service Letter #197, dated June 13, 2000.

Why Is It Important To Publish This AD?

The FAA found that immediate corrective action was required, notice and opportunity for prior public comment were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on July 3, 2000, to all known U.S. operators of Air Tractor, Inc. Models AT–501, AT–502, and AT–502A airplanes. These conditions still exist, and the AD is published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

How Do I Comment on This AD?

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites comments on this rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received.

How Can We Communicate More Clearly With You?

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

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may examine all comments we receive in the Rules Docket. We will file a report in the Rules Docket that summarizes each

FAA contact with the public that concerns the substantive parts of this AD.

How Can I Be Sure the FAA Receives My Comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–40–AD." We will date stamp and mail the postcard back to you.

Regulatory Impact

How Does This AD Impact Relations Between Federal and State governments?

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

How Does This Action Involve an Emergency Situation?

The FAA determined that this is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. This action involves an emergency regulation under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). The FAA will prepare a final regulatory evaluation if we determine that this emergency regulation is significant under DOT Regulatory Policies and Procedures. You may obtain a copy of the evaluation (if required) from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–14–51 Air Tractor Incorporated: Amendment 39–11837; Docket No. 2000–CE–40–AD.

(a) *What airplanes are affected by this AD?* This AD applies to the following Air Tractor airplane models and serial numbers:

Model	Serial numbers
AT–501	501–002 through 501–0060 that have been converted to turboprop power.
AT–502	502–003 through 502–0061, except those that have been upgraded to the 8,000-pound gross weight configuration through the incorporation of Snow Engineering Co. Service Letter #80J.
AT–502A	All serial numbers.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* This AD is intended to detect and correct fatigue cracks in the wing lower spar cap, which could result in an in-flight separation of the wing from the airplane.

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

Action	When	Procedures
(1) Initial Inspection: Visually inspect the wing lower spar cap at the wing center splice connection for cracks.	At whichever of the following that is applicable: (i) For the Models AT–501 and AT–502 airplanes: Upon accumulating 4,000 hours time-in-service (TIS) on each wing or within the next 10 hours TIS after the effective date of this AD, whichever occurs later; or. (ii) For the Model AT–502A airplanes: Upon accumulating 3,000 hours TIS on each wing or within the next 10 hours TIS after the effective date of this AD, whichever occurs later.	Accomplish this inspection in accordance with the Inspection Requirements section of Snow Engineering Co. Service Letter #197, dated June 13, 2000.
(2) Repetitive Inspections: Inspect using visual or ultrasonic methods the wing lower spar cap at center splice connection for cracks.	For all affected airplanes, accomplish the repetitive inspections as follows: (i) Visually: Within 50 hours TIS after the initial inspection and thereafter at intervals not to exceed 50 hours TIS; or. (ii) Using ultrasonic methods: Within 400 hours TIS after the initial inspection and thereafter at intervals not to exceed 400 hours TIS.	Accomplish these inspections in accordance with the Inspection Requirements section of Snow Engineering Co. the Service Letter #197, dated June 13, 2000.
(3) Replace or modify any cracked wing lower spar cap, as specified in the service information.	Prior to further flight after the inspection where the crack is found.	Accomplish the replacement and modification as follows: (i) Replacement: Remove the wing with the cracked lower spar cap and return to Air Tractor for spar cap replacement. Immediately notify Air Tractor that you are sending the wing if the cracked spar cap can not be modified.

Action	When	Procedures
(4) Modifying each lower spar cap is considered terminating action for the repetitive inspection requirement. This modification can only be accomplished if the lower spar caps are inspected before the modification is incorporated and: (i) no cracks are found; or (ii) any crack found can be removed by drilling the hole to the next larger size.	This terminating action may be accomplished at any time provided the lower spar caps are not cracked.	(ii) Modification: In accordance with the TERMINATING ACTION section of Snow Engineering Co. Service Letter #197, dated June 13, 2000. Accomplish in accordance with the TERMINATING ACTION section of Snow Engineering Co. Service Letter #197, dated June 13, 2000.

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

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

(2) The Manager, Fort Worth Airplane Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector. The inspector may add comments before sending it to the Manager, Fort Worth ACO.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Rob Romero, Aerospace Engineer, FAA, Fort Worth ACO, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5102; facsimile: (817) 222–5960.

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

(1) The hopper is empty;

(2) Vne is reduced to 138 miles per hour (mph) (120 knots) indicated airspeed (IAS); and

(3) Flight into known turbulence is prohibited.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Snow Engineering Co. Service Letter #197, dated June 13, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies of this document from Air Tractor, Incorporated, P.O. Box 485, Olney, Texas 76374. You may look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this AD become effective?* This AD becomes effective August 4, 2000, to all affected persons who did not receive emergency AD 2000–14–51, issued July 3, 2000. Emergency AD 2000–14–51 contained the requirements of this amendment and became effective immediately upon receipt.

Issued in Kansas City, Missouri, on July 20, 2000.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18995 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–248–AD; Amendment 39–11838; AD 90–15–12 R1]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes Modified in Accordance with Valsan Supplemental Type Certificate (STC) SA4363NM

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to Boeing Model 727 series airplanes modified by the installation of Pratt and Whitney JT8D–217C or –219 engines in accordance with Valsan STC SA4363NM, that currently requires repetitive inspections of the through-bolt nut for proper torque and for certain other conditions of the through-bolt and nut, and replacement, if necessary. That AD also requires the installation of anti-rotation plates, which constitutes terminating action for the repetitive inspections. This amendment changes the responsible office for approval of an alternative method of compliance. This amendment is prompted by the transfer of the supplemental type certificate. The actions specified in this AD are intended to prevent the nut coming off the through-bolt allowing the through-bolt to migrate out of the engine mount flange and cone bolt and possible separation of the engine.

DATES: Effective August 15, 2000.

Comments for inclusion in the Rules Docket must be received on or before September 29, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–248–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. The information concerning this amendment may be obtained from or examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–248–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

FOR FURTHER INFORMATION CONTACT: Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood,

California 90712–4137; telephone (562) 627–5320; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On July 6, 1990, the FAA issued AD 90–15–12, amendment 39–6663 (55 FR 29005, July 17, 1990), applicable to Boeing Model 727 series airplanes modified by the installation of Pratt and Whitney JT8D–217C or –219 engines in accordance with Valsan STC SA4363NM, to require repetitive inspections of the through-bolt nut for proper torque and for certain other conditions of the through-bolt and nut, and replacement, if necessary. That AD also requires the installation of anti-rotation plates, which constitutes terminating action for the repetitive inspections. The actions required by that AD are intended to prevent the nut coming off the through-bolt allowing the through-bolt to migrate out of the engine mount flange and cone bolt and possible separation of the engine.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has transferred the supplemental type certificate data from the Seattle Aircraft Certification Office (ACO) to the Los Angeles ACO. Therefore, the FAA has determined it is necessary to issue this AD to require that all future alternative methods of compliance and adjustments of compliance time be approved by the Manager of the Los Angeles ACO.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD revises AD 90–15–12 to continue to require repetitive inspections of the through-bolt nut for proper torque and for certain other conditions of the through-bolt and nut, and replacement, if necessary. This AD also continues to require the installation of anti-rotation plates, which constitutes terminating action for the repetitive inspections. This AD changes the responsible office for approval of an alternative method of compliance.

Determination of Rule's Effective Date

Since this AD is a minor and merely technical amendment in which the public is not particularly interested, and does not change the existing requirements, it is found that notice and opportunity for prior public comment hereon are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that is a minor and merely technical amendment and, thus, was not preceded by notice and an opportunity for public comment, 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 shall 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 in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the 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 AD 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 Number 2000–NM–248–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that notice and comment hereon are unnecessary because this is a minor and merely technical amendment in which the public is not particularly interested.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6663 (55 FR 29005, July 17, 1990), and by adding a new airworthiness directive (AD), amendment 39–11838, to read as follows:

90–15–12 R1 Boeing: Amendment 39–11838. Docket 2000–NM–248–AD. Revises AD 90–15–12, Amendment 39–6663.

Applicability: Model 727 series airplanes, modified by installation of Pratt and Whitney JT8D–217C or –219 engines in accordance with Valsan Supplemental Type Certificate (STC) SA4363NM, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously. To prevent the nut coming off the through-bolt allowing the through-bolt to migrate out of the engine mount flange and cone bolt and possible separation of the engine, accomplish the following:

Inspection/Corrective Action

(a) Within 48 clock hours (not flight hours) after receipt of Telegraphic AD T90–11–53, dated May 24, 1990, inspect the through-bolt nut, part number SPS83978–1216, for proper torque and for certain conditions as specified in Valsan Operator Service Letter OSL–727RE–007, Revision 1, dated May 23, 1990,

in accordance with the service letter. If any discrepancies are found, prior to further flight, take corrective action in accordance with the service letter.

(b) Repeat the inspections required by paragraph (a) of this AD thereafter at intervals not to exceed 35 flight hours.

Reporting Requirement

(c) Within 10 days after performing the inspection required by paragraph (a) of this AD, submit a report of any discrepancies discovered to the Manager, Los Angeles Manufacturing Inspection District Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137. The report must include the airplane's serial number.

Installation

(d) Within 60 days after July 31, 1990 (the effective date of AD 90–15–12, amendment 39–6663), install anti-rotation plates in accordance with Valsan Service Bulletin 71–002, dated June 1, 1990. This modification constitutes terminating action for the repetitive inspections required by paragraph (a) and (b) of this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), 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, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 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.

(g) This amendment becomes effective on August 15, 2000.

Issued in Renton, Washington, on July 25, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19261 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–215–AD; Amendment 39–11836; AD 2000–15–07]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10 series airplanes, that requires a one-time detailed visual inspection of the galley power feeder cables and fuselage structure at a certain station to detect chafing or arcing damage to the cables and structure or to detect arcing damage to the insulation blankets; and corrective actions, if necessary. This AD also requires installation of spacers between the galley power feeder cable clamps and fuselage structure. This amendment is prompted by reports indicating that the galley power feeder cables chafed against a certain fuselage frame in the forward lower cargo compartment, which resulted in electrical arcing. The actions specified by this AD are intended to prevent such chafing and arcing due to insufficient clearance between the cables and the airplane structure, which could result in smoke and fire in the forward lower cargo compartment.

DATES: Effective September 4, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 4, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10 series airplanes was published in the **Federal Register** on January 26, 2000 (65 FR 4182). That action proposed to require a one-time detailed visual inspection of the galley power feeder cables and fuselage structure at a certain station to detect chafing or arcing damage to the cables and structure or to detect arcing damage to the insulation blankets; and corrective actions, if necessary. That action also proposed to require installation of spacers between the galley power feeder cable clamps and fuselage structure.

Comments

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

Support for Proposed Rule

Several commenters support the proposed rule.

Request To Extend Compliance Time

One commenter requests that the compliance time from accomplishing the detailed visual inspection be extended from the proposed 6 months to 18 months. The commenter states that the inspection should be accomplished during a heavy maintenance visit to ensure that proper access can be obtained, all discrepancies are identified, and that any on-condition repairs can be performed in the proper maintenance environment.

The FAA does not concur. In developing an appropriate compliance time for this inspection, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's recommendation as to an appropriate compliance time, the availability of required parts, and the practical aspect of accomplishing the inspection within an interval of time that parallels the normal scheduled maintenance for the majority of affected operators. In light of these items, the FAA has determined that 6 months for

compliance is appropriate. However, under the provisions of paragraph (b) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Request To Revise Work Hour Estimate

One commenter requests that the work hour estimate for accomplishing the proposed inspection be revised from 2 work hours to 4 work hours. The commenter states that the proposed inspection alone will require 4 work hours. The commenter notes that any on-condition repairs will add additional time to this inspection, and that any structural repairs that may be needed will significantly increase the hours necessary to accomplish the requirements of the proposed AD.

The FAA does not concur. The work hour estimate (*i.e.*, 2 work hours) in the proposed AD reflects the time necessary to accomplish the required inspection (1 work hour) and installation of spacers (1 work hour). The FAA used the work hours specified in McDonnell Douglas Alert Service Bulletin DC10–24A162, dated July 28, 1999 (which is referenced in the AD as the appropriate source of service information for accomplishment of the required inspection and installation). In addition, the economic analysis of the AD is limited only to the cost of actions actually required by the rule. It does not consider the costs of "on condition" actions, such as repairing a crack if one is detected during a required inspection ("repair, if necessary"). Such "on-condition" repair actions would be required to be accomplished—regardless of AD direction—in order to correct an unsafe condition identified in an airplane and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations. Therefore, no change to the final rule is necessary.

Conclusion

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

Cost Impact

There are approximately 168 Model DC–10 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 103 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $12,360, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–15–07 McDonnell Douglas: Amendment 39–11836. Docket 99–NM–215–AD.

Applicability: Model DC–10 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC10–24A162, dated July 28, 1999; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing and arcing of the galley power feeder cables against the airplane structure due to insufficient clearance between the cables and the airplane structure, which could result in smoke and fire in the forward lower cargo compartment, accomplish the following:

Inspection, Installation of Spacers, and Corrective Actions, If Necessary

(a) Within 6 months after the effective date of this AD, perform a detailed visual inspection of the galley external power feeder cables and fuselage structure at station Y=635.000 to detect chafing or arcing damage to the cables and structure or to detect arcing damage to the insulation blankets, in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A162, dated July 28, 1999.

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

(1) If any damage or chafing is detected, prior to further flight, accomplish the actions specified in paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), and (a)(1)(iv) of this AD, as applicable, in accordance with Condition 2 of the Accomplishment Instructions of the service bulletin.

(i) Repair or replace the chafed cables with new cables.

(ii) Repair the damaged frame.

(iii) Replace the damaged insulation blanket with a new blanket; however, insulation blankets made of metallized polyethyleneteraphthalate (MPET) may not be used.

(iv) Install spacers between the galley power feeder cable clamps and fuselage structure.

(2) If no damage or chafing is detected, prior to further flight, install spacers between

the galley power feeder cable clamps and fuselage structure in accordance with Condition 1 of the Accomplishment Instructions of the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), 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, Los Angeles ACO.

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

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A162, dated July 28, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on September 4, 2000.

Issued in Renton, Washington, on July 19, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18750 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–214–AD; Amendment 39–11835; AD 2000–15–06]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10 series airplanes, that requires a general visual inspection of electrical power feeder cables, airplane structure, and insulation blankets at a certain fuselage station to detect chafing and arcing damage, and corrective actions, if necessary; and installation of a standoff and clamp. This amendment is prompted by an incident in which the power feeder cables in the cabin electrical system were found to be chafed and arced against a fuselage frame due to insufficient clearance between the cables and airplane structure. The actions specified by this AD are intended to prevent such chafing and arcing, which could cause smoke and fire in the overhead of the main cabin.

DATES: Effective September 4, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 4, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes was published in the **Federal Register** on January 26, 2000 (65 FR 4184). That action proposed to require a general visual inspection of electrical power feeder cables, airplane structure, and insulation blankets at a certain fuselage station to detect chafing and arcing damage, and corrective actions, if necessary; and installation of a standoff and clamp.

Comments

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

Support for Proposed AD

One commenter supports the proposed AD.

Request To Revise the Applicability

One commenter requests that the effectivity of McDonnell Douglas Alert Service Bulletin DC10–24A163, dated July 28, 1999 (which was referenced in the applicability of the proposed AD as the appropriate source of service information for determining the affected manufacturer's fuselage numbers of the affected airplanes), be revised to exclude freighter airplanes N1852U through N1854U inclusive, and N1859U. The commenter states that the service bulletin is not applicable to freighter airplanes.

The FAA concurs. The cabin power feeder cables at station Y=1099.00, which is the subject area of the identified unsafe condition of this AD, were not installed on McDonnell Douglas Model DC–10 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration, and Model DC–10–10F, –30F (KC–10A and KDC–10 military), and –40F series airplanes. Therefore, the FAA has revised the applicability of the final rule accordingly.

Request To Extend Compliance Time

One commenter requests that the compliance time for accomplishing the general visual inspection be extended from the proposed 6 months to 18 months. The commenter states that the

inspection should be accomplished during a heavy maintenance visit to ensure that proper access can be obtained, all discrepancies are identified, and that any on-condition repairs can be performed in the proper maintenance environment.

The FAA does not concur. In developing an appropriate compliance time for this inspection, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's recommendation as to an appropriate compliance time, the availability of required parts, and the practical aspect of accomplishing the inspection within an interval of time that parallels the normal scheduled maintenance for the majority of affected operators. In light of these items, the FAA has determined that 6 months for compliance is appropriate. However, under the provisions of paragraph (b) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Request To Revise the Work Hours Specified in the Cost Estimate

One commenter requests that the work hour figure specified in the Cost Impact section of the proposed AD be revised from 1 work hour to 5 work hours, which includes 3 hours to gain access, 1 hour to inspect, and 1 hour to install the clamp. The commenter states that the work hours will be even greater than 5 if any on-condition repairs are needed.

The FAA does not concur. The cost impact information, below, describes only the "direct" costs of the specific actions required by this AD. The work hours specified in the AD represent the time necessary to perform only the actions actually required by this AD. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up; planning time; or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate.

In addition, the FAA notes that the economic analysis of the AD is limited only to the cost of actions actually required by the rule. It does not consider the costs of "on condition" actions, such as repairing a crack if one is detected during a required inspection ("repair, if necessary"). Such "on-condition" actions would be required to be accomplished—regardless of AD direction—in order to correct an unsafe condition identified in an airplane and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations. Therefore, no change to the final rule is necessary.

Conclusion

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

Cost Impact

There are approximately 160 Model DC–10 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 80 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $4,800, or $60 per airplane.

It will take approximately 1 work hour per airplane to accomplish the required installation, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the installation required by this AD on U.S. operators is estimated to be $4,800, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–15–06 McDonnell Douglas: Amendment 39–11835. Docket 99–NM–214–AD.

Applicability: Model DC–10 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC10–24A163, dated July 28, 1999; certificated in any category; except those airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration, and Model DC–10–10F, -30F (KC–10A and KDC–10 military), and –40F series airplanes.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing of the power feeder cables against the fuselage structure, which could cause smoke and fire in the overhead of the main cabin, accomplish the following:

Inspection

(a) Within 6 months after the effective date of this AD, perform a general visual inspection of the power feeder cables in the cabin electrical system, airplane structure, and insulation blankets at station Y=1099.000 between longerons 9 and 10 (right side) for evidence of chafing and arcing damage, in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A163, dated July 28, 1999.

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

Condition 1 Corrective Action

(1) If no chafing or damage to the power feeder cables, structure, or insulation blankets is detected: Prior to further flight, install a standoff and clamp at station Y=1093.000, longeron 10, in accordance with Condition 1 of the Work Instructions of the service bulletin.

Condition 2 Corrective Action

(2) If any chafed power feeder cable is detected, and if no damage to adjacent structure or insulation blankets is detected: Prior to further flight, repair or replace the power feeder cables in the cabin electrical system with new power feeder cables; and install a standoff and clamp at station Y=1093.000, longeron 10, in accordance with Condition 2 of the Work Instructions of the service bulletin.

Condition 3 Corrective Action

(3) If any chafed power feeder cable is detected, and if any damage to the adjacent structure and/or insulation blankets is detected: Prior to further flight, accomplish the actions specified in paragraphs (a)(3)(i), (a)(3)(ii), (a)(3)(iii), and (a)(3)(iv) of this AD, as applicable, in accordance with Condition 3 of the Work Instructions of the service bulletin.

(i) Repair or replace the damaged power feeder cables in the cabin electrical system with new power feeder cables.

(ii) Repair or replace the damaged structure with new structure.

(iii) Repair or replace the damaged insulation blankets with new insulation blankets; however, insulation blankets made of metallized polyethyleneteraphthalate (MPET) may not be used.

(iv) Install a standoff and clamp at station Y=1093.000, longeron 10.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), 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, Los Angeles ACO.

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

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A163, dated July 28, 1999. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on September 4, 2000.

Issued in Renton, Washington, on July 19, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18749 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–211–AD; Amendment 39–11834; AD 2000–15–05]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10 Military), –40, and –40F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10 military), –40, and –40F series airplanes, that requires a one-time inspection of the wiring and wire bundles of the aft main avionics rack (MAR) to determine if the wires are damaged, or riding or chafing on structure, clamps, braces, standoffs, or clips, and to detect damaged or out of alignment rubber cushion inserts of the wiring clamps; and corrective actions, if necessary. This amendment is prompted by an incident in which the automatic and manual cargo door test in the cockpit was inoperative during dispatch of the airplane, due to wiring of the MAR chafing against clamps as a result of the wire bundles being installed improperly during production of the airplane. The actions specified by this AD are intended to ensure that the wires that route from the main wire bundles to the MAR and associated brackets, clamps, braces, standoffs, and clips are installed properly. Improper installation of such wiring and structure could cause chafing of the wires/wire bundles, which could result in electrical arcing, smoke, and possible fire in the MAR.

DATES: Effective September 4, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 4, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA),

Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10 military), –40, and –40F series airplanes was published in the **Federal Register** on January 26, 2000 (65 FR 4190). That action proposed to require a one-time inspection of the wiring and wire bundles of the aft main avionics rack (MAR) to determine if the wires are damaged, or riding or chafing on structure, clamps, braces, standoffs, or clips, and to detect damaged or out of alignment rubber cushion inserts of the wiring clamps; and corrective actions, if necessary.

Comments

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

Support for the Proposed AD

Two commenters support the proposed AD.

Request To Withdraw Proposed AD

One commenter requests that the proposed AD be withdrawn. The commenter states that the original problem, which was noted in the proposed AD, that led to the issuance of McDonnell Douglas Alert Service Bulletin DC10–24A165 was due to a production problem on McDonnell Douglas Model MD–11 series airplanes. The commenter also states that it has been performing general visual inspections of the subject area on numerous occasions as part of its FAA-approved DC–10 maintenance program. The commenter contends that performing these inspections again is overly redundant and unnecessary.

The FAA does not concur. The FAA acknowledges that Model DC–10 series airplanes have an extensive life of service, and that operators have performed numerous inspections as a part of the FAA-approved DC–10 maintenance program. As part of the continued airworthiness requirements, all operators are required to periodically maintain their airplanes in accordance with an FAA-approved maintenance program. However, the FAA finds that the subject inspections of the maintenance program may not adequately address certain in-service difficulties and, thus, do not adequately address the identified unsafe condition. The FAA has determined that the actions required by this AD will address the identified unsafe condition. In light of this, the FAA has determined that this AD is appropriate and warranted.

Request To Extend Compliance Time

One commenter requests that the compliance time from accomplishing the general visual inspection be extended from the proposed 60 days to 18 months. The commenter states that the 60-day compliance time is illogical given the extensive service life of the affected airplanes. The commenter also states that the inspection should be accomplished during the FAA-approved maintenance program task that accomplishes the same inspection.

The FAA does not concur. The FAA finds that an 18-month compliance time, which coincides with the FAA-approved maintenance program task that accomplishes a similar inspection required by this AD, would not maintain an adequate level of safety. In developing an appropriate compliance time for the inspection required by this AD, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's recommendation as to an appropriate compliance time, the availability of required parts, and the practical aspect of accomplishing the inspection within an interval of time that parallels the normal scheduled maintenance for the majority of affected operators. In light of these items, the FAA has determined that the compliance time, as proposed, represents an appropriate interval in which inspection can be accomplished in a timely manner within the fleet and still maintain an adequate level of safety. However, under the provisions of paragraph (g) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Request To Revise Reporting Requirement

One commenter requests that the compliance time of the reporting requirement be revised from within 10 days after accomplishing the inspection to "within 10 days after the AD compliance date." The commenter also requests that the reporting requirement be limited to positive findings only. The commenter states that the compliance time extension would allow them to submit one report describing findings for its entire fleet.

The FAA partially concurs. The FAA does not concur with the commenter that only positive findings should be reported. The FAA finds that both negative and positive findings of the inspection are necessary to determine if further rulemaking is necessary. The FAA concurs with the commenter that the inspection results may be submitted to the FAA within 70 days after the effective date of this AD. Therefore, the FAA has revised paragraph (f) of the final rule accordingly.

Request To Revise Work Hour Estimate

One commenter requests that the work hour estimate for accomplishing the proposed inspection be revised from 3 work hours to 5 work hours, because of the large numbers of wires in the subject area.

The FAA does not concur. The FAA used the work hours (rounded up) specified in McDonnell Douglas Alert Service Bulletin DC10–24A165, dated April 14, 1999 (which is referenced in the AD as the appropriate source of service information for accomplishment of the required inspection). The FAA notes that the economic analysis of the AD is limited only to the cost of actions actually required by the rule. It does not consider the costs of "on condition" actions, such as repairing a crack if one is detected during a required inspection ("repair, if necessary"). Such "on-condition" actions would be required to be accomplished—regardless of AD direction—in order to correct an unsafe condition identified in an airplane and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations. Therefore, no change to the final rule is necessary.

Explanation of Change to Affected Airplane Models

Throughout the proposed AD, the affected airplanes are listed as "Model DC–10–10, –15, –30, –30F, and –40 series airplanes and KC–10A (military) airplanes." The FAA finds that operators may misinterpret the term

"series" when determining which airplane models are subject to the requirements of this AD. Therefore, the FAA finds that clarification is necessary. The FAA's intent was that applicability of the proposed AD include, among other series airplanes, all series of Model DC–10–10 and DC–10–40 airplanes (*i.e.*, Model DC–10–10, DC–10–10F, DC–10–40, and DC–10–40F), as listed in McDonnell Douglas Alert Service Bulletin DC10–24A165, dated April 14, 1999 (which references the specific affected manufacturer's fuselage numbers, including those numbers that correspond to Model DC–10–10F and DC–10–40F series airplanes). In addition, operators should note that Model DC–10–30F series airplanes, as listed in the applicability, include two military airplane models (i.e., KC–10A and KDC–10). The FAA has revised the affected airplanes throughout the final rule to read "Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10 military), –40, and –40F series airplanes.

Conclusion

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

Cost Impact

There are approximately 412 Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10 military), –40, and –40F series airplanes of the affected design in the worldwide fleet. The FAA estimates that 300 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required inspection of the wiring and wire bundles, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the required inspection by this AD on U.S. operators is estimated to be $54,000, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–15–05 McDonnell Douglas: Amendment 39–11834. Docket 99–NM–211–AD.

Applicability: Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10 military), –40, and –40F series airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC10–24A165, dated April 14, 1999; 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 (g) 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 the wires that route from the main wire bundles to the main avionics rack (MAR) and associated brackets, clamps, braces, standoffs, and clips are installed properly, accomplish the following:

One-Time General Visual Inspection

(a) Within 60 days after the effective date of this AD, perform a one-time general visual inspection of the wiring and wire bundles of the aft MAR to determine if the wires are damaged, or riding or chafing on structure, clamps, braces, standoffs, or clips, and to detect damaged or out of alignment rubber cushion inserts of the wiring clamps; in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A165, dated April 14, 1999.

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

Note 3: Where there are differences between this AD and the referenced alert service bulletin, the AD prevails.

Note 4: The wording "main avionics rack" in this AD and the wording "main radio rack" in the alert service are used interchangeably.

Corrective Actions

(b) If any damaged wiring is detected during the inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with the alert service bulletin.

(c) If any wire/wire bundle is detected to be riding or chafing on the subject areas during the inspection required by paragraph (a) of this AD, prior to further flight, accomplish paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Route and tie all wires/wire bundles so they are not in contact with adjacent wire bundles, clamps or structure, and install silicon rubber coated glass cloth wrapping on wiring, if necessary, in accordance with the alert service bulletin.

(2) Perform a general visual inspection of all brackets, clamps, braces, standoffs, and clips to make sure they are not bent or twisted and do not come in contact with wires/wire bundles, in accordance with the alert service bulletin. If any of these parts is bent or twisted or is in contact with wires/wire bundles, prior to further flight, reposition in accordance with the alert service bulletin.

(3) Perform a general visual inspection of the clamps for proper alignment or for damage of the rubber cushion, in accordance

with the alert service bulletin. If any clamp is not aligned properly, prior to further flight, realign the clamp in accordance with the alert service bulletin. If any rubber cushion is damaged, prior to further flight, replace the clamp in accordance with the alert service bulletin.

(d) If any damaged rubber cushion insert is detected during the inspection required by paragraph (a) of this AD, prior to further flight, replace the clamp with a new or serviceable clamp in accordance with McDonnell Douglas Process Engineering Order DPS 1.834–7, Revision CF, dated June 29, 1999.

(e) If any rubber cushion insert is out of alignment, prior to further flight, visually realign the cushion.

Reporting Requirement

(f) Within 70 days after the effective date of this AD, submit a report of the results (both positive and negative findings) of the inspection required by paragraph (a) of this AD to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712–4137; fax (562) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

(g) 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, Los Angeles ACO, 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, Los Angeles ACO.

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

Special Flight Permits

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

Incorporation by Reference

(i) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A165, dated April 14, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on September 4, 2000.

Issued in Renton, Washington, on July 19, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18748 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 5

RIN 3038–ZA00

Fees for Applications for Contract Market Designation, and Reviews of the Rule Enforcement Programs of Contract Markets and Registered Futures Associations

AGENCY: Commodity Futures Trading Commission.

ACTION: Establish a new schedule of fees.

SUMMARY: The Commission charges fees to the contract markets and the National Futures Association ("NFA") to recover the costs incurred by the Commission in the operation of two programs that provide a service to these entities. The fees are charged for the Commission's review of applications for contract designation submitted by the contracts markets and for the Commission's conduct of its program of oversight over self-regulatory ("SRO") rule enforcement programs. (NFA and the contract markets are collectively referred to herein as the "SROs".) The calculation of the new amounts to be charged for the upcoming year is based upon an average of actual program costs incurred in the most recent three full fiscal years, as explained in SUPPLEMENTARY INFORMATION.

EFFECTIVE DATES: The fee schedule for processing of the contracts submitted by contract markets for designation by the Commission is effective on July 31, 2000 and must be paid at the time of submission to the Commission for processing. The fees for Commission oversight of each SRO rule enforcement program must be paid by each of the named SROs in the amount specified by no later than September 29, 2000.

FOR FURTHER INFORMATION CONTACT: Donald L. Tendick, Acting Executive Director, Office of the Executive Director, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, 202–418–5160.

SUPPLEMENTARY INFORMATION:

I. General

The Commission re-calculated the fees charged each year with the intention of recovering the costs of operating the two Commission programs.[1] All costs are accounted for by the Commission's Management Accounting Structure Codes (MASC) system which is operated according to a government-wide standard established by the Office of Management and Budget. Both types of fees are set each year based upon direct program costs plus an overhead factor, as explained in sections II., III. and IV. below.

The Commission previously had proposed to eliminate fees for contract market designation applications in connection with the Commission's adoption of Rule 5.3 which allows exchanges to list new contracts by certification (64 FR 66432, November 26, 1999). Since then, the Commission has embarked on a program of regulatory reform and has proposed a new regulatory framework for multilateral transaction execution facilities, which includes, among other things, alternative procedures for listing new products (65 FR 38985, June 22, "A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations"). As a result, the Commission at this time is deferring any final determination whether to remove designation fees.

The new fee schedules are set forth below and information is provided on the effective date of the fees and the due date for payment:

A. *Fees charged to contract markets for processing applications for designation of futures and option contracts:*

1. For futures contracts and options on futures contracts which do not meet the multiple contract filing criteria set forth in 2 below:

- A single futures contract or an option on a physical—$6,300;
- A single option on a previously approved futures contract—$1,100;
- A combined submission of a futures contract and an option on the same futures contract—$7,000;

[1] See Section 237 of the Futures Trading Act of 1982, 7 U.S.C. 16a and 31 U.S.C. 9701. For a broader discussion of the history of Commission fees, see 52 FR 46070 (Dec. 4, 1987).

2. Reduced fees for simultaneous submission of certain multiple cash-settled index contracts and multiple contracts on the following major currencies—the Australian dollar; British pound; Euro (and its component Currencies); Japanese yen; Canadian dollar; Swiss franc; New Zealand dollar; Swedish krona; and the Norwegian krone. The Commission's reduced fees for simultaneous submission of multiple, related cash-settled or major-currency contracts is equal to the applicable fee listed above for the first contract plus 10 percent of that fee for each additional contract in the filing. For multiple, simultaneously submitted, major-currency or cash-settled contract filings to be eligible for the reduced fees, the contracts in the filing must meet the following criteria:

a. Each contract must be based on a major currency or be cash-settled based on an index representing measurements of physical properties or financial characteristics which are not traded per se in the cash market, except in regard to the specified currency or the temporal or spatial pricing characteristics of the cash settlement price or the multiplier used to determine the size of each contract;

b. The currency delivery procedures or the cash-settlement procedure must be the same for each contract in the filing;

c. All other terms and conditions of the contracts must be the same in all respects; and

d. The filing must contain a claim for the reduced fee and a representation that terms a.–c. are met. For multiple contract filings containing related contracts, the designation fees are:

- A submission of multiple related futures contracts—$6,300 for the first contract, plus $630 for each additional contract;
- A submission of multiple related options on futures contracts $1,100 for the first contract, plus $110 for each additional contract;
- A combined submission of multiple futures contracts and options on those futures contracts—$7,000 for the first combined futures and option contract, plus $700 for each additional futures and option contract.

B. Fees for the Commission's review of the rule enforcement programs at the registered futures associations and contract markets regulated by the Commission are:

Entity	Fee amount
Chicago Board of Trade	$207,586
Chicago Mercantile Exchange	283,444
New York Mercantile Exchange/COMEX	184,499
New York Board of Trade	98,468
Kansas City Board of Trade	6,779
Minneapolis Grain Exchange	3,531
Philadelphia Board of Trade	.....
National Futures Association	233,222
Total	1,017,528

II. Overhead Rate

The fees charged by the Commission to the SROs are designed to recover program costs, including direct labor costs and overhead. The overhead rate is calculated by dividing total Commission-wide direct labor program costs into the total amount of the Commission-wide overhead pool. In this connection, direct program labor costs are the salary costs of personnel working in all of the Commission's programs. Overhead costs consist generally of the following Commission wide costs: indirect personnel costs (leave and benefits), rent, communications, contract services, utilities, equipment, and supplies. This formula has resulted in the following overhead rates for the most recent three years (rounded to the nearest whole percent): 91 % for fiscal year 1997, 104% for fiscal year 1998 and 105% for fiscal year 1999. These are the overhead rates applied to the direct labor costs in calculating the costs of reviewing contract designations and oversight of SRO rule enforcement programs, as described below.

III. Processing Applications for Designation of Contracts

The calculation of the fees for processing applications for designation of contracts has become more refined over the years in response to changes in the types of contracts being designated.

On August 23, 1983, the Commission established a fee for Contract Market Designation (48 FR 38214). The fee was based upon a three-year moving average of the actual costs expended and the number of contracts reviewed by the Commission during that period of time. The formula for determining the fee was revised in 1985. At that time most designation applications were for futures contracts, as opposed to option contracts, and no separate fee was set for option contracts.

In 1992, the Commission reviewed its data on the actual costs for reviewing designation applications for both futures and option contracts and determined that the percentage of applications pertaining to options had increased and that the cost of reviewing a futures contract designation application was much higher than the cost of reviewing an application for an option contract. It was also determined that, when designation applications for both a futures contract and an option on that futures contract are submitted simultaneously, the cost for reviewing both together was lower than for reviewing the contracts separately. Therefore, in the interest of recognizing the cost differences to the Commission of the different combinations of contract submission, three separate fees were established—one for futures alone; one for options alone; and one for combined futures and option contract applications (57 FR 1372).

Effective during fiscal year 1999, the Commission further refined its fee structure in order to recognize the unique processing cost characteristics of a class of contracts which are cash-settled based on a index of non-tangible commodities. In this connection the Commission determined to charge a reduced fee for "related" simultaneously submitted contracts for which the cash settlement procedure is identical, except in regard to a specified temporal or spatial pricing characteristic or the multiplier used to determine the size of each contract, and all other terms and conditions of the contracts in the filing are the same. The Commission also is including contracts on major currencies (including contracts based on currency cross rates) as contracts eligible for the reduced multiple contract fees. For this purpose, major currencies are defined as the Australian dollar; British pound; Euro (and its component currencies); Japanese yen; Canadian dollar; Swiss franc; New Zealand dollar; Swedish krona; and Norwegian krone.

Contracts having differentiated spatial features include contracts which are identical in all respects, including the cash settlement mechanism, but which may be based on different geographical areas. These may include contracts on weather-related data or vacancy rates for rental properties, where each individual contract is based on the value—temperature, local vacancy rate, etc.—for a specific city. To be eligible for the multiple contract filing fee, each contract must be cash-settled based on the same underlying data source and derived under identical calculation procedures, such that the integrity of the cash settlement mechanism is not dependent on the individual spatial specifications.[2] Contracts having

[2] Thus, for example, applications containing a number of similar cash-settled contracts based on the government debt of different foreign countries would not be eligible for the reduced fee, since the manipulation potential of each contract would be

Continued

differentiated temporal features include contracts that are the same in all respects except for the time to maturity of the individual underlying instruments. This may include cash-settled interest rate futures contracts within a specific segment of the yield curve, provided that for each contract the cash settlement mechanism and derivation procedure is identical, and the integrity of the cash settlement mechanism is not dependent on the individual temporal specifications. Examples are, short-term interest rate contracts having monthly maturities ranging up to one year.[3]

The Commission stated that a 10-percent marginal fee for additional contracts in a filing is appropriate for those simultaneously submitted applications eligible for the multiple-contract filing fee. Because the eligible, related contracts are based on indexes of non-tangible commodities not traded in the cash market, the Commission's review need not require a separate analysis of the different contracts in a filing related to the liquidity of the underlying cash markets or the reliability or transparency of prices for the individual commodities. Also, because each contract must use an identical cash-settlement procedure and all other material terms and conditions must be identical (except for the differentiated spatial or temporal term or the contract multiplier), the analysis of the cash settlement procedure for one contract would apply in large part to each of the additional contracts. Finally, because all of the contracts in a related group are differentiated from one another only with respect to a spatial or temporal feature that has no bearing upon the characteristics of the cash settlement mechanism, each separate contract would not require a separate analysis to ascertain its compliance with the requirements for designation. Thus, the Commission's analysis of the cash settlement procedure in general and its review of the other material terms and conditions would be equally applicable to all of the related contracts in the filing. Only a limited supplemental analysis is required for each additional contract in such a filing, resulting in a substantially reduced marginal cost for reviewing and processing the additional contracts.

Multiple contract filings of related futures and option contracts on major currencies are eligible for the multiple contract fees for the same reasons that reduced fees are appropriate for multiple, related cash settled contract filings. While currency contracts may not be cash settled, *per se*, issues related to physical delivery contracts do not arise for currencies since, like contracts providing for cash settlement, futures delivery and payment simply involves the exchange of cash (one currency for another). Moreover, the Commission previously has found that major currencies (as defined herein) have nearly inexhaustible deliverable supplies, exhibit extremely deep and liquid markets, are not subject to convertibility or delivery restrictions and are easily arbitraged between cash and futures markets; thus, it has exempted contracts based on them from speculative limits. In view of this, no separate analysis is required of the manipulation potential of each contract based on a major currency in a multiple contract filing. Also, the delivery and payment procedures and all other terms and conditions are identical for currency contracts, as the only difference is the actual currencies being transferred in the delivery and payment process. Accordingly, since only an incremental analysis is needed for each additional contract in a multiple contract filing, lower fees are more in line with actual processing costs.

The Commission's extensive experience in reviewing new contract designation applications indicates that, for simultaneous submission of multiple, related major-currency or cash-settled contracts, a fee for each additional contract equal to 10 percent of the single contract application fee would reflect the Commission's expected review costs for these types of applications. Thus, the Commission's fees for simultaneous submission of these types of related contracts is set to be equal to the prevailing, single contract applicable fee for the first contract plus 10 percent of that fee for each additional contract in the filing. This marginal-cost-based fee structure represents an extension of the policy adopted by the Commission in 1992 when it established reduced fees for option applications and for combined futures and option applications.

Separately, the Commission notes that the fees for futures contract applications also applies to applications for options on physical commodities, and that the reduced option fee applies only to applications for options on existing futures contracts. Because the requirements for designation of an option on a physical commodity are substantially identical to those of futures, the same fee will apply to both types of filings.[4]

The Commission staff compiled the actual costs of processing applications for contract market designation for a futures contract for fiscal years 1997, 1998 and 1999 and found that the average cost over the three-year period was $6,300 per contract. The review of actual costs of processing applications for contract market designation for an option contract for fiscal years 1997, 1998 and 1999 revealed that the average costs over the same three-year period was $1,116 per contract, including overhead applied. Accordingly, the Commission has determined that the fee for applications for contract market designation for a futures contract will be set at $6,300 and the fee for applications for contract market designation as an option contract will be set at $1,100, in accordance with the Commission's regulations (17 CFR Part 5, Appendix B). In addition, by reference to the above cost analysis, the combined fee for contract markets simultaneously submitting designation applications for a futures contract and an option contract on that futures contract and fees for filings containing multiple cash-settled indexes on nontangible commodities have been set on a similar basis, as indicated in the schedule appearing above in the Summary section.

IV. Conduct of SRO Rule Enforcement Reviews

Under the formula adopted in 1993 (58 FR 42643, August 11, 1993, which appears in 17 CFR Part 1, Appendix B), the Commission calculates the fee to recover the costs of its review of rule enforcement programs, based on a 3-year average of the actual cost of performing reviews at each SRO. The cost of operation of the Commission's program of SRO oversight varies from SRO to SRO, according to the size and complexity of each SRO's program. The 3-year averaging is performed to smooth out some variations in year-to-year costs which can be large. In particular, the costs may vary year-to-year depending upon the timing of the reviews. This is

related to the liquidity of the underlying instruments, and the individual trading practices and governmental oversight in each specific country require separate analyses.

[3] Cash-settled contracts covering various segments of the yield curve would not be eligible for the reduced fee, since the underlying instruments may be priced differently and have different trading characteristics, and the manipulation potential of each contract would be related to the liquidity of the underlying instruments and would, therefore, require separate analyses.

[4] In this regard, under the Commission's Guideline No. 1, which details the information an application for contract market designation must include, all of the requirements for futures contract applications (whether providing for physical delivery or cash settlement) also apply to options on physicals applications, plus several additional requirements that apply uniquely to options. *See*, for example, 63 FR 38537, July 17, 1998.

because the conduct of a review may span two fiscal years and, also, reviews at each SRO are not usually conducted each and every year. An adjustment to actual costs may be made in order to relieve burden upon SROs with a disproportionately large share of program costs. That is, the Commission's formula provides for a reduction in the fee assessed if an SRO has a smaller percentage of U.S. industry contract volume than its percentage of overall Commission oversight program costs, as described below. The adjustment made is to reduce one-half of the costs so that, as a percentage of total Commission SRO oversight program costs, the costs are in line (in percentage terms) with the pro-rata percentage for that SRO of U.S. industry-wide contract volume. Following is a detailed description of the calculation:

The fee required to be paid to the Commission by each contract market is equal to the lesser of: actual costs based upon the three-year historical average of costs for that contract market or: (i) One-half of average costs incurred by the Commission pertaining to each contract market for the most recent three-years, plus (ii) a pro-rata share (based upon average trading volume for the most recent three years) of the aggregate of average annual costs of all the contract markets for the most recent three years. The formula for calculating the second factor mentioned above is: 0.5a + 0.5vt = current fee. In the formula, "a" equals the average annual costs, "v" equals the percentage of total volume across exchanges over the last three years and "t" equals the average annual cost for all exchanges. (The one registered futures association regulated by the Commission, the National Futures Association (NFA), has no contracts traded and, thus, the NFA's fee is based simply on costs for the most recent three fiscal years.)

Following is a summary of data used in the calculations and the resultant fee for each entity:

	3-year average actual costs	3-year average percentage of volume (percent)	2000 fee amount
Chicago Board of Trade	$207,586	44.6820	$207,586
Chicago Mercantile Exchange	283,444	35.3012	283,444
NYMEX/COMEX	226,295	15.8933	184,499
New York Board of Trade	165,269	3.5269	94,468
Kansas City Board of Trade	9,989	0.3975	6,779
Minneapolis Grain Exchange	5,295	0.1967	3,531
Philadelphia Board of Trade	0	0.0024	0
Sub-total	897,887	100.0000	784,306
National Futures Association	233,222	N/A	233,222
Total	1,131,099	100.0000	$1,017,528

Below is an example of how the fee was calculated for one exchange, the Minneapolis Grain Exchange:

(i) Actual 3-year average costs are $5,295;

(ii) Alternative computation is;

(.5)($5,295) + (.5)(.1967%)($897,877) = 3,531

(iii) The fee is the lesser of (i) or (ii) = $3,531.

As noted above, the alternative calculation, which is based upon contracts traded, is not applicable to the NFA because it is not a contract market and, thus, has no contracts traded. The Commission's average annual cost for conducting oversight review of the NFA rule enforcement program during fiscal years 1997 through 1999 was $233,222 (⅓ of $699,666). Therefore, the fee to be paid by the NFA for the current fiscal year is $233,222.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires agencies to consider the impact of rules on small businesses. The fees implemented in this release affect contract markets (also referred to as "exchanges") and registered futures associations. The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, 47 FR 18618 (April 30, 1982). Registered futures associations also are not considered "small entities" by the Commission. Therefore, the requirements of the Regulatory Flexibility Act do not apply to contract markets or registered futures associations. Accordingly, the Chairman, on behalf of the Commission, certifies that the fees implemented herein do not have a significant economic impact on a substantial number of small entities.

Issued in Washington, DC on July 19, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–18729 Filed 7–28–00; 8:45 am]

BILLING CODE 6351–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 241 and 271

[Release No. 34–43069; IC–24564]

Commission Guidance on Mini-Tender Offers and Limited Partnership Tender Offers

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: We are publishing our views regarding the following issues: the disclosure and dissemination of tender offers that result in the bidder holding five percent or less of the outstanding securities of a company; and the disclosure for tender offers for limited partnership units. This interpretive guidance is intended to help bidders, subject companies and others participating in tender offers meet their obligations under the applicable statutes and rules, including the antifraud provisions.

EFFECTIVE DATE: July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Dennis O. Garris, Chief, or Nicholas P. Panos, Special Counsel, Office of

Mergers and Acquisitions, Division of Corporation Finance at (202) 942–2920.

SUPPLEMENTARY INFORMATION: We are aware of questions about the applicability of the tender offer rules under the Securities Exchange Act of 1934 ("Exchange Act")[1] to two specific situations: a tender offer resulting in ownership of not more than five percent of a company's securities (a "mini-tender offer") and a tender offer for limited partnership units. In the past, the staff has provided guidance on a case-by-case basis by responding to inquiries and through the review and comment process. This Commission interpretive release enhances investor protection by providing guidance in a broader context. It first describes the regulatory framework for tender offers and then sets forth our views on disclosure, dissemination and other obligations involving mini-tender offers and tender offers for limited partnership units. By following the guidelines set forth below, participants in tender offers will reduce the risk that they will violate the antifraud provisions of the statute and rules. However, in every instance, the determination will depend on the particular facts.

I. Tender Offer Regulatory Scheme

For purposes of determining whether our tender offer rules apply to a particular acquisition program, the threshold question is whether the transaction constitutes a "tender offer" within the scope of the Williams Act.[2] While the term "tender offer" has never been defined in any statutory provision or rule, the courts generally have applied an eight-factor test in determining whether a particular acquisition program constitutes a tender offer.[3] It is not necessary that all eight factors be present to conclude that the acquisition program is a tender offer.[4]

Both mini-tender offers and offers for limited partnership units are tender offers subject to our rules.

Mini-tender offers generally are structured to result in ownership of not more than five percent of a class of securities to avoid the filing, disclosure and procedural requirements of Section 14(d) of the Exchange Act and Regulation 14D.[5] While Congress limited the application of Section 14(d) to tender offers that would result in ownership of more than five percent of a class of securities, Section 14(e) has no similar limitation. Security holders faced with a mini-tender offer therefore are entitled to the protections of Section 14(e) and Regulation 14E.[6]

Federal tender offer regulation is based on three statutory sections of the Exchange Act and our regulations adopted under those sections. The applicability of each section and its underlying regulations depends on: (i) The party conducting the offers, (ii) the nature of the subject security, (iii) whether the security is registered under Section 12 of the Exchange Act,[7] and (iv) whether or not the bidder would own more than five percent of the securities after the tender offer.

A. Section 14(d) and Regulation 14D

Section 14(d) of the Exchange Act and Regulation 14D apply to all tender offers for Exchange Act registered equity securities made by parties other than the target (or affiliates of the target), so long as upon consummation of the tender offer the bidder would beneficially own more than five percent of the class of securities subject to the offer.[8] A bidder must include any shares it owns before the commencement of the tender offer in calculating the five percent amount. For example, if a bidder owns four percent of the target's securities before it commences the tender offer, it could not make an offer for more than one percent of the target's securities without triggering Section 14(d) and Regulation 14D requirements.[9]

Regulation 14D requires the bidder to make specific disclosures to security holders and mandates certain procedural protections. The disclosure focuses on the terms of the offer and information about the bidder.[10] The procedural protections include the right to withdraw tendered securities while the offer remains open,[11] the right to have tendered securities accepted on a pro rata basis[12] throughout the term of the offer if the offer is for less than all of the securities, and the requirement that all security holders of the subject class of securities be treated equally.[13] Also, Regulation 14D requires the bidder to file its offering documents and other information with the Commission[14] and hand deliver a copy to the target and any competing bidders.[15]

Regulation 14D also requires the target to send to security holders specific disclosure about its recommendation, file a Schedule 14D–9 containing that disclosure, and send the Schedule 14D–9 to the bidder.[16]

B. Rule 13e–4

Rule 13e–4,[17] promulgated under Section 13(e) of the Exchange Act, applies to all tender offers by the issuer for its equity securities when the issuer has a class of equity securities registered under Section 12 or when the issuer files periodic reports under Section 15(d) of the Exchange Act.[18] Rule 13e–4 also applies to a tender offer by an affiliate of the issuer for the issuer's securities where the tender offer is not subject to Section 14(d). Rule 13e–4 is different from Regulation 14D because it applies even if the class of securities sought in the offer is not registered under Section 12. Also, Rule 13e–4 applies regardless of the amount of securities sought in the offer. Rule 13e–4 provides for disclosure, filing and procedural safeguards that generally mirror those provided under Section 14(d) and Regulation 14D.

C. Section 14(e) and Regulation 14E

Section 14(e) of the Exchange Act is the antifraud provision for all tender offers, including mini-tender offers and tender offers under Regulation 14D and Rule 13e–4.[19] Section 14(e) prohibits

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[1] 15 U.S.C. 78a *et seq.*

[2] The Williams Act added a number of provisions to Sections 13 and 14 of the Exchange Act in 1968 addressing beneficial ownership disclosure, tender offers and changes in control, including Sections 13(d) and 13(e) [15 U.S.C. 78m(d)–(e)); and Sections 14(d) and 14(e) [15 U.S.C. 78n(d)–(e)].

[3] These factors include whether the transaction: (1) Involves an active and widespread solicitation of security holders; (2) involves a solicitation for a substantial percentage of the issuer's stock; (3) offers a premium over the market price; (4) contains terms that are fixed as opposed to flexible; (5) is conditioned upon the tender of a fixed number of securities; (6) is open for a limited period of time; (7) pressures security holders to respond; and (8) would result in the bidder acquiring a substantial amount of securities. *SEC* v. *Carter Hawley Hale Stores, Inc.*, 760 F.2d 945 (9th Cir. 1985); *Wellman* v. *Dickinson*, 475 F.Supp. 783 (S.D.N.Y. 1979). *But see Hanson Trust plc* v. *SCM Corp.*, 774 F.2d 47 (2d Cir. 1985) (relevant determination is whether sellers need the protections of the tender offer rules).

[4] *Wellman* at 824.

[5] 17 CFR 240.14d–1 *et seq.*

[6] 17 CFR 240.14e–1 *et seq.; see also* Exchange Act Release No. 16384 (November 29, 1979) [44 FR 70326), n.7 and related text.

[7] 15 U.S.C. 78l.

[8] Section 14(d)(1) of the Exchange Act [15 U.S.C. 78n(d)(1)) and Rule 14d–1(a) [17 CFR 240.14d–1(a)).

[9] If the bidder acquires no more than two percent over a 12-month period, however, Regulation 14D will not be triggered notwithstanding the amount the bidder owned before the commencement of the tender offer. Section 14(d)(8) of the Exchange Act [15 U.S.C. 78n(d)(8)).

[10] Schedule TO [17 CFR 240.14d–100].

[11] Rule 14d–7 [17 CFR 240.14d–7).

[12] Rule 14d–8 [17 CFR 240.14d–8).

[13] Rule 14d–10 [17 CFR 240.14d–10]. This rule requires that the tender offer be made to all security holders and that the highest consideration paid to any security holder be paid to all security holders.

[14] Rule 14d–3(a)(1) [17 CFR 240.14d–3(a)(1)) and Schedule TO.

[15] Rule 14d–3(a)(2) [17 CFR 240.14d–3(a)(2)).

[16] Rule 14d–9 [17 CFR 240.14d–9) and Schedule 14D–9 [17 CFR 240.14d–101]. *Also see* the discussion of Rule 14e–2 in Section I.C below.

[17] 17 CFR 240.13e–4.

[18] 15 U.S.C. 78o(d).

[19] The antifraud provisions of Section 10(b) of the Exchange Act and Rule 10b–5 also apply to all

fraudulent, deceptive, and manipulative acts in connection with a tender offer. Regulation 14E provides the basic procedural protections for all tender offers, including mini-tender offers and tender offers under Regulation 14D and Rule 13e–4.

Section 14(e) and Regulation 14E apply to all tender offers, even where the offer is for less than five percent of the outstanding securities and offers where the bidder would not own more than five percent after the consummation of the offer. Section 14(e) and Regulation 14E apply to tender offers for any type of security (including debt). These provisions apply both to registered and unregistered securities (including securities issued by a private company), except exempt securities under the Exchange Act, such as municipal bonds.

Regulation 14E requires that a tender offer be open for at least 20 business days,[20] that the offer remain open for 10 business days following a change in the offering price or the percentage of securities being sought,[21] and that the bidder promptly pay for or return securities when the tender offer expires.[22] Regulation 14E also requires the target company to state its position about the offer within 10 business days after the offer begins.[23] The target must state either that it recommends that its security holders accept or reject the offer; that it expresses no opinion and remains neutral toward the offer; or that it is unable to take a position on the offer.[24] With a tender offer not subject to Regulation 14D, however, the bidder is not required to send its offer to the target. Therefore, the target may not know about the tender offer. The target should take all steps to comply with its obligations under Regulation 14E within 10 business days or as soon as possible upon becoming aware of the offer.

II. Mini-Tender Offers

A. Background

We have observed an increase in tender offers that would result in the bidder holding not more than five percent of a company's securities. These so-called "mini-tender offers" are generally structured to avoid the filing; disclosure and procedural requirements of Section 14(d) and Regulation 14D. These offers are subject only to the provisions of Section 14(e) and Regulation 14E. Mini-tender offers have been common in the limited partnership area for several years. Bidders now make mini-tender offers for corporate securities and shares of closed-end funds that are traded on exchanges or quoted on the National Association of Securities Dealers Automated Quotation system ("Nasdaq").

We are concerned that the substance of the disclosure in many of these offers is not adequate under Section 14(e) and Regulation 14E. We also are concerned that bidders are not adequately disseminating the disclosure to security holders. Further, we are concerned that many bidders are not paying for securities promptly at the expiration of the tender offer, as required by Regulation 14E. Recently, we have brought enforcement actions that address some concerns we have with mini-tender offers.[25]

The offering documents in mini-tender offers frequently are very brief and contain very little information. Often, these mini-tender offers are made at a price below the current market price.[26] However, frequently there is no disclosure of this fact in the offering documents or in any disclosure that the security holders ultimately receive. This lack of disclosure can mislead security holders because most tender offers, especially third-party offers, historically have been made at prices that are at a premium to the current market price. Many investors could reasonably assume that a mini-tender offer also involves a premium to market price. However, because of the lack of disclosure given to shareholders, it is often difficult for shareholders to determine the actual price that will be paid in the offer and whether it is below the market price.

Some bidders have devised schemes to confuse security holders about the actual offer price. For example, we have seen situations where a bidder makes an offer at a price above market price but never intends to purchase the shares in the offer at a premium. In these cases, the bidder holds the shares tendered and continuously extends the offer until the market price rises above the offer price. During this time, security holders generally are not permitted to withdraw their securities from the offer. Then the bidder purchases the shares at the offer price. In these situations, the bidder does not disclose this plan to security holders.[27] We believe these practices are "fraudulent, deceptive or manipulative practices" within the meaning of Section 14(e), and we recently brought an enforcement action to stop such practices.[28]

We have seen other situations where a bidder does not make it clear that certain fees or expenses will be deducted from the offer price. After deducting the amount of the fees, the offer price is often less than the market price. These fees often are disclosed only in the fine print in the documents that the security holders send back to the bidder to accept the offer, but not in the disclosure document itself.[29] We believe that these disclosure practices may, under certain circumstances, be "fraudulent, deceptive or manipulative practices" within the meaning of Section 14(e).

Disclosure in mini-tender offers is usually deficient in other respects that may harm security holders. For instance, since mini-tender offers are not subject to the specific requirements of Regulation 14D, these offers are generally structured as first-come, first-served offers without withdrawal rights and prorationing. This structure pressures security holders into tendering quickly. Once they have tendered, they are locked into their decision. Security holders are then unable to take advantage of new information or opportunities that may become available during the course of the offer, such as the opportunity to sell their stock outside the tender offer at a higher market price, the target's recommendation, or a higher offer. It is not typical for this aspect of a mini-tender offer to be disclosed.

This lack of disclosure is compounded by the fact that some bidders do not adequately disseminate the tender offer disclosure to security holders. Often, bidders in mini-tender offers will deliver the offering documents to The Depository Trust Company ("DTC").[30] These bidders rely on DTC to forward a notice of the offer electronically to DTC's participant broker-dealers and banks. In some cases, the participants then send information to their customers for whom the

tender offers, including mini-tender offers. 15 U.S.C. 78j; 17 CFR 240.10b–5.

[20] Rule 14e–1(a) [17 CFR 240.14e–1(a)].

[21] Rule 14e–1(b) [17 CFR 240.14e–1(b)].

[22] Rule 14e–1(c) [17 CFR 240.14e–1(c)].

[23] Rule 14e–2 [17 CFR 240.14e–2].

[24] Rule 14e–2(a) [17 CFR 240.14e–2(a)].

[25] *In the Matter of IG Holdings, Inc.*, Exchange Act Release No. 41759 (August 19, 1999); *In the Matter of Peachtree Partners*, Exchange Act Release No. 41760 (August 19, 1999); *In the Matter of City Investment Group, LLC*, Exchange Act Release No. 42919 (June 12, 2000).

[26] In the case of an illiquid security, such as a limited partnership unit, the offer is frequently made at less than net asset value.

[27] *See* Section II.B.

[28] *See City Investment Group.*

[29] *See* Section III.B.

[30] DTC is a clearing agency registered with the Commission under Section 17A of the Exchange Act [15 U.S.C. 78q–1] that holds securities in custody on behalf of broker-dealers, banks and others. In this capacity, DTC is the depository for more than 90% of the securities held in the United States.

participants hold securities in street name. Generally, bidders make no effort to send offering documents to security holders who hold their securities in their own name, rather than through brokers or banks in street name.

The information sent by the broker-dealer or bank participants to customers often is limited to notice of the tender offer, the expiration date, and, in some cases, the price. The participants do not always request copies of the offering documents from DTC. Even if the participants do obtain the offering documents, they may decide not to send them to their customers. Therefore, security holders may make investment decisions without receiving material information about the tender offer.

In mini-tender offers, bidders often wait 30 days or more after the offers expire to pay for securities. During this period, the bidder sells the securities it obtains in the tender offer at the market price, which may well be higher than the price the bidder paid in the offer. The bidder then uses the proceeds from the sales in the market to pay security holders who tendered into the offer. By conducting the offer in this manner, a bidder generally is not at risk. However, security holders are harmed because their funds are withheld for a significant amount of time. This practice is inconsistent with the prompt payment requirements of Rule 14e–1(c).

B. Disclosure Guidelines

As discussed above, we believe security holders need better and clearer disclosure in mini-tender offers. To avoid "fraudulent, deceptive or manipulative practices" within the meaning of Section 14(e), we recommend that bidders in mini-tender offers consider the following issues in crafting disclosures in the tender offer documents that are provided to security holders.[31]

- Offer Price: Price information is material to security holders. Because tender offers typically are made at prices that are at a premium to market, investors could reasonably assume that a mini-tender offer also includes a premium. Bidders should disclose clearly if the offer price is below the market price.

If the price offered is below the market price when the offer commences, the disclosure should clearly explain this prominently in the document. Also, the explanation should include the market price (or the bid and ask prices) on the day of commencement, or the most recent practicable date. For closed-end funds, the disclosure also should include the net asset value on the date the offer commences, or the most recent practicable date. If there is no liquid market for the securities, the bidder should disclose, if known, the latest price at which the security sold, including the date of sale, or the latest bid and ask prices.

Some mini-tender offers have been made at, or slightly above, the market price of the security. The offer is then repeatedly extended until the market price rises above the offer price. These offers generally do not have withdrawal rights. The bidder then purchases the shares below the market price. If the bidder intended never to purchase the shares unless the market price rose above the offer price, and did not disclose this intent, we believe that this would be a "fraudulent, deceptive or manipulative practice" within the meaning of Section 14(e).[32]

- Price Changes: We believe that a bidder's intent to reduce the offering price based on distributions made to security holders by the target company and fees imposed by the bidder is material information. In describing the offer price, the bidder should disclose, if applicable, that the price may be reduced by any distributions or fees and the amount, if known. If the bidder changes the price, the tender offer would need to be extended for 10 business days as provided by Rule 14e–1(b).
- Withdrawal Rights: The ability to withdraw a tender while the offer is open can influence an investor's decision whether to tender. The bidder should disclose clearly whether security holders have the right to withdraw the shares they tendered during the offer. If no withdrawal rights exist, the disclosure should indicate that security holders who tender their shares cannot withdraw their shares. The disclosure should also clearly state, if applicable, that if the bidder extends the offer, the shares tendered before the extension still cannot be withdrawn and may be held through the end of the offer until payment. If withdrawal rights do exist, the disclosure should explain fully the procedures for withdrawing tendered shares.
- Pro Rata Acceptance: A pro rata provision has a direct bearing on the amount of time available for an investment decision. If no pro rata provision exists, the offer can, in effect, be open for less than 20 business days because shares will be purchased on a first come, first served basis. The bidder should disclose clearly whether tendered securities will be accepted on a pro rata basis if the offer is oversubscribed. If shares will not be accepted on a pro rata basis, the disclosure should describe the effect on security holders.
- Target Recommendation: Security holders should be advised, before an investment decision is made, that additional, material information will come from management of the target company. This disclosure is especially important in instances where withdrawal rights do not exist. The bidder should disclose that if the target is aware of the offer, the target is required to make a recommendation to security holders regarding the offer within 10 business days of commencement. We encourage the bidder to send the offering document to the target at the commencement of the tender offer so the target can comply with its obligation under Rule 14e–2 to make a recommendation regarding the tender offer.
- Identity of Bidder: Identification of the bidder provides security holders with insight regarding financial resources, capacity to pay for tendered securities, and historic business practices. The bidder should completely and accurately disclose its identity, including control persons of the bidder and promoters. For example, it may be meaningful to disclose the controlling security holders, executive officers and directors of a corporate bidder, or the general partner (and its control persons) of a partnership bidder. The bidder also should disclose any affiliation between the target and the bidder.
- Plans or Proposals: In deciding whether to tender, it may be material to know whether the bidder intends to continue the acquisition program at some future point. The bidder should disclose its plans or proposals regarding future tender offers of the securities of the same target.
- Ability to Finance Offer: Security holders need to know whether the bidder has the ability to buy the securities. The bidder should disclose whether it has the funds necessary to consummate the offer. If the bidder does not have the financing for the offer (*e.g.*, cash or a commitment letter from a bank) at the commencement of the offer, the bidder should clearly state it cannot buy the securities until it obtains financing.

Bidders in mini-tender offers often do not have the financing necessary to purchase the shares in the offer. In many cases they merely accept the

[31] If the mini-tender offer is for a limited partnership, the bidder also must consider the information specified below in Secton III. Further, guidance provided in this section also is applicable to tender offers that are subject to Section 14(d) and Regulation 14D.

[32] *See City Investment Group.*

shares in the offer and then attempt to sell those shares in the market and use the proceeds to pay the security holders who tendered. When the offer is made at a premium, bidders sometimes improperly hold the shares and wait for the market price to rise above the offer price before they attempt to sell the shares in the market. This plan is not disclosed to security holders. We believe this method of financing tender offers is inappropriate and may be a "fraudulent, deceptive or manipulative practice" within the meaning of Section 14(e).[33] Rule 14e–8(c) expressly prohibits a person from publicly announcing a tender offer if that person "does not have the reasonable belief that the person will have the means to purchase the securities to complete the offer." [34] Furthermore, this method of financing does not comply with prompt payment as required by Rule 14e–1(c).[35]

- Conditions to the Offer: It is important for security holders to be able to evaluate the genuineness of the offer. We believe therefore that a tender offer can be subject to conditions only where the conditions are based on objective criteria, and the conditions are not within the bidder's control. If the conditions are not objective and are within the bidder's control (*e.g.*, the offer may be terminated for any reason or may be extended indefinitely), we believe the offer would be illusory and may constitute a "fraudulent, deceptive or manipulative" practice within the meaning of Section 14(e). We believe the bidder should disclose all material conditions to the offer.

- Extensions of the Offer: We believe that a bidder's ability and intent to extend the offer period is material information. This information is particularly important when there are no withdrawal rights. Security holders will be unable to withdraw shares tendered even if the offer is extended and shares are locked up for an unexpectedly long time. The initial disclosure materials should state whether the offer could be extended, whether the bidder intends to extend the offer, under what circumstances the bidder would extend, and, if the bidder intends to extend, the anticipated length of any extension. If the offer is extended after the initial disclosure materials are provided to security holders, the bidder should publicly announce this fact.

[33] *See City Investment Group.*

[34] *See* Securities Act Release No. 7760, Section II.D.1. (October 22, 1999) [64 FR 61408].

[35] *See* Section II.D. of this release.

C. Dissemination Guidelines

In enacting the Williams Act, Congress stressed the importance of not merely specifying disclosure requirements but also ensuring that information is communicated to security holders.[36] The bidder in a tender offer must make reasonable efforts to disseminate material information about the tender offer to security holders. The failure to disseminate the disclosure frustrates the purpose of the tender offer rules.

Rule 14e–1(a) states that a tender offer must be held open for 20 business days from the date the offer is first "published or sent to security holders." [37] Section 14(e) and Regulation 14E do not state how tender offers should be "published or sent to security holders." However, Rule 14d–4,[38] which applies only to tender offers subject to Section 14(d) and Regulation 14D, provides guidance in this area. Rule 14d–4 sets out three alternative methods of dissemination for cash tender offers. The purpose of Rule 14d–4 is to add content and clarity to the term "published or sent or given" in Section 14(d)(1).[39] Dissemination under Rule 14d–4 is deemed "published or sent or given to security holders" for purposes of Section 14(d)(1). These dissemination methods are as follows:

1. Publishing the offering document in a newspaper;

2. Publishing a summary advertisement containing certain information in a newspaper and mailing to security holders a copy of the full offering document upon request; or

3. Mailing the offering document to security holders using a security holder list.

Rule 14d–4 also provides that these methods of dissemination are not exclusive or mandatory.

Depending on the facts and circumstances, adequate publication of a tender offer under Rule 14d–4 may require publication of the offering document in a newspaper with a national circulation or may only require publication in a newspaper with metropolitan or regional circulation.[40] Publication in all editions of a daily newspaper with a national circulation will always constitute adequate publication for purposes of Rule 14d–4.[41]

We believe that dissemination of material information using mechanisms the bidder knows or is reckless in not knowing are inadequate would be a "fraudulent, deceptive or manipulative" practice within the meaning of Section 14(e) and Rule 14e–1. For example, we believe that merely sending the offering documents to DTC is not an adequate means of communicating the information to security holders. DTC is not in business to, and in fact does not disseminate the tender offer materials to security holders. DTC sends only limited notice information to its participants about tender offers. Broker-dealers and banks have taken a variety of approaches in dealing with mini-tender offer materials. As a result, the bidder has no reasonable assurance that dissemination to DTC and then through broker-dealers or banks will satisfy the requirements of Section 14(e). Further, many bidders have refused to pay broker-dealers and banks the costs of forwarding information to security holders. Consequently, the tender offer document is not consistently reaching security holders to whom the offer is made. It is the bidder's obligation to assure that security holders get material information about the tender offer. If a bidder adequately disseminates the information to security holders through another method, such as one of the methods provided in Rule 14d–4, the bidder also may send the information to DTC for forwarding to its participants.

Also, we believe that only posting the information on a web site would not be adequate dissemination.[42] Not all security holders have access to the Internet. By merely posting a tender offer on a web site, the bidder does not adequately publish the offer, nor is the offer deemed sent to security holders.[43]

If a bidder makes a material change to the tender offer, the bidder must disseminate the changes in a manner reasonably likely to inform security holders of the change. The bidder generally should disseminate the change

[36] "[T]he legislative history and case law recognize that dissemination as indicated in the term 'published, sent or given to security holders' is part of the disclosure process of the Williams Act." Exchange Act Release No. 15548 (February 5, 1979) [44 FR 9956]. In addressing the importance of dissemination to our disclosure rules, Chairman Manuel Cohen in testimony emphasized, "disclosure is useful if it reaches the people for whom it is intended." Hearings before the Subcommittee on Banking and Currency, United States Senate, March 21, 1967, p. 178.

[37] A primary reason for adopting a mandatory minimum offering period under Section 14(e) was to allow sufficient time for security holders to receive the offering materials. Exchange Act Release No. 16384 (November 29, 1979) [44 FR 70326].

[38] 17 CFR 240.14d–4.

[39] Exchange Act Release No. 15548 (February 5, 1979) [44 FR 9956].

[40] Rule 14d–4(b) [17 CFR 240.14d–4(b)].

[41] *Id.*

[42] Securities Act Release No. 7760, Section II.D.2.

[43] *See* Securities Act Release No. 7233 (October 6, 1995) [60 FR 53458] for our guidelines on the use of electronic media for delivery of information.

in the same manner as it disseminated the original offer.

D. Prompt Payment

Rule 14e–1(c) requires the bidder to pay the consideration offered or return the tendered securities promptly after the termination or withdrawal of the tender offer. The rule does not define "promptly." However, we have stated that this standard may be determined by the practices of the financial community, including current settlement practices.[44] In most cases, the current settlement practice is for the payment of funds and delivery of securities no later than the third business day after the date of the transaction.[45] We view payment within these time periods as "prompt" under Rule 14e–1(c). We understand that some bidders have waited up to 30 days to pay tendering security holders. We believe that this delay in payment is inconsistent with the prompt payment requirements of Rule 14e–1(c).

Where the target is a limited partnership, and its securities are not listed on an exchange or quoted on an interdealer quotation system, it may not be possible to pay within three days, due to delays in transferring the limited partnership interests. Where the bidder is a third party and, therefore, cannot control the transfer and settlement process, we would not consider a reasonable extension of the three- to five-day period to be a violation of Rule 14e–1(c). The offer should disclose the anticipated time frame for settlement if it is expected to be delayed for these reasons. However, where the bidder is an affiliate and is able to control the settlement process, payment should not be delayed for these reasons and should be made as soon as possible.

III. Tender Offers for Limited Partnership Units

A. Background

Tender offers for limited partnership units, whether or not the bidder is affiliated with the target, raise significant disclosure issues due to the nature of limited partnership investments. Limited partnership units may be difficult to sell, and general partners face conflicts of interest in deciding when and whether to liquidate the partnership. These issues are particularly important in the limited partnership context since many investors in limited partnerships are unsophisticated retail investors.

In most cases, the price offered in a tender offer for limited partnership units is significantly lower than the original purchase price. It may also be below any recent appraisals of the partnership's assets. The tender offer may be the only way limited partners can sell their units because the markets for many limited partnership units are generally illiquid. Even when markets do exist, the limited partnership units usually trade at a significant discount to their appraised value.

Further, in many partnerships, the general partner has not liquidated the partnership within the time frame disclosed in the original offering of the units. Limited partners must, therefore, hold their investment longer than originally anticipated. General partners have a conflict of interest in determining whether to liquidate the partnership since, upon liquidation, they would no longer receive management and other fees associated with continuing the partnership.

B. Disclosure Guidelines for Limited Partnership Tender Offers

In order to avoid misleading investors,[46] we believe that bidders should consider disclosing the particular risks and conflicts of interest that arise in tender offers for limited partnership units. Cash tender offers do not always fall within our roll-up rules,[47] and partial offers usually do not trigger the going-private rule.[48] However, in the course of review and comment, the Commission staff often draws upon these rules in assessing the adequacy of the disclosure furnished to limited partners. As we said in 1991, in the release adopting the roll-up disclosure rules, these provisions must be considered and applied to a transaction that is not a roll-up within the rules, but raises the same concerns as a roll-up, in order to comply with the antifraud provisions.[49] Since bidders must not violate the antifraud provisions, we believe that all tender offers for limited partnership units should consider making these disclosures, whether subject to Regulation 14D or only Regulation 14E, as is the case for mini-tender offers.[50]

The following disclosure guidelines are drawn from the releases discussed above regarding limited partnership offerings and roll-ups, as well as the Division of Corporation Finance staff's practices in issuing comments on limited partnership tender offer filings.[51]

1. Bidder Disclosure Guidelines

Bidders must provide disclosure that is balanced so as not to be misleading. When determining the adequacy of disclosure, the key focus is the materiality of the information to security holders. If the disclosure document is lengthy, the disclosure should include a table of contents. All disclosure should be prepared in plain English.[52] To avoid misleading security holders, we recommend that bidders consider the following issues in crafting disclosures in limited partnership tender offer documents provided to security holders.

- Risk Factors: The offering document should prominently include a description of the risks of the transaction. These risk factors should be presented clearly and concisely, for example in bullet form. The risk factors should disclose any valuations (*e.g.*, market price, net asset value) that are higher than the offering price.
- Affiliated Bidder: Because of the potential conflict of interest, the bidder should disclose if it is affiliated with the target, describing the affiliation.
- Conflicts of Interest: It is important for security holders assessing the merits of an offer to know whether the bidder lacks independence in structuring and negotiating the offer's terms. If the bidder is affiliated with the target, it should disclose the benefits of the transaction to the bidder and the reasons for conducting the tender offer versus liquidating the partnership. If known, the bidder should also disclose the anticipated holding period of the assets as described in the original offering documents. The focus should be on the anticipated holding period,

[44] Exchange Act Release No. 16384 (November 29, 1979) [44 FR 70326].

[45] Rule 15c6–1(a) [17 CFR 240.15c6–1(a)]. Certain exceptions apply, including transactions involving limited partnership interests that are not listed on a securities exchange or quoted on an automated quotation system.

[46] Section 14(e) of the Exchange Act and Rule 14e–3 [17 CFR 240.14e–3]; Section 10(b) of the Exchange Act and Rule 10b–5.

[47] Section 14(h) of the Exchange Act [15 U.S.C. 78n(h)] and the 900 series of Regulation S–K [17 CFR 229.900 *et seq.*]. The roll-up rules may, however, apply to third party exchange offers.

[48] 48 Rule 13e–3 [17 CFR 240.13e–3].

[49] 49 Securities Act Release No. 6922 (October 30, 1991) [56 FR 57237].

[50] 50 The guidance in Section II also applies to limited partnership tender offers.

[51] In addition, the Division staff has provided public guidance in this area for several years in its "Current Issues and Rulemaking Projects" outline. This outline is available on our web site, www.sec.gov, and may be located at the icon "Current SEC Rulemaking" under the topic heading *Other Commission Notices and Information.*

[52] These requirements are contained in our release regarding the disclosure requirements for limited partnerships (Securities Act Release No. 6900 (June 17, 1991) [56 FR 28979]) and roll-ups (Securities Act Release No. 6922 (October 30, 1991) [56 FR 57237]).

not the legal termination date of the partnership.

• Market Price: Secondary market sales price information is material because an investment decision can be based, in whole or in part, upon the comparison between historical or currently reported values and the consideration being offered. The bidder should disclose the prices at which recent sales have been made, to the extent known or reasonably available, even when there is no established market.

• Method of Determining the Offer Price: Security holders need to know what valuation methodologies were used in deciding the amount of consideration offered. The bidder should summarize how the offer price was determined. If the bidder prepared a valuation for the partnership, it should disclose the value along with the basis for the value. If the bidder decided not to perform a valuation analysis, investors may want to know why. The bidder should disclose any liquidation value that was calculated.

• Third Party Reports: General partners sometimes have engineering, property valuation, or other reports about the underlying assets or asset value of the partnership. Investors may find this information useful in evaluating the price they are offered. The bidder should summarize any report received from a third party that is materially related to the transaction. It should also disclose the identity of the third party that prepared the report. In addition, it should file the report as an exhibit to the Schedule TO, if a Schedule TO is required to be filed.

• Valuations by the General Partner: General partners are in the best position to know the value of the partnership assets. The bidder should disclose any valuations or projections prepared by the general partner or its affiliates and obtained by the bidder that are materially related to the transaction.

• Purpose and Plans: A bidder's intention to conduct successive tender offers or execute additional market purchases upon consummation of the current offer can influence a security holder's investment decision. The bidder should disclose the purpose of the offer, the bidder's plans for the issuer, and whether or not the bidder intends to continue to acquire units in the future until control is obtained.

• Property/Business Disclosure: Property/business information provides security holders with basic information concerning the partnership's core operations and industry, as well as partnership, profit potential. In real estate partnerships, the bidder should provide disclosure similar to that required by Items 14 and 15 of Form S–11 (*e.g.*, occupancy rate, location, average rental per square foot).[53] In other partnerships, the bidder should disclose comparable information specific to that industry. An unaffiliated bidder need only provide information that is otherwise publicly available unless it has received non-public information from the target, in which case the non-public information also would need to be disclosed, if material.

• Financial Information: Because limited partnerships do not hold annual meetings, the proxy rules do not require them to send the annual report to security holders that contains financial statements.[54] Security holders, as a result, may not otherwise have material financial information regarding the partnership's operating performance. The bidder should disclose, to the extent known, financial information about the target similar to that required by Item 301 of Regulation S–K (selected financial data).[55] If the partnership is a public reporting partnership, the information can be obtained from the most recent Form 10–K.[56] A non-affiliated bidder may disclose the extent of its due diligence with respect to such information if taken from the target's Form 10–K.

• Tax Consequences: One of the primary investment objectives of those who invest in limited partnerships is often favorable tax treatment. The bidder should disclose the tax consequences and any limitations on transfers in order to preserve favorable tax status.

• Transfer or Processing Fees: General partners frequently charge a fee to investors for transferring ownership interests on the books of the partnership when investors sell their interests to third parties. In tender offers by affiliates of the partnership, the general partner typically waives the fee. These fees can be significant in relation to the amount of the sales price. The fees may be charged on a per unit basis or one fee per investor for as many units that the investor sells. The bidder should disclose the amount of the transfer fees and whether the fees are charged on a per unit basis or per investor basis. The bidder also should disclose whether it intends to subtract the amount of these fees from the proceeds to be paid in the offer.

[53] 17 CFR 239.18.

[54] Rule 14a–6 [17 CFR 240.14a–6] provides that a proxy or information statement relating to the election of directors must be accompanied or preceded by an annual report to security holders.

[55] 17 CFR 229.301.

[56] 17 CFR 249.310.

• Price Reductions due to Distributions: We believe that a bidder's intent to reduce the offering price by any cash or other distributions to security holders made by the target company is material information. In describing the offer price, the bidder should disclose, if applicable, that the price may be reduced by any distributions and the amount, if known. If a distribution occurs and the price is reduced, the tender offer would need to be extended for 10 business days as provided by Rule 14e–1(b).

2. Target Disclosure Guidelines

The general partner has an obligation under Rule 14e–2 to respond to an offer, stating the reasons for its position, within 10 days of commencement of the offer. To avoid misleading security holders, we recommend that targets consider the following issues in crafting disclosures in the tender offer documents that are provided to security holders:

• Conflicts of Interest: It is important for security holders considering the target's recommendation to know what conflicts of interest could affect that recommendation. The target should disclose the conflicts arising in making the recommendation whether or not to tender (*e.g.*, interest in recommending against the offer in order to continue to collect management fees). It also should disclose, if true, why the partnership is not being liquidated in accordance with the terms in the original offering document.

• Valuations by the General Partner: The target should disclose any valuations prepared by the general partner or its affiliates that are materially related to the transaction. The target also should disclose the basis for the valuations.

• Third Party Reports: The target should summarize any report received from a third party that is materially related to the transaction, and disclose the identity of the third party preparer. In addition, the target should file the report as an exhibit to the Schedule 14D–9, if a Schedule 14D–9 is required to be filed.

List of Subjects

17 CFR Parts 241 and 271

Securities.

17 CFR Part 271

Investment companies, Securities.

Amendments to the Code of Federal Regulations

For the reasons set forth in the release, we are amending title 17,

chapter II of the Code of Federal Regulations as follows:

PART 241—INTERPRETIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

1. Part 241 is amended by adding Release No. 34–43069 and the release date of July 24, 2000 to the list of interpretive releases.

PART 271—INTERPRETIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

2. Part 271 is amended by adding Release No. IC–24564 and the release date of July 24, 2000 to the list of interpretive releases.

Dated: July 24, 2000.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–19189 Filed 7–28–00; 8:45 am]

BILLING CODE 8010–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8894]

RIN 1545–AE41

Loans From a Qualified Employer Plan to Plan Participants or Beneficiaries

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to loans made from a qualified employer plan to plan participants or beneficiaries. These final regulations provide guidance on the application of section 72(p) of the Internal Revenue Code. These regulations affect administrators of, participants in, and beneficiaries of qualified employer plans that permit participants or beneficiaries to receive loans from the plan, including loans from section 403(b) contracts and other contracts issued under qualified employer plans.

DATES: *Effective Date:* These regulations are effective July 31, 2000.

Applicability Date: For dates of applicability, see § 1.72(p)–1, Q&A–22 (a) through (c)(2).

FOR FURTHER INFORMATION CONTACT: Vernon S. Carter, (202) 622–6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations (26 CFR Part 1) under section 72 of the Internal Revenue Code of 1986 (Code). These regulations provide guidance concerning the tax treatment of loans that are deemed to be distributed under section 72(p). Section 72(p) was added by section 236 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 324), and amended by the Technical Corrections Act of 1982 (96 Stat. 2365), the Deficit Reduction Act of 1984 (98 Stat. 494), the Tax Reform Act of 1986 (100 Stat. 2085), and the Technical and Miscellaneous Revenue Act of 1988 (102 Stat. 3342).

On December 21, 1995, a notice of proposed rulemaking (EE–106–82) was published in the **Federal Register** (60 FR 66233) with respect to many of the issues arising under section 72(p)(2). The preamble to the 1995 proposed regulations requested comments on certain issues that were not addressed. Following publication of the 1995 proposed regulations, comments were received and a public hearing was held on June 28, 1996. One of the issues on which comments were requested and received was the effect of a deemed distribution on the tax treatment of subsequent distributions from a plan (such as whether a participant has tax basis as a result of a deemed distribution). After reviewing the written comments and comments made at the public hearing, additional proposed regulations addressing this issue were published January 2, 1998 (REG–209476–82), in the **Federal Register** (63 FR 42). Written comments were received on the 1998 proposed regulations, but no public hearing was requested. After consideration of all comments received on both the 1995 and the 1998 proposed regulations, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

Section 72(p)(1)(A) provides that a loan from a qualified employer plan (including a contract purchased under a qualified employer plan) to a participant or beneficiary is treated as received as a distribution from the plan for purposes of section 72 (a deemed distribution). Section 72(p)(1)(B) provides that an assignment or pledge of (or an agreement to assign or pledge) any portion of a participant's or beneficiary's interest in a qualified employer plan is treated as a loan from the plan.

Section 72(p)(2) provides that section 72(p)(1) does not apply to the extent certain conditions are satisfied. Specifically, under section 72(p)(2), a loan from a qualified employer plan to a participant or beneficiary is not treated as a distribution from the plan if the loan satisfies requirements relating to the term of the loan and the repayment schedule, and to the extent the loan satisfies certain limitations on the amount loaned. For example, except in the case of certain home loans, the exception in section 72(p)(2) only applies to a loan that by its terms is to be repaid over not more than five years in substantially level installments.

For purposes of section 72, a qualified employer plan includes a plan that qualifies under section 401 (relating to qualified trusts), 403(a) (relating to qualified annuities) or 403(b) (relating to tax sheltered annuities [1]), as well as a plan (whether or not qualified) maintained by the United States, a State or a political subdivision thereof, or an agency or instrumentality thereof. A qualified employer plan also includes a plan which was (or was determined to be) a qualified plan or a government plan.

Summary of Comments Received and Changes Made and Summary of the Final Regulations

In general, comments received on the proposed regulations were favorable and, accordingly, the final regulations retain the general structure and substance of the proposed regulations, including a wide variety of examples illustrating the rules in the final regulations. However, commentators made a number of specific recommendations for modifications and clarifications of the regulations. The comments are summarized below, along with the IRS' and Treasury's consideration of those comments.

A. Cure Period for Missed Payments

The 1995 proposed regulations stated that the section 72(p)(2)(C) requirement that repayments be made in level installments at least quarterly would not

[1] With respect to coverage under Title I of the Employee Retirement Income Security Act of 1974 (88 Stat. 829) (ERISA), the Department of Labor (DOL) has advised the IRS that an employer's tax-sheltered annuity program would not necessarily fail to satisfy the Department's regulation at 29 CFR 2510.3–2(f) merely because the employer permits employees to make repayments of loans made in connection with the tax-sheltered annuity program through payroll deductions as part of the employer's payroll deduction system, if the program operates within the limitations set by that regulation.

be violated if payments are not made until the end of a grace period that the plan administrator may allow, but only to the extent the grace period does not continue beyond the last day of the calendar quarter following the calendar quarter in which the required installment payment was due. Commentators suggested that the proposed regulations should specify how the grace period is to be established, such as whether the grace period must be contained in the plan document, a separate loan program that is deemed to be a part of the plan document pursuant to DOL 29 CFR 2550.408b–1(d)(2), or the summary plan description, and whether it is permissible for a plan to have grace periods on a participant by participant basis (so long as this did not discriminate in favor of the highly compensated employees).

Some commentators requested that a plan participant have a reasonable period of time (such as up to 30 days) to cure a default after the plan administrator has sent a notice of default, and that the section 72(p) regulations mandate that the plan administrator send a notice of default within a reasonable period of time (such as 30 days) after it has discovered the default. These commentators suggested that grace and cure periods might be conditioned upon the plan administrator having an appropriate procedure in place for timely identification of defaults and curing defects. Some commentators requested that final regulations permit a plan administrator to use his or her discretion, under special circumstances, to provide a grace period of up to one year from the date of a missed payment.

Many of these suggested changes relate to legal requirements other than section 72(p), such as the application of the fiduciary requirements of ERISA [2] and Federal and state laws that apply to debtors and creditors. The 1995 proposed regulations allowed a grace period up to the end of the next following quarter. Thus, a plan could select a grace period of, for example, 30 days or 90 days and could provide a special notice to the participant concerning the grace period. Thus, many of the suggested changes would involve the imposition of new and complicated rules for which there is no apparent basis in section 72(p) and which would in any case be difficult to enforce and to administer. Accordingly, the final regulations retain the same rules as the proposed regulations. However, the final regulations use the term *cure period* instead of *grace period*.

The final regulations also include a new cross-reference to section 414(u)(4), (relating to military service) which was added to the Code by the Small Business Job Protection Act of 1996 (110 Stat. 1755).

B. Treatment of Loans After Deemed Distribution

The 1998 proposed regulations provide that once a loan is deemed distributed under section 72(p) of the Code, interest that accrues thereafter on that loan is not included in income and, for purposes of calculating the maximum permitted amount of any subsequent loan, a loan that has been deemed distributed is considered outstanding until the loan obligation has been satisfied. The majority of the comments on this issue urged that the positions taken in the 1998 proposed regulations addressing post-default interest be adopted in the final regulations. Some commentators asked that the regulations provide further guidance on or revise the treatment of interest that accrues on a loan that is a deemed distribution under section 72(p), as described in Q&A–19 of the 1998 proposed regulations. Commentators noted that, in the case of a plan that has chosen to permit additional loans after a default that has not been cured, the rule in the proposed regulations requiring interest to be taken into account in determining the maximum amount of any subsequent loan would involve costs to make system and procedural changes to calculate the accrued interest on the defaulted loan for this limited application. Other commentators urged that participants be taxed on the additional interest after a default, either annually or as an accumulated amount at the time of a loan offset, as an incentive for the participant to repay the loan.

One commentator raised the issue of how a deemed distribution would be taken into account in a plan with a graded vesting schedule.

The final regulations generally adopt the rules in the proposed regulations, but the regulations have been revised to indicate that a deemed distribution is not taken into account as a distribution for purposes of the requirements of § 1.411(a)–7(d)(5) (relating to the determination of a participant's account balance if a distribution is made at a time when the participant's vesting percentage may increase).

C. Enforceable Agreement and New Technologies

The 1995 proposed regulations required that a loan be evidenced by a legally enforceable agreement and that the legally enforceable agreement be set forth in writing or in another form approved by the Commissioner. Commentators asked whether a participant needs to sign a loan agreement document and whether loans made electronically, such as over phone or voice response units, would be permitted.

Some comments requested elimination of the requirement that a loan be evidenced by a legally enforceable agreement. However, the final regulations retain this requirement. There is, arguably, no difference between a loan that is not legally enforceable and a cash distribution that the employee is permitted to return to the plan. The final regulations clarify that, as long as a signature is not required in order for the loan to be enforceable under applicable law, the agreement need not be signed.

The final regulations also require the agreement to be set forth in a written paper document or in another form approved by the Commissioner. However, the final regulations also treat this requirement as satisfied if the loan agreement is set forth in any electronic medium that satisfies certain standards. The standards in these final regulations for use of an electronic medium for a loan are the same as the standards for use of an electronic medium for a consent to a distribution under § 1.411(a)–11(f)(2). 65 FR 6001 (February 8, 2000). Specifically, a loan agreement will not fail to satisfy section

[2] The Department of Labor has advised the IRS that, with respect to plans covered by Title I of ERISA, the administration of a participant loan program involves the management of plan assets. Therefore, fiduciary conduct undertaken in the administration of such a loan program must conform to the rules that govern transactions involving plan assets. See, generally, ERISA sections 403, 404, and 406. Fiduciary conduct in the administration of a loan program would include decisions concerning the rules governing the program, including establishing standards to govern the appropriateness of making any particular loan and the appropriate treatment of any defaulted loan. Further, absent an exemption, any loan between a plan covered by Title I of ERISA and a party in interest to the plan (including plan participants and beneficiaries) would constitute a prohibited transaction under section 406(a)(1)(B) of ERISA. DOL has promulgated a regulation at 29 CFR 2550.408b–1 providing guidance regarding the statutory exemption contained in section 408(b)(1) of ERISA for plan loans to parties in interest who are participants or beneficiaries. Further, some loans by plans (whether or not covered under Title I of ERISA) may constitute prohibited transactions under section 4975(c)(1)(B) of the Internal Revenue Code. Under section 102 of Reorganization Plan No. 4 of 1978, (43 FR 47,713) (1978), the Secretary of Labor has jurisdiction to promulgate regulations under section 4975(d)(1) of the Internal Revenue Code, which provides a limited exemption to the prohibition of section 4975(c)(1)(B) of the Internal Revenue Code.

72(p)(2) of the Code merely because the loan agreement is in an electronic medium reasonably accessible to the participant or the beneficiary under a system that is reasonably designed to preclude anyone other than the participant or the beneficiary from requesting a loan, that provides the participant or the beneficiary with a reasonable opportunity to review the terms of the loan and to confirm, modify, or rescind the terms of the loan before the loan is made, and that provides the participant or the beneficiary, within a reasonable period after the loan is made, with a confirmation of the loan terms through a written paper document or an electronic medium.[3] If an electronic medium is used to provide confirmation of the loan terms, the electronic medium must be reasonably accessible to the participant or the beneficiary and the electronic confirmation must be provided under a system reasonably designed to give the confirmation in a manner no less understandable to the participant or the beneficiary than a written paper document. Also, the participant or the beneficiary must be advised of the right to request and to receive a copy of the confirmation on a written paper document without charge.

The Electronic Signatures in Global and National Commerce Act (114 Stat. 464) (the Electronic Signatures Act) was signed on June 30, 2000. Title I of the Electronic Signatures Act, which is generally effective October 1, 2000, applies to certain electronic records and signatures in commerce. In the Notice of Proposed Rulemaking that appears in this issue of the **Federal Register**, comments are requested on the impact of the Electronic Signatures Act on these regulations and on any future guidance that may be needed on the application of the Electronic Signatures Act to plan loan transactions.

D. Mortgage Investment Program

Some commentators requested that the special rule in the 1995 proposed regulations under which section 72(p) would not apply to loans made under a residential mortgage investment program be revised to eliminate the requirement that the loans also be available to nonparticipants. This special rule is not based on an explicit statutory provision, but is based on legislative history[4] indicating the understanding that section 72(p) was not intended to apply to loans made in the ordinary course of a bona fide residential mortgage investment program. The IRS and Treasury have concluded that there is a risk that the intent of the section 72(p)(2) limitations might be thwarted if a category of loans extended solely to participants were not subject to section 72(p). However, the extension of this requirement to otherwise bona fide mortgage investment programs that were in effect at the time the 1995 proposed regulations were issued would be inappropriate and, accordingly, the final regulations permit plans with these preexisting programs to continue to make such loans. The special rule in the final regulations is not intended to provide guidance on whether, or to what extent, a plan that is covered by Title I of ERISA may make such residential mortgage loans available to participants or beneficiaries of the plan without violating the provisions of Title I of ERISA.[5]

E. Other Changes

The requirement that a loan be repaid within five years does not apply to a loan used to acquire a dwelling unit which will within a reasonable time be used as the principal residence of the participant. For this purpose, the 1995 proposed regulations provided that a principal residence has the same meaning as a principal residence under section 1034. To reflect the repeal of section 1034[6] and the use of the same term in section 121, the final regulations provide that a principal residence has the same meaning as a principal residence under section 121.[7]

F. Effective Date of Final Regulations

Both the 1995 and the 1998 proposed regulations were proposed to apply for assignments, pledges, and loans made on or after the first January 1 that is at least six months after the issuance of final regulations. Under certain limited conditions, the 1998 proposed regulations permitted loans made before this proposed general effective date to apply Q&A–19, relating to interest accruing after a deemed distribution, and Q&A–20, relating to basis resulting from repayments after a deemed distribution. Comments on these transition conditions were generally favorable, but one commentator requested that plan sponsors be permitted to rely on these rules for loans made before the general effective date if any reasonable and consistent method had been used to report deemed distributions before the general effective date. The rules in the 1998 proposed regulations for pre-effective date loans included carefully considered, specific conditions in order for such loans to be able to rely on Q&A–19 and Q&A–20 (including several detailed examples illustrating the application of these transition conditions) and these rules have been retained in the final regulations.

Commentators also requested that the general effective date be the first January 1 that is at least 6 or 12 months after the date of the final regulations to allow for proper redesign and testing of plan loan administration systems. Consistent with the proposed effective date and these comments, the final regulations are applicable to assignments, pledges, and loans made on or after January 1, 2002.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Vernon S. Carter, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

[3] Neither the regulations regarding use of electronic medium under section 411 nor these regulations apply for purposes of satisfying the requirements of section 417, including the requirement of section 417(a)(2)(A) that spousal consent be witnessed by a notary public or plan representative.

[4] H.R. Conf. Rep. No. 97–760, 97th Cong., 2d Sess. 620 (1982), 1982–2 C.B. 672 and S. Rep. No. 97–494, 97th Cong., 2d Sess. 319, 321 (1982).

[5] See, for example, PTCE 88–59.

[6] Section 1034 was repealed by section 312(b) of the Taxpayer Relief Act of 1997 (Public Law 105–34) (111 Stat. 788).

[7] Like the 1995 proposed regulations, the final regulations (at Q&A–7) apply the tracing rules of section 163(h)(3) of the Code to trace whether a loan is a principal residence plan loan. Notice 88–74 (1988–2 C.B. 385), sets forth certain standards applicable under section 163(h)(3).

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.72–17A is amended as follows:

1. Paragraphs (d)(1), (d)(2) and (d)(3) are redesignated as paragraphs (d)(2), (d)(3) and (d)(4), respectively.

2. New paragraph (d)(1) is added.

The addition reads as follows:

§ 1.72–17A Special rules applicable to employee annuities and distributions under deferred compensation plans to self-employed individuals and owner-employees.

* * * * *

(d) * * * (1) The references in this paragraph (d) to section 72(m)(4) are to that section as in effect on August 13, 1982. Section 236(b)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 324) repealed section 72(m)(4), generally effective for assignments, pledges and loans made after August 13, 1982, and added section 72(p). See section 72(p) and § 1.72(p)–1 for rules governing the income tax treatment of certain assignments, pledges and loans from qualified employer plans made after August 13, 1982.

* * * * *

Par. 3. Section 1.72(p)–1 is added to read as follows:

§ 1.72(p)–1 Loans treated as distributions.

The questions and answers in this section provide guidance under section 72(p) pertaining to loans from qualified employer plans (including government plans and tax-sheltered annuities and employer plans that were formerly qualified). The examples included in the questions and answers in this section are based on the assumption that a bona fide loan is made to a participant from a qualified defined contribution plan pursuant to an enforceable agreement (in accordance with paragraph (b) of Q&A–3 of this section), with adequate security and with an interest rate and repayment terms that are commercially reasonable. (The particular interest rate used, which is solely for illustration, is 8.75 percent compounded annually.) In addition, unless the contrary is specified, it is assumed in the examples that the amount of the loan does not exceed 50 percent of the participant's nonforfeitable account balance, the participant has no other outstanding loan (and had no prior loan) from the plan or any other plan maintained by the participant's employer or any other person required to be aggregated with the employer under section 414(b), (c) or (m), and the loan is not excluded from section 72(p) as a loan made in the ordinary course of an investment program as described in Q&A–18 of this section. The regulations and examples in this section do not provide guidance on whether a loan from a plan would result in a prohibited transaction under section 4975 of the Internal Revenue Code or on whether a loan from a plan covered by Title I of the Employee Retirement Income Security Act of 1974 (88 Stat. 829) (ERISA) would be consistent with the fiduciary standards of ERISA or would result in a prohibited transaction under section 406 of ERISA. The questions and answers are as follows:

Q–1: In general, what does section 72(p) provide with respect to loans from a qualified employer plan?

A–1: (a) *Loans.* Under section 72(p), an amount received by a participant or beneficiary as a loan from a qualified employer plan is treated as having been received as a distribution from the plan (a deemed distribution), unless the loan satisfies the requirements of Q&A–3 of this section. For purposes of section 72(p) and this section, a loan made from a contract that has been purchased under a qualified employer plan (including a contract that has been distributed to the participant or beneficiary) is considered a loan made under a qualified employer plan.

(b) *Pledges and assignments.* Under section 72(p), if a participant or beneficiary assigns or pledges (or agrees to assign or pledge) any portion of his or her interest in a qualified employer plan as security for a loan, the portion of the individual's interest assigned or pledged (or subject to an agreement to assign or pledge) is treated as a loan from the plan to the individual, with the result that such portion is subject to the deemed distribution rule described in paragraph (a) of this Q&A–1. For purposes of section 72(p) and this section, any assignment or pledge of (or agreement to assign or to pledge) any portion of a participant's or beneficiary's interest in a contract that has been purchased under a qualified employer plan (including a contract that has been distributed to the participant or beneficiary) is considered an assignment or pledge of (or agreement to assign or pledge) an interest in a qualified employer plan. However, if all or a portion of a participant's or beneficiary's interest in a qualified employer plan is pledged or assigned as security for a loan from the plan to the participant or the beneficiary, only the amount of the loan received by the participant or the beneficiary, not the amount pledged or assigned, is treated as a loan.

Q–2: What is a qualified employer plan for purposes of section 72(p)?

A–2: For purposes of section 72(p) and this section, a qualified employer plan means—

(a) A plan described in section 401(a) which includes a trust exempt from tax under section 501(a);

(b) An annuity plan described in section 403(a);

(c) A plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b);

(d) Any plan, whether or not qualified, established and maintained for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of the United States, a State or a political subdivision of a State; or

(e) Any plan which was (or was determined to be) described in paragraph (a), (b), (c), or (d) of this Q&A–2.

Q–3: What requirements must be satisfied in order for a loan to a participant or beneficiary from a qualified employer plan not to be a deemed distribution?

A–3: (a) *In general.* A loan to a participant or beneficiary from a qualified employer plan will not be a deemed distribution to the participant or beneficiary if the loan satisfies the repayment term requirement of section 72(p)(2)(B), the level amortization requirement of section 72(p)(2)(C), and the enforceable agreement requirement of paragraph (b) of this Q&A–3, but only to the extent the loan satisfies the amount limitations of section 72(p)(2)(A).

(b) *Enforceable agreement requirement.* A loan does not satisfy the requirements of this paragraph unless the loan is evidenced by a legally enforceable agreement (which may include more than one document) and the terms of the agreement demonstrate compliance with the requirements of section 72(p)(2) and this section. Thus, the agreement must specify the amount and date of the loan and the repayment schedule. The agreement does not have to be signed if the agreement is enforceable under applicable law without being signed. The agreement must be set forth either—

(1) In a written paper document;

(2) In an electronic medium that is reasonably accessible to the participant or the beneficiary and that is provided under a system that satisfies the following requirements:

(i) The system must be reasonably designed to preclude any individual other than the participant or the beneficiary from requesting a loan.

(ii) The system must provide the participant or the beneficiary with a reasonable opportunity to review and to confirm, modify, or rescind the terms of the loan before the loan is made.

(iii) The system must provide the participant or the beneficiary, within a reasonable time after the loan is made, a confirmation of the loan terms either through a written paper document or through an electronic medium that is reasonably accessible to the participant or the beneficiary and that is provided under a system that is reasonably designed to provide the confirmation in a manner no less understandable to the participant or beneficiary than a written document and, under which, at the time the confirmation is provided, the participant or the beneficiary is advised that he or she may request and receive a written paper document at no charge, and, upon request, that document is provided to the participant or beneficiary at no charge; or

(3) In such other form as may be approved by the Commissioner.

Q–4: If a loan from a qualified employer plan to a participant or beneficiary fails to satisfy the requirements of Q&A–3 of this section, when does a deemed distribution occur?

A–4: (a) *Deemed distribution.* For purposes of section 72, a deemed distribution occurs at the first time that the requirements of Q&A–3 of this section are not satisfied, in form or in operation. This may occur at the time the loan is made or at a later date. If the terms of the loan do not require repayments that satisfy the repayment term requirement of section 72(p)(2)(B) or the level amortization requirement of section 72(p)(2)(C), or the loan is not evidenced by an enforceable agreement satisfying the requirements of paragraph (b) of Q&A–3 of this section, the entire amount of the loan is a deemed distribution under section 72(p) at the time the loan is made. If the loan satisfies the requirements of Q&A–3 of this section except that the amount loaned exceeds the limitations of section 72(p)(2)(A), the amount of the loan in excess of the applicable limitation is a deemed distribution under section 72(p) at the time the loan is made. If the loan initially satisfies the requirements of section 72(p)(2)(A), (B) and (C) and the enforceable agreement requirement of paragraph (b) of Q&A–3 of this section, but payments are not made in accordance with the terms applicable to the loan, a deemed distribution occurs as a result of the failure to make such payments. See Q&A–10 of this section regarding when such a deemed distribution occurs and the amount thereof and Q&A–11 of this section regarding the tax treatment of a deemed distribution.

(b) *Examples.* The following examples illustrate the rules in paragraph (a) of this Q&A–4 and are based upon the assumptions described in the introductory text of this section:

Example 1. (i) A participant has a nonforfeitable account balance of $200,000 and receives $70,000 as a loan repayable in level quarterly installments over five years.

(ii) Under section 72(p), the participant has a deemed distribution of $20,000 (the excess of $70,000 over $50,000) at the time of the loan, because the loan exceeds the $50,000 limit in section 72(p)(2)(A)(i). The remaining $50,000 is not a deemed distribution.

Example 2. (i) A participant with a nonforfeitable account balance of $30,000 borrows $20,000 as a loan repayable in level monthly installments over five years.

(ii) Because the amount of the loan is $5,000 more than 50% of the participant's nonforfeitable account balance, the participant has a deemed distribution of $5,000 at the time of the loan. The remaining $15,000 is not a deemed distribution. (Note also that, if the loan is secured solely by the participant's account balance, the loan may be a prohibited transaction under section 4975 because the loan may not satisfy 29 CFR 2550.408b–1(f)(2).)

Example 3. (i) The nonforfeitable account balance of a participant is $100,000 and a $50,000 loan is made to the participant repayable in level quarterly installments over seven years. The loan is not eligible for the section 72(p)(2)(B)(ii) exception for loans used to acquire certain dwelling units.

(ii) Because the repayment period exceeds the maximum five-year period in section 72(p)(2)(B)(i), the participant has a deemed distribution of $50,000 at the time the loan is made.

Example 4. (i) On August 1, 2002, a participant has a nonforfeitable account balance of $45,000 and borrows $20,000 from a plan to be repaid over five years in level monthly installments due at the end of each month. After making monthly payments through July 2003, the participant fails to make any of the payments due thereafter.

(ii) As a result of the failure to satisfy the requirement that the loan be repaid in level monthly installments, the participant has a deemed distribution. See paragraph (c) of Q&A–10 of this section regarding when such a deemed distribution occurs and the amount thereof.

Q–5: What is a principal residence for purposes of the exception in section 72(p)(2)(B)(ii) from the requirement that a loan be repaid in five years?

A–5: Section 72(p)(2)(B)(ii) provides that the requirement in section 72(p)(2)(B)(i) that a plan loan be repaid within five years does not apply to a loan used to acquire a dwelling unit which will within a reasonable time be used as the principal residence of the participant (a principal residence plan loan). For this purpose, a principal residence has the same meaning as a principal residence under section 121.

Q–6: In order to satisfy the requirements for a principal residence plan loan, is a loan required to be secured by the dwelling unit that will within a reasonable time be used as the principal residence of the participant?

A–6: A loan is not required to be secured by the dwelling unit that will within a reasonable time be used as the participant's principal residence in order to satisfy the requirements for a principal residence plan loan.

Q–7: What tracing rules apply in determining whether a loan qualifies as a principal residence plan loan?

A–7: The tracing rules established under section 163(h)(3)(B) apply in determining whether a loan is treated as for the acquisition of a principal residence in order to qualify as a principal residence plan loan.

Q–8: Can a refinancing qualify as a principal residence plan loan?

A–8: (a) *Refinancings.* In general, no, a refinancing cannot qualify as a principal residence plan loan. However, a loan from a qualified employer plan used to repay a loan from a third party will qualify as a principal residence plan loan if the plan loan qualifies as a principal residence plan loan without regard to the loan from the third party.

(b) *Example.* The following example illustrates the rules in paragraph (a) of this Q&A–8 and is based upon the assumptions described in the introductory text of this section:

Example. (i) On July 1, 2003, a participant requests a $50,000 plan loan to be repaid in level monthly installments over 15 years. On August 1, 2003, the participant acquires a principal residence and pays a portion of the purchase price with a $50,000 bank loan. On September 1, 2003, the plan loans $50,000 to the participant, which the participant uses to pay the bank loan.

(ii) Because the plan loan satisfies the requirements to qualify as a principal residence plan loan (taking into account the tracing rules of section 163(h)(3)(B)), the plan loan qualifies for the exception in section 72(p)(2)(B)(ii).

Q–9: Does the level amortization requirement of section 72(p)(2)(C) apply when a participant is on a leave of absence without pay?

A–9: (a) *Leave of absence.* The level amortization requirement of section

72(p)(2)(C) does not apply for a period, not longer than one year (or such longer period as may apply under section 414(u)), that a participant is on a bona fide leave of absence, either without pay from the employer or at a rate of pay (after income and employment tax withholding) that is less than the amount of the installment payments required under the terms of the loan. However, the loan (including interest that accrues during the leave of absence) must be repaid by the latest date permitted under section 72(p)(2)(B) (*e.g.*, the suspension of payments cannot extend the term of the loan beyond 5 years, in the case of a loan that is not a principal residence plan loan) and the amount of the installments due after the leave ends (or, if earlier, after the first year of the leave or such longer period as may apply under section 414(u)) must not be less than the amount required under the terms of the original loan.

(b) *Military service.* See section 414(u)(4) for special rules relating to military service.

(c) *Example.* The following example illustrates the rules of paragraph (a) of this Q&A–9 and is based upon the assumptions described in the introductory text of this section:

Example. (i) On July 1, 2002, a participant with a nonforfeitable account balance of $80,000 borrows $40,000 to be repaid in level monthly installments of $825 each over 5 years. The loan is not a principal residence plan loan. The participant makes 9 monthly payments and commences an unpaid leave of absence that lasts for 12 months. Thereafter, the participant resumes active employment and resumes making repayments on the loan until the loan is repaid in full (including interest that accrued during the leave of absence). The amount of each monthly installment is increased to $1,130 in order to repay the loan by June 30, 2007.

(ii) Because the loan satisfies the requirements of section 72(p)(2), the participant does not have a deemed distribution. Alternatively, section 72(p)(2) would be satisfied if the participant continued the monthly installments of $825 after resuming active employment and on June 30, 2007 repaid the full balance remaining due.

Q–10: If a participant fails to make the installment payments required under the terms of a loan that satisfied the requirements of Q&A–3 of this section when made, when does a deemed distribution occur and what is the amount of the deemed distribution?

A–10: (a) *Timing of deemed distribution.* Failure to make any installment payment when due in accordance with the terms of the loan violates section 72(p)(2)(C) and, accordingly, results in a deemed distribution at the time of such failure. However, the plan administrator may allow a cure period and section 72(p)(2)(C) will not be considered to have been violated if the installment payment is made not later than the end of the cure period, which period cannot continue beyond the last day of the calendar quarter following the calendar quarter in which the required installment payment was due.

(b) *Amount of deemed distribution.* If a loan satisfies Q&A–3 of this section when made, but there is a failure to pay the installment payments required under the terms of the loan (taking into account any cure period allowed under paragraph (a) of this Q&A–10), then the amount of the deemed distribution equals the entire outstanding balance of the loan (including accrued interest) at the time of such failure.

(c) *Example.* The following example illustrates the rules in paragraphs (a) and (b) of this Q&A–10 and is based upon the assumptions described in the introductory text of this section:

Example. (i) On August 1, 2002, a participant has a nonforfeitable account balance of $45,000 and borrows $20,000 from a plan to be repaid over 5 years in level monthly installments due at the end of each month. After making all monthly payments due through July 31, 2003, the participant fails to make the payment due on August 31, 2003 or any other monthly payments due thereafter. The plan administrator allows a three-month cure period.

(ii) As a result of the failure to satisfy the requirement that the loan be repaid in level installments pursuant to section 72(p)(2)(C), the participant has a deemed distribution on November 30, 2003, which is the last day of the three-month cure period for the August 31, 2003 installment. The amount of the deemed distribution is $17,157, which is the outstanding balance on the loan at November 30, 2003. Alternatively, if the plan administrator had allowed a cure period through the end of the next calendar quarter, there would be a deemed distribution on December 31, 2003 equal to $17,282, which is the outstanding balance of the loan at December 31, 2003.

Q–11: Does section 72 apply to a deemed distribution as if it were an actual distribution?

A–11: (a) *Tax basis.* If the employee's account includes after-tax contributions or other investment in the contract under section 72(e), section 72 applies to a deemed distribution as if it were an actual distribution, with the result that all or a portion of the deemed distribution may not be taxable.

(b) *Section 72(t) and (m).* Section 72(t) (which imposes a 10 percent tax on certain early distributions) and section 72(m)(5) (which imposes a separate 10 percent tax on certain amounts received by a 5-percent owner) apply to a deemed distribution under section 72(p) in the same manner as if the deemed distribution were an actual distribution.

Q–12: Is a deemed distribution under section 72(p) treated as an actual distribution for purposes of the qualification requirements of section 401, the distribution provisions of section 402, the distribution restrictions of section 401(k)(2)(B) or 403(b)(11), or the vesting requirements of § 1.411(a)–7(d)(5) (which affects the application of a graded vesting schedule in cases involving a prior distribution)?

A–12: No; thus, for example, if a participant in a money purchase plan who is an active employee has a deemed distribution under section 72(p), the plan will not be considered to have made an in-service distribution to the participant in violation of the qualification requirements applicable to money purchase plans. Similarly, the deemed distribution is not eligible to be rolled over to an eligible retirement plan and is not considered an impermissible distribution of an amount attributable to elective contributions in a section 401(k) plan. See also § 1.402(c)–2, Q&A–4(d) and § 1.401(k)–1(d)(6)(ii).

Q–13: How does a reduction (offset) of an account balance in order to repay a plan loan differ from a deemed distribution?

A–13: (a) *Difference between deemed distribution and plan loan offset amount.* (1) Loans to a participant from a qualified employer plan can give rise to two types of taxable distributions—

(i) A deemed distribution pursuant to section 72(p); and

(ii) A distribution of an offset amount.

(2) As described in Q&A–4 of this section, a deemed distribution occurs when the requirements of Q&A–3 of this section are not satisfied, either when the loan is made or at a later time. A deemed distribution is treated as a distribution to the participant or beneficiary only for certain tax purposes and is not a distribution of the accrued benefit. A distribution of a plan loan offset amount (as defined in § 1.402(c)–2, Q&A–9(b)) occurs when, under the terms governing a plan loan, the accrued benefit of the participant or beneficiary is reduced (offset) in order to repay the loan (including the enforcement of the plan's security interest in the accrued benefit). A distribution of a plan loan offset amount could occur in a variety of circumstances, such as where the terms governing the plan loan require that, in the event of the participant's request for a distribution, a loan be repaid immediately or treated as in default.

(b) *Plan loan offset.* In the event of a plan loan offset, the amount of the

account balance that is offset against the loan is an actual distribution for purposes of the Internal Revenue Code, not a deemed distribution under section 72(p). Accordingly, a plan may be prohibited from making such an offset under the provisions of section 401(a), 401(k)(2)(B) or 403(b)(11) prohibiting or limiting distributions to an active employee. See § 1.402(c)–2, Q&A–9(c), *Example 6*. See also Q&A–19 of this section for rules regarding the treatment of a loan after a deemed distribution.

Q–14: How is the amount includible in income as a result of a deemed distribution under section 72(p) required to be reported?

A–14: The amount includible in income as a result of a deemed distribution under section 72(p) is required to be reported on Form 1099–R (or any other form prescribed by the Commissioner).

Q–15: What withholding rules apply to plan loans?

A–15: To the extent that a loan, when made, is a deemed distribution or an account balance is reduced (offset) to repay a loan, the amount includible in income is subject to withholding. If a deemed distribution of a loan or a loan repayment by benefit offset results in income at a date after the date the loan is made, withholding is required only if a transfer of cash or property (excluding employer securities) is made to the participant or beneficiary from the plan at the same time. See §§ 35.3405–1, f–4, and 31.3405(c)–1, Q&A–9 and Q&A–11, of this chapter for further guidance on withholding rules.

Q–16: If a loan fails to satisfy the requirements of Q&A–3 of this section and is a prohibited transaction under section 4975, is the deemed distribution of the loan under section 72(p) a correction of the prohibited transaction?

A–16: No, a deemed distribution is not a correction of a prohibited transaction under section 4975. See §§ 141.4975–13 and 53.4941(e)–1(c)(1) of this chapter for guidance concerning correction of a prohibited transaction.

Q–17: What are the income tax consequences if an amount is transferred from a qualified employer plan to a participant or beneficiary as a loan, but there is an express or tacit understanding that the loan will not be repaid?

A–17: If there is an express or tacit understanding that the loan will not be repaid or, for any reason, the transaction does not create a debtor-creditor relationship or is otherwise not a bona fide loan, then the amount transferred is treated as an actual distribution from the plan for purposes of the Internal Revenue Code, and is not treated as a loan or as a deemed distribution under section 72(p).

Q–18: If a qualified employer plan maintains a program to invest in residential mortgages, are loans made pursuant to the investment program subject to section 72(p)?

A–18: (a) Residential mortgage loans made by a plan in the ordinary course of an investment program are not subject to section 72(p) if the property acquired with the loans is the primary security for such loans and the amount loaned does not exceed the fair market value of the property. An investment program exists only if the plan has established, in advance of a specific investment under the program, that a certain percentage or amount of plan assets will be invested in residential mortgages available to persons purchasing the property who satisfy commercially customary financial criteria. A loan will not be considered as made under an investment program if—

(1) Any of the loans made under the program matures upon a participant's termination from employment;

(2) Any of the loans made under the program is an earmarked asset of a participant's or beneficiary's individual account in the plan; or

(3) The loans made under the program are made available only to participants or beneficiaries in the plan.

(b) Paragraph (a)(3) of this Q&A–18 shall not apply to a plan which, on December 20, 1995, and at all times thereafter, has had in effect a loan program under which, but for paragraph (a)(3) of this Q&A–18, the loans comply with the conditions of paragraph (a) of this Q&A–18 to constitute residential mortgage loans in the ordinary course of an investment program.

(c) No loan that benefits an officer, director, or owner of the employer maintaining the plan, or their beneficiaries, will be treated as made under an investment program.

(d) This section does not provide guidance on whether a residential mortgage loan made under a plan's investment program would result in a prohibited transaction under section 4975, or on whether such a loan made by a plan covered by Title I of ERISA would be consistent with the fiduciary standards of ERISA or would result in a prohibited transaction under section 406 of ERISA. See 29 CFR 2550.408b–1.

Q–19: If there is a deemed distribution under section 72(p), is the interest that accrues thereafter on the amount of the deemed distribution an indirect loan for income tax purposes?

A–19: (a) *General rule.* Except as provided in paragraph (b) of this Q&A–19, a deemed distribution of a loan is treated as a distribution for purposes of section 72. Therefore, a loan that is deemed to be distributed under section 72(p) ceases to be an outstanding loan for purposes of section 72, and the interest that accrues thereafter under the plan on the amount deemed distributed is disregarded in applying section 72 to the participant or beneficiary. Even though interest continues to accrue on the outstanding loan (and is taken into account for purposes of determining the tax treatment of any subsequent loan in accordance with paragraph (b) of this Q&A–19), this additional interest is not treated as an additional loan (and, thus, does not result in an additional deemed distribution) for purposes of section 72(p). However, a loan that is deemed distributed under section 72(p) is not considered distributed for all purposes of the Internal Revenue Code. See Q&A–11 through Q&A–16 of this section.

(b) *Exception for purposes of applying section 72(p)(2)(A) to a subsequent loan.* In the case of a loan that is deemed distributed under section 72(p) and that has not been repaid (such as by a plan loan offset), the unpaid amount of such loan, including accrued interest, is considered outstanding for purposes of applying section 72(p)(2)(A) to determine the maximum amount of any subsequent loan to the participant or beneficiary.

Q–20: May a participant refinance an outstanding loan or have more than one loan outstanding from a plan?

A–20: [Reserved]

Q–21: Is a participant's tax basis under the plan increased if the participant repays the loan after a deemed distribution?

A–21: (a) *Repayments after deemed distribution.* Yes, if the participant or beneficiary repays the loan after a deemed distribution of the loan under section 72(p), then, for purposes of section 72(e), the participant's or beneficiary's investment in the contract (tax basis) under the plan increases by the amount of the cash repayments that the participant or beneficiary makes on the loan after the deemed distribution. However, loan repayments are not treated as after-tax contributions for other purposes, including sections 401(m) and 415(c)(2)(B).

(b) *Example.* The following example illustrates the rules in paragraph (a) of this Q&A–21 and is based on the assumptions described in the introductory text of this section:

Example. (i) A participant receives a $20,000 loan on January 1, 2003, to be repaid in 20 quarterly installments of $1,245 each.

On December 31, 2003, the outstanding loan balance ($19,179) is deemed distributed as a result of a failure to make quarterly installment payments that were due on September 30, 2003 and December 31, 2003. On June 30, 2004, the participant repays $5,147 (which is the sum of the three installment payments that were due on September 30, 2003, December 31, 2003, and March 31, 2004, with interest thereon to June 30, 2004, plus the installment payment due on June 30, 2004). Thereafter, the participant resumes making the installment payments of $1,245 from September 30, 2004 through December 31, 2007. The loan repayments made after December 31, 2003 through December 31, 2007 total $22,577.

(ii) Because the participant repaid $22,577 after the deemed distribution that occurred on December 31, 2003, the participant has investment in the contract (tax basis) equal to $22,577 (14 payments of $1,245 each plus a single payment of $5,147) as of December 31, 2007.

Q–22: When is the effective date of section 72(p) and the regulations in this section?

A–22: (a) *Statutory effective date.* Section 72(p) generally applies to assignments, pledges, and loans made after August 13, 1982.

(b) *Regulatory effective date.* This section applies to assignments, pledges, and loans made on or after January 1, 2002.

(c) *Loans made before the regulatory effective date*—(1) *General rule.* A plan is permitted to apply Q&A–19 and Q&A–21 of this section to a loan made before the regulatory effective date in paragraph (b) of this Q&A–22 (and after the statutory effective date in paragraph (a) of this Q&A–22) if there has not been any deemed distribution of the loan before the transition date or if the conditions of paragraph (c)(2) of this Q&A–22 are satisfied with respect to the loan.

(2) *Consistency transition rule for certain loans deemed distributed before the regulatory effective date.* (i) The rules in this paragraph (c)(2) of this Q&A–22 apply to a loan made before the regulatory effective date in paragraph (b) of this Q&A–22 (and after the statutory effective date in paragraph (a) of this Q&A–22) if there has been any deemed distribution of the loan before the transition date.

(ii) The plan is permitted to apply Q&A–19 and Q&A–21 of this section to the loan beginning on any January 1, but only if the plan reported, in Box 1 of Form 1099–R, for a taxable year no later than the latest taxable year that would be permitted under this section (if this section had been in effect for all loans made after the statutory effective date in paragraph (a) of this Q&A–22), a gross distribution of an amount at least equal to the initial default amount. For purposes of this section, the initial default amount is the amount that would be reported as a gross distribution under Q&A–4 and Q&A–10 of this section and the transition date is the January 1 on which a plan begins applying Q&A–19 and Q&A–21 of this section to a loan.

(iii) If a plan applies Q&A–19 and Q&A–21 of this section to such a loan, then the plan, in its reporting and withholding on or after the transition date, must not attribute investment in the contract (tax basis) to the participant or beneficiary based upon the initial default amount.

(iv) This paragraph (c)(2)(iv) of this Q&A–22 applies if—

(A) The plan attributed investment in the contract (tax basis) to the participant or beneficiary based on the deemed distribution of the loan;

(B) The plan subsequently made an actual distribution to the participant or beneficiary before the transition date; and

(C) Immediately before the transition date, the initial default amount (or, if less, the amount of the investment in the contract so attributed) exceeds the participant's or beneficiary's investment in the contract (tax basis). If this paragraph (c)(2)(iv) of this Q&A–22 applies, the plan must treat the excess (the loan transition amount) as a loan amount that remains outstanding and must include the excess in the participant's or beneficiary's income at the time of the first actual distribution made on or after the transition date.

(3) *Examples.* The rules in paragraph (c)(2) of this Q&A–22 are illustrated by the following examples, which are based on the assumptions described in the introductory text of this section (and, except as specifically provided in the examples, also assume that no distributions are made to the participant and that the participant has no investment in the contract with respect to the plan). *Example 1, Example 2,* and *Example 4* of this paragraph (c)(3) of this Q&A–22 illustrate the application of the rules in paragraph (c)(2) of this Q&A–22 to a plan that, before the transition date, did not treat interest accruing after the initial deemed distribution as resulting in additional deemed distributions under section 72(p). Example 3 of this paragraph (c)(3) of this Q&A–22 illustrates the application of the rules in paragraph (c)(2) of this Q&A–22 to a plan that, before the transition date, treated interest accruing after the initial deemed distribution as resulting in additional deemed distributions under section 72(p). The examples are as follows:

Example 1. (i) In 1998, when a participant's account balance under a plan is $50,000, the participant receives a loan from the plan. The participant makes the required repayments until 1999 when there is a deemed distribution of $20,000 as a result of a failure to repay the loan. For 1999, as a result of the deemed distribution, the plan reports, in Box 1 of Form 1099–R, a gross distribution of $20,000 (which is the initial default amount in accordance with paragraph (c)(2)(ii) of this Q&A–22) and, in Box 2 of Form 1099–R, a taxable amount of $20,000. The plan then records an increase in the participant's tax basis for the same amount ($20,000). Thereafter, the plan disregards, for purposes of section 72, the interest that accrues on the loan after the 1999 deemed distribution. Thus, as of December 31, 2001, the total taxable amount reported by the plan as a result of the deemed distribution is $20,000 and the plan's records show that the participant's tax basis is the same amount ($20,000). As of January 1, 2002, the plan decides to apply Q&A–19 of this section to the loan. Accordingly, it reduces the participant's tax basis by the initial default amount of $20,000, so that the participant's remaining tax basis in the plan is zero. Thereafter, the amount of the outstanding loan is not treated as part of the account balance for purposes of section 72. The participant attains age 59½ in the year 2003 and receives a distribution of the full account balance under the plan consisting of $60,000 in cash and the loan receivable. At that time, the plan's records reflect an offset of the loan amount against the loan receivable in the participant's account and a distribution of $60,000 in cash.

(ii) For the year 2003, the plan must report a gross distribution of $60,000 in Box 1 of Form 1099–R and a taxable amount of $60,000 in Box 2 of Form 1099–R.

Example 2. (i) The facts are the same as in *Example 1,* except that in 1999, immediately prior to the deemed distribution, the participant's account balance under the plan totals $50,000 and the participant's tax basis is $10,000. For 1999, the plan reports, in Box 1 of Form 1099–R, a gross distribution of $20,000 (which is the initial default amount in accordance with paragraph (c)(2)(ii) of this Q&A–22) and reports, in Box 2 of Form 1099–R, a taxable amount of $16,000 (the $20,000 deemed distribution minus $4,000 of tax basis ($10,000 times ($20,000/$50,000)) allocated to the deemed distribution). The plan then records an increase in tax basis equal to the $20,000 deemed distribution, so that the participant's remaining tax basis as of December 31, 1999, totals $26,000 ($10,000 minus $4,000 plus $20,000). Thereafter, the plan disregards, for purposes of section 72, the interest that accrues on the loan after the 1999 deemed distribution. Thus, as of December 31, 2001, the total taxable amount reported by the plan as a result of the deemed distribution is $16,000 and the plan's records show that the participant's tax basis is $26,000. As of January 1, 2002, the plan decides to apply Q&A–19 of this section to the loan. Accordingly, it reduces the participant's tax basis by the initial default amount of $20,000, so that the participant's

remaining tax basis in the plan is $6,000. Thereafter, the amount of the outstanding loan is not treated as part of the account balance for purposes of section 72. The participant attains age 59½ in the year 2003 and receives a distribution of the full account balance under the plan consisting of $60,000 in cash and the loan receivable. At that time, the plan's records reflect an offset of the loan amount against the loan receivable in the participant's account and a distribution of $60,000 in cash.

(ii) For the year 2003, the plan must report a gross distribution of $60,000 in Box 1 of Form 1099–R and a taxable amount of $54,000 in Box 2 of Form 1099–R.

Example 3. (i) In 1993, when a participant's account balance in a plan is $100,000, the participant receives a loan of $50,000 from the plan. The participant makes the required loan repayments until 1995 when there is a deemed distribution of $28,919 as a result of a failure to repay the loan. For 1995, as a result of the deemed distribution, the plan reports, in Box 1 of Form 1099–R, a gross distribution of $28,919 (which is the initial default amount in accordance with paragraph (c)(2)(ii) of this Q&A–22) and, in Box 2 of Form 1099–R, a taxable amount of $28,919. For 1995, the plan also records an increase in the participant's tax basis for the same amount ($28,919). Each year thereafter through 2001, the plan reports a gross distribution equal to the interest accruing that year on the loan balance, reports a taxable amount equal to the interest accruing that year on the loan balance reduced by the participant's tax basis allocated to the gross distribution, and records a net increase in the participant's tax basis equal to that taxable amount. As of December 31, 2001, the taxable amount reported by the plan as a result of the loan totals $44,329 and the plan's records for purposes of section 72 show that the participant's tax basis totals the same amount ($44,329). As of January 1, 2002, the plan decides to apply Q&A–19 of this section. Accordingly, it reduces the participant's tax basis by the initial default amount of $28,919, so that the participant's remaining tax basis in the plan is $15,410 ($44,329 minus $28,919). Thereafter, the amount of the outstanding loan is not treated as part of the account balance for purposes of section 72. The participant attains age 59½ in the year 2003 and receives a distribution of the full account balance under the plan consisting of $180,000 in cash and the loan receivable equal to the $28,919 outstanding loan amount in 1995 plus interest accrued thereafter to the payment date in 2003. At that time, the plan's records reflect an offset of the loan amount against the loan receivable in the participant's account and a distribution of $180,000 in cash.

(ii) For the year 2003, the plan must report a gross distribution of $180,000 in Box 1 of Form 1099–R and a taxable amount of $164,590 in Box 2 of Form 1099–R ($180,000 minus the remaining tax basis of $15,410).

Example 4. (i) The facts are the same as in Example 1, except that in 2000, after the deemed distribution, the participant receives a $10,000 hardship distribution. At the time of the hardship distribution, the participant's account balance under the plan totals $50,000. For 2000, the plan reports, in Box 1 of Form 1099–R, a gross distribution of $10,000 and, in Box 2 of Form 1099–R, a taxable amount of $6,000 (the $10,000 actual distribution minus $4,000 of tax basis ($10,000 times ($20,000/$50,000)) allocated to this actual distribution). The plan then records a decrease in tax basis equal to $4,000, so that the participant's remaining tax basis as of December 31, 2000, totals $16,000 ($20,000 minus $4,000). After 1999, the plan disregards, for purposes of section 72, the interest that accrues on the loan after the 1999 deemed distribution. Thus, as of December 31, 2001, the total taxable amount reported by the plan as a result of the deemed distribution plus the 2000 actual distribution is $26,000 and the plan's records show that the participant's tax basis is $16,000. As of January 1, 2002, the plan decides to apply Q&A–19 of this section to the loan. Accordingly, it reduces the participant's tax basis by the initial default amount of $20,000, so that the participant's remaining tax basis in the plan is reduced from $16,000 to zero. However, because the $20,000 initial default amount exceeds $16,000, the plan records a loan transition amount of $4,000 ($20,000 minus $16,000). Thereafter, the amount of the outstanding loan, other than the $4,000 loan transition amount, is not treated as part of the account balance for purposes of section 72. The participant attains age 59½ in the year 2003 and receives a distribution of the full account balance under the plan consisting of $60,000 in cash and the loan receivable. At that time, the plan's records reflect an offset of the loan amount against the loan receivable in the participant's account and a distribution of $60,000 in cash.

(ii) In accordance with paragraph (c)(2)(iv) of this Q&A–22, the plan must report in Box 1 of Form 1099–R a gross distribution of $64,000 and in Box 2 of Form 1099–R a taxable amount for the participant for the year 2003 equal to $64,000 (the sum of the $60,000 paid in the year 2003 plus $4,000 as the loan transition amount).

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: July 13, 2000.

Jonathan Talisman,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–18815 Filed 7–28–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 08–99–066]

RIN 2115–AE46

Special Local Regulations; Eighth Coast Guard District Annual Marine Events

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising its list of annual marine events that occur within the Eighth Coast Guard District. This action is being taken to ensure the safety of life and property during each event, while avoiding the necessity of publishing a separate temporary regulation each year for each event. This list reflects the approximate dates and locations of each annual recurring marine event.

DATES: This Final Rule will become effective September 29, 2000.

FOR FURTHER INFORMATION CONTACT: Project Attorney, Lieutenant Junior Grade Curtis Borland at Commander (dl), Eighth Coast Guard District, 501 Magazine Street, New Orleans, LA 70130–3396, (504) 589–6188.

SUPPLEMENTARY INFORMATION:

Regulatory Information

A notice of proposed rulemaking (NPRM) was published on 28 April 2000 proposing to revise Table 1 to 33 CFR 100.801, the list of annual marine events that occur within the Eighth Coast Guard District. The Coast Guard received no comments on the proposed rulemaking. A public hearing was not requested and one was not held.

Background and Purpose

This rulemaking updates the existing list of anticipated annual marine events in the Eighth Coast Guard District.

Discussion of Comments and Changes

No comments were received in response to the NPRM. The Coast Guard has added new events and updated all event descriptions, as reported by the sponsor of the event.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT was unnecessary. The economic impact is not significant because this rule serves only to update an already existing list of marine events and does not change the process for reviewing such occurrences.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this 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, operated, and not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The segment of the listed waterways regulated is the minimum necessary to assure the safety of life and property on or adjacent to navigable waters. These regulations are relatively brief in duration and will only affect marine traffic. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard is revising its list of recurring marine events. The listing itself will not affect the environment. When an event application is received, the Coast Guard will conduct an environmental analysis for the event. Under figure 2–1 paragraph (34)(h) of Coast Guard Commandant Instruction M16475.1C, this revision is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

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

Final Regulations

In consideration of the foregoing, the Coast Guard is amending Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46; and 33 CFR 100.35.

2. § 100.801 is amended by revising Table 1 to read as follows:

§ 100.801 Annual Marine Events in the Eighth Coast Guard District.

* * * * *

Table 1 of § 100.801—Eighth Coast Guard District Table of Annual Marine Events

* * * * *

GROUP UPPER MISSISSIPPI RIVER

1. Riverfest Power Boat Grand Prix
   Sponsor: Twin City Power Boat Association
   Date: 1 Day—2nd Saturday in June
   Regulated Area: Upper Mississippi River miles 980.0–981.0, Little Falls, MN
2. W.A.M.S.O. Ball Fireworks
   Sponsor: St. Paul Parks and Recreation
   Date: 1 Day—1st or 2nd Saturday in June
   Regulated Area: Upper Mississippi River miles 839.1–839.7, St. Paul, MN
3. Winona Downtown Arts & River Festival
   Sponsor: Winona Downtown Cooperative
   Date: 2 Days—2nd or 3rd Weekend in June
   Regulated Area: Upper Mississippi River miles 725.0–726.0, Winona, MN
4. La Crosse Riverfest
   Sponsor: Riverfest, Inc.
   Date: 5 Days—Last Week of June or 1st Week of July
   Regulated Area: Upper Mississippi River miles 698.0–699.0, La Crosse, WI
5. Fair St. Louis
   Sponsor: Fair St. Louis Committee
   Date: 3 Days—1st Week in July
   Regulated Area: Upper Mississippi River miles 179.2–180.0, St. Louis, MO
6. Fourth of July River Front Blast
   Sponsor: Alton Exposition Commission
   Date: 1 Day—1st Week in July
   Regulated Area: River Front Park, Upper Mississippi River miles 202.5–203.5, Alton, IL
7. Steamboat days
   Sponsor: Winona Area Jaycees
   Date: 3 Days—1st Weekend in July
   Regulated Area: Upper Mississippi River miles 725.0–726.0, Winona, MN
8. Independence Day Celebration
   Sponsor: Marquette American Legion
   Date: 2 Days—1st Week in July
   Regulated Area: Upper Mississippi River miles 634.5–634.7, Marquette, IA
9. City of Redwing 4th of July Fireworks
   Sponsor: City of Redwing
   Date: 1 Day—4th of July
   Regulated Area: Upper Mississippi River miles 790.0–791.0, Red Wing, MN
10. City of Minneapolis 4th of July Fireworks
    Sponsor: City of Minneapolis
    Date: 1 Day—4th of July
    Regulated Area: Upper Mississippi River miles 854.7–855.8, Minneapolis, MN
11. The Great Steamboat Race
    Sponsor: Delta Queen Steamboat Company
    Date: 1 Day—4th of July
    Regulated Area: Upper Mississippi River miles 173.6–179.2. St. Louis, MO
12. Celebrate the Bridge Regatta
    Sponsor: Minneapolis Rowing Club
    Date: 1 Day—2nd or 3rd Saturday in July.
    Regulated Area: Upper Mississippi River miles 849.8–850.4, Minneapolis, MN
13. Hastings Rivertown Days
    Sponsor: Hastings Chamber of Commerce
    Date: 3 Days—3rd Weekend in July

Regulated Area: Upper Mississippi River miles 813.0–815.2, Hastings, MN

14. Lumberjack Days Festival
Sponsor: St. Croix Events and/or City of Stillwater
Date: 4 Days—3rd or 4th Weekend in July
Regulated Area: Lower St. Croix River miles 22.9–23.5, Stillwater, MN

15. Minneapolis Aquatennial
Sponsor: Minneapolis Aquatennial Association
Date: 9 Days—3rd Weekend through 4th Weekend in July
Regulated Area: Upper Mississippi River miles 854.7–856.2, Minneapolis, MN

16. Big Splash Festival
Sponsor: City of Prairie du Chien and Lentzkow Racing
Date: 4 Days—3rd Weekend of July
Regulated Area: Upper Mississippi River miles 634.5–636.0, Prairie du Chien, WI

17. RiverFeast
Sponsor: Capital City Partnership d.b.a. RiverFeast
Date: 1 Day—3rd or 4th Saturday in July
Regulated Area: Upper Mississippi River miles 839.0–839.8, St. Paul, MN

18. River City Days
Sponsor: Red Wing Chamber of Commerce
Date: 2 Days—1st or 2nd Weekend in August
Regulated Area: Upper Mississippi River miles 790.0–792.0, Red Wing, MN

19. Riverboat Days
Sponsor: City of Yankton, Twin City Power Boat Association, WNAX Radio
Date: 3 Days—3rd Weekend in August
Regulated Area: Missouri River miles 805.0–806.0, Yankton, SD

20. Labor Day Celebration
Sponsor: City of McGregor Chamber of Commerce
Date: 4 Days—Last Weekend in August
Regulated Area: Upper Mississippi River miles 633.0–634.0, McGregor, IA

21. Busch Beer Drag Boat Classic
Sponsor: St. Louis Drag Boat Association
Date: 2 Days—1st or 2nd Week of September
Regulated Area: Kaskaskia River miles 28.0–29.0, New Athens, IL

22. Minnesota Orchestra on the Mississippi Fireworks Show
Sponsor: City of St. Paul Parks and Recreation
Date: 1 Day—1st or 2nd Saturday in September
Regulated Area: Upper Mississippi River miles 839.1–839.7, St. Paul, MN

GROUP OHIO VALLEY

1. Eskimo Escapades—Water Ski Race
Sponsor: Skiers of Knoxville, TN
Date: 1 Day—2nd Saturday in January
Regulated Area: Tennessee River miles 648.0–649.0, Knoxville, TN

2. Tom White Invitational—Rowing
Sponsor: Oak Ridge (Tennessee) Rowing Association
Date: 1 Day—2nd or 3rd Saturday in March
Regulated Area: Clinch River miles 49.8–51.1, Anderson County, TN

3. Thunder Over Louisville
Sponsor: Thunder Over Louisville
Date: 1 Day—3rd Saturday in April
Regulated Area: Ohio River miles 602.0–605.0, Louisville, KY

4. Marietta Invitational Rowing Regatta
Sponsor: Marietta High School
Date: 2nd Week of April
Regulated Area: Muskingum River Mile 0.5–1.5, Marietta, OH

5. Southeast Intercollegiate Rowing Championships—Rowing Race
Sponsor: Oak Ridge (Tennessee) Rowing Association
Date: 2 Days—3rd Weekend in April
Regulated Area: Clinch River miles 49.8–51.1, Anderson County, TN

6. Oak Ridge Scholastics—Rowing Shells
Sponsor: Oak Ridge (Tennessee) Rowing Association
Date: 1 Day—4th Saturday in April
Regulated Area: Clinch River miles 49.8–51.1, Anderson County, TN

7. Kentucky Derby Festival Great Steamboat Race
Sponsor: Kentucky Derby Festival/ Belle of Louisville Operating Board
Date: 1 Day—Last Week in April or First Week in May
Regulated Area: Ohio River 597.0–604.0, Louisville, KY

8. Annual Boat Review—Marine Parade
Sponsor: Chattanooga Marine Trade Association
Date: 1 Day—1st Saturday in May
Regulated Area: Tennessee River miles 471.0–478.0, Hamilton County, TN

9. TRRA Scholastic Sprint
Sponsor: Three Rivers Rowing Association, Pittsburgh, PA
Date: 1 Day—1st Sunday in May
Regulated Area: Allegheny River miles 2.0–4.0, Pittsburgh, PA

10. UT Coaches Regatta—Rowing Race
Sponsor: Oak Ridge (Tennessee) Rowing Association
Date: 1 Day—2nd or 3rd Saturday in May
Regulated Area: Clinch River miles 49.8–51.1, Anderson County, TN

11. NCAA Regional Championships—Rowing Race
Sponsor: Oak Ridge (Tennessee) Rowing Association
Date: 1 Day—2nd or 3rd Saturday in May
Regulated Area: Clinch River miles 49.8–51.1, Anderson County, TN

12. Blessing of the Fleet—Parade of Boats
Sponsor: Jonathan Aurora Action Committee, Aurora, KY
Date: 1 Day—2nd or 3rd Weekend in May
Regulated Area: Tennessee River miles 42.0–43.0, Aurora, KY

13. West Virginia Governors Cup Regatta
Sponsor: University of Charleston
Date: 3rd Week of May
Regulated Area: Kanawha River Mile 59.5–62.0, Charleston, WV

14. Boats and Music Regatta
Sponsor: The Great Kanawha River Navy
Date: Last Week of May
Regulated Area: Kanawha River Mile 57.9–58.9, Charleston, WV

15. Albert Gallatin Regatta
Sponsor: Point Marion (Pennsylvania) Rotary Club
Date: 2 Days—Saturday & Sunday of Memorial Day Weekend
Regulated Area: Monongahela River miles 89.9–90.8, Point Marion, PA

16. West Virginia Symphony Fireworks
Sponsor: West Virginia Symphony
Date: 1st Week of June
Regulated Area: Kanawha River Mile 59.4–60.4, Charleston, WV

17. Riverbend Festival—Concerts and Fireworks
Sponsor: Friends of the Festival, Chattanooga, TN
Date: 4 Days—1st & 2nd Weekend in June
Regulated Area: Tennessee River miles 463.4–464.5, Chattanooga, TN

18. Annual Superman Celebration—Fireworks
Sponsor: Metro Chamber, Metropolis, IL
Date: 1 Day—2nd Saturday in June
Regulated Area: Ohio River miles 942.0–943.0, Metropolis, IL

19. Saint Brendan Cup Rowing Race
Sponsor: Pittsburgh Irish Rowing Club
Date: 1 Day—2nd or 3rd Saturday in June
Regulated Area: Ohio River miles 7.0–9.0, Pittsburgh, PA

20. Blessing of The Fleet
Sponsor: Pittsburgh Safe Boating Committee
Date: 1 Day—2nd or 3rd Sunday in June
Regulated Area: Allegheny River miles 0.0–0.2, Pittsburgh, PA

21. River Heritage Days Regatta And Powerboat Races

Sponsor: River Heritage Days Committee
Date: 2 Days—Saturday & Sunday—2nd or 3rd Weekend in June
Regulated Area: Ohio River miles 127.6–128.5, New Martinsville, WV

22. Picnic With the Pops
Sponsor: Huntington Symphony Orchestra
Date: 2nd or 3rd week of June
Regulated Area: Ohio River Mile 307.5–308.5, Huntington, WV

23. Point Pleasant Sternwheel Regatta and River Festival
Sponsor: Point Pleasant Sternwheel Regatta
Date: 3 Days—Last Weekend in June
Regulated Area: Ohio River miles 265.0–266.0, Point Pleasant, WV

24. Thunder On The Ohio
Sponsor: Evansville Freedom Festival
Date: 3 Days—Last Weekend in June
Regulated Area: Ohio River miles 792.0–793.0, Evansville, IN

25. Augusta Sternwheel Days
Sponsor: City of Augusta/Sternwheel Days Committee
Date: 1 Day—Last Saturday in June
Regulated Area: Ohio River miles 426.0–429.0, Augusta, KY

26. Festival On The Lake—Rowing Race
Sponsor: Oak Ridge (Tennessee) Rowing Association
Date: 2 Days—4th Weekend in June
Regulated Area: Clinch River miles 50.3–50.8, Anderson County, TN

27. Chattanooga Dam Triathlon—Lake Swim
Sponsor: Chattanooga Track Club
Date: 1 Day—4th Sunday in June
Regulated Area: Tennessee River miles 471.0–471.5, Chattanooga, TN

28. Charleston 4th of July Celebration
Sponsor: Charleston Festival Commission
Date: 1st Week of July
Regulated Area: Kanawha River Mile 50.9–51.9, Charleston, WV

29. Annual River Recreational Festival
Sponsor: Gallia County Chamber of Commerce
Date: 1st Week of July
Regulated Area: Ohio River Mile 269.0–270.0, Gallipolis, OH

30. Civic Forum Fireworks and Entertainment
Sponsor: Civic Forum
Date: 1st Week of July
Regulated Area: Ohio River Mile 355.5–356.5, Portsmouth, OH

31. Freedomfest
Sponsor: WTCR FM
Date: 1st Week of July
Regulated Area: Ohio River Mile 307.5–308.5, Huntington, WV

32. City of Pittsburgh July 4th Celebration
Sponsor: Citiparks
Date: 1 Day—4th of July
Regulated Area: Ohio River miles 0.0–0.2, Pittsburgh, PA

33. EZ Challenge Speedboat Race
Sponsor: APR Events Group, New Martinsville, WV
Date: 2 Days—Saturday & Sunday on or about 4th of July
Regulated Area: Ohio River miles 77.0–78.0, Brooke County, WV

34. St. Albans Riverfest
Sponsor: St. Albans Riverfest, Inc.
Date: 2 Days—1st Weekend in July
Regulated Area: Kanawha River miles 46.0–47.0, St. Albans, WV

35. Summer Motion Festival Tri-State Fireworks
Sponsor: Tri-State Fair and Regatta Committee
Date: 1 Day—4th of July
Regulated Area: Ohio River miles 322.4–322.6, Ashland, KY

36. Indiana Governor's Cup
Sponsor: Madison Regatta Inc.
Date: 3 Days—1st Weekend in July
Regulated Area: Ohio River miles 557.0–558.0, Madison, IN

37. The New Kensington Recreational Commission's Fireworks Display
Sponsor: New Kensington Recreation Commission
Date: One day—July 3rd
Regulated Area: Allegeheny River mile 18.3–18.7

38. Toronto 4th of July Celebration
Sponsor: Toronto 4th of July Committee
Date: One day—July 3rd
Regulated Area: Ohio River between mile 58.1–59.1

39. Wheeling Symphony Conducky Derby
Sponsor: Wheeling Symphony Society Inc.
Date: One day—July 4th
Regulated Area: Ohio River between mile 90.2–90.7

40. Independence Day Celebration—Fireworks
Sponsor: Paducah Parks Department
Date: 1 Day—4th of July
Regulated Area: Ohio River miles 935.5–936.0, Paducah, KY

41. Independence Day Celebration—Boat Parade and Fireworks
Sponsor: Metropolitan Board of Parks and Recreation, Nashville, TN
Date: 1 Day—4th of July
Regulated Area: Cumberland River miles 190.0–191.0, Nashville, TN

42. 4th of July Celebration—Fireworks
Sponsor: Players Riverboat Casino, Metropolis, IL
Date: 1 Day—3rd or 4th of July
Regulated Area: Ohio River miles 943.0–944.0, Metropolis, IL

43. Lottie McAlice Rowing Race
Sponsor: Three Rivers Rowing Association, Pittsburgh, PA
Date: 2 Days—Saturday & Sunday Near July 15
Regulated Area: Allegheny River miles 2.0–3.0, Pittsburgh, PA

44. Rocketman Triathlon—Lake Swim
Sponsor: Spring City Triathletes, Huntsville, AL
Date: 1 Day—2nd or 3rd Saturday in July
Regulated Area: Tennessee River miles 324.0–324.5, Madison County, TN

45. Cross River Swim Paducah Summerfest
Sponsor: Paducah Tourist & Convention Commission
Date: 1 Day—3rd Saturday in July
Regulated Area: Ohio River miles 934.5–936.0, Paducah, KY

46. Oak Ridge Sprints—Rowing Race
Sponsor: Oak Ridge (Tennessee) Rowing Association
Date: 3 Days—3rd Weekend in July
Regulated Area: Clinch River miles 49.8–51.1, Anderson County, TN

47. Summerfest
Sponsor: Tri-State Fair and Regatta
Date: 3rd or 4th Week of July
Regulated Area: Ohio River Mile 307.5–308.5, Huntington ,WV

48. Fitness System's Lock Triathlon—Lake Swim
Sponsor: Greater Knoxville Triathlon Club
Date: 1 Day—4th Weekend in July
Regulated Area: Clinch River miles 22.0–23.0, Loudon County, TN

49. Paducah Summer Festival—Fireworks
Sponsor: Paducah Promotions
Date: 1 Day—4th Weekend In July
Regulated Area: Ohio River miles 934.0–935.0, Paducah, KY

50. Oakmont Regatta
Sponsor: Oakmont Yacht Club, Oakmont, PA
Date: 2 Days—Last Saturday and Sunday in July
Regulated Area: Allegheny River miles 11.8–12.3, Oakmont, PA

51. Pittsburgh Three Rivers Regatta
Sponsor: Pittsburgh Three Rivers Regatta, Inc.
Date: 7 Days—End of July or beginning of August
Regulated Area: One mile around point at confluence of Allegheny River miles 0.0–1.0, Monongahela River miles 0.0–0.2, and Ohio River miles 0.0–0.9, Pittsburgh, PA

52. Beaver County Riverfest
Sponsor: Beaver County Chamber of Commerce, Beaver, PA
Date: 3 Days—Friday, Saturday & Sunday nearest August 15
Regulated Area: Ohio River miles 25.1–25.8, Beaver River miles 0.1–0.3, Beaver County, PA

53. Belpre Ohio Homecoming
Sponsor: Belpre Ohio Chamber of

Commerce
Date: 2nd Week of August
Regulated Area: Ohio River Mile 185.5–186.5, Belpre, OH
54. Rumble on the River
Sponsor: Southern Ohio Water Sports
Date: 2nd Week of August
Regulated: Ohio River Mile 355.5–356.5, Portsmouth OH
55. Steubenville (Ohio) Regatta Rumble On The River
Sponsor: Steubenville Regatta And Racing Association, Inc.
Date: 3 Days—Friday, Saturday & Sunday nearest August 15
Regulated Area: Ohio River miles 65.0–67.0, Jefferson County, OH
56. Armstrong County (Pennsylvania) Regatta
Sponsor: Three Rivers Outboard Racing Association
Date: 2 Days—Saturday & Sunday nearest August 15
Regulated Area: Allegheny River miles 43.8–45.7, Armstrong County, PA
57. Parkersburg Homecoming Festival
Sponsor: Parkersburg Homecoming Festival
Date: 2 Days—3rd Weekend in August
Regulated Area: Ohio River miles 184.0–185.0, Parkersburg, WV
58. Kentucky Drag Boat Association Inc.: Drag Boat Races
Sponsor: Kentucky Drag Boat Association Inc.
Date: 3 Days—End of August
Regulated Area: Green River miles 70.0–71.5, Livermore, KY
59. WEBN/Toyota Fireworks
Sponsor: WEBN
Date: 1 Day—Sunday before Labor Day
Regulated Area: Ohio River 469.2–470.5, Cincinnati, OH
60. Charleston Sternwheel Regatta
Sponsor: Charleston Festival Commission
Date: 4 Days—The 2 Weekends before Labor Day
Regulated Area: Kanawha River miles 57.0–59.0, Charleston, WV
61. Aurora APR Power Boat Races
Sponsor: Aurora Riverfront Beautification
Date: August 29
Regulated Area: Ohio River, at approximately mile 496.0–499.0, mid-channel, Aurora, IN
62. Portsmouth River Days
Sponsor: Portsmouth River Days Inc.
Date: 1st Week of September
Regulated Area: Ohio River Mile 355.5–356.5, Portsmouth, OH
63. Ohio River Sternwheel Festival
Sponsor: Ohio River Sternwheel Festival Commission
Date: 2 Days—1st or 2nd Weekend in September
Regulated Area: Ohio River miles 170.0–180.0, Marietta, OH
64. My 102 Booms Day—Fireworks
Sponsor: WMYU Radio, Knoxville, TN
Date: 1 Day—1st Weekend in September
Regulated Area: Tennessee River miles 645.0–649.0, Knoxville, TN
65. Ducks On The Ohio
Sponsor: Goodwill Industries, Inc.
Date: 1 Day—2nd or 3rd Weekend in September
Regulated Area: Ohio River miles 792.0–793.0, Evansville, IN
66. Head of Licking Regatta
Sponsor: Kendle, Cincinnati Rowing Club, City of Newport
Date: 1 Day—Last Saturday in September
Regulated Area: Licking River miles 0.0–3.5, Newport, KY
67. Fleur De Lis Regatta
Sponsor: City of Louisville, KY
Date: 2 Days—Last Weekend in September
Regulated Area: Ohio River miles 602.0–604.0, Louisville, KY,
68. Head of The Ohio
Sponsor: Pittsburgh Mercy Foundation
Date: 1 Day—1st Saturday in October
Regulated Area: Allegheny River miles 0.0–4.0, Pittsburgh, PA
69. Chattanooga Head Race—Rowing Race
Sponsor: Look Out Rowing Club
Date: 1 Day—2nd Saturday in October
Regulated Area: Tennessee River miles 464.0–467.0, Chattanooga, TN
70. Head of Tennessee Regatta
Sponsor: Knoxville Rowing Association
Date: 1 Day—2nd Saturday in October
Regulated Area: Tennessee River miles 641.5–645.0, Knoxville, TN
71. City of Pittsburgh Light Up Night Fireworks
Sponsor: Citiparks
Date: 1 Day—1st Friday in November
Regulated Area: Ohio River miles 0.0–0.2, Pittsburgh, PA
72. Light Up Pittsburgh
Sponsor: Kauffmans
Date: 3rd Friday in November
Regulated Area: Ohio River mile 0.0–0.1
73. Christmas on the River—Marine Parade
Sponsor: Chattanooga Downtown Partnership
Date: 1 Day—Last Weekend in November or 1st Weekend in December
Regulated Area: Tennessee River miles 464.0–469.0, Chattanooga, TN
74. First Night Pittsburgh
Sponsor: Forest City Management
Date: One day—31 December
Regulated Area: Ohio River mile 0.0–0.1

GROUP LOWER MISSISSIPPI RIVER

1. Memphis in May Canoe & Kayak Race
Sponsor: Outdoors, Inc.
Date: 1 Day—1st or 2nd Saturday in May
Regulated Area: Lower Mississippi River miles 735.5–738.5, Memphis, TN
2. Duckin' Down the River Rubber Duck Race
Sponsor: Young Women's Community Guild
Date: 1 Day—1st or 2nd Saturday in May
Regulated Area: Arkansas River miles 308.2–308.6, Fort Smith, AR
3. Memphis in May Sunset Symphony Fireworks Display
Sponsor: Memphis in May International Festival, Inc.
Date: 1 Day—Saturday before Memorial Day
Regulated Area: Lower Mississippi River miles 735.0–736.0, Memphis, TN
4. Riverfest, Little Rock Arkansas
Sponsor: Riverfest, Inc.
Date: 1 Day—Sunday before Memorial Day
Regulated Area: Arkansas River miles 118.8–119.5, Main Street Bridge, Little Rock, AR
5. Riverfest Fireworks Display
Sponsor: Old Fort Riverfest Committee
Date: 1 Day—2nd or 3rd Saturday in June
Regulated Area: Arkansas River miles 297.0–298.0, Fort Smith, AR
6. Fourth of July Fireworks
Sponsor: Memphis Center City Commission
Date: 1 Day—4th of July
Regulated Area: Lower Mississippi River miles 735.5–736.5, Mud Island, Memphis, TN
7. Pops on the River Fireworks Display
Sponsor: Arkansas Democrat-Gazette
Date: 1 Day—4th of July
Regulated Area: Arkansas River miles 118.8–119.5, Main Street Bridge, Little Rock AR
8. Fourth of July Celebration
Sponsor: Pickwick Landing State Park
Date: 4th of July
Regulated Area: Tennessee River Mile 206.7–209.0, Pickwick Dam, TN
9. Independence Day Celebration
Sponsor: City of Guntersville
Date: 4th of July
Regulated Area: Tennessee River Miles 356.0–360.0, Guntersville, AL
10. Spirit of Freedom Celebration
Sponsor: WLAY Radio
Date: 4th of July
Regulated Area: Tennessee River Mile

255.0–256.5, Sheffield, AL
11. Meat on the River Barbecue Cook-Off Fireworks Display
Sponsor: Meat on the Mississippi
Date: 1 Day—1st Friday or Saturday in August
Regulated Area: Lower Mississippi River miles 847.0–849.0, Caruthersville, MO
12. Budweiser/Jesse Brent Memorial Boat Racing Association
Sponsor: Budweiser/Jesse Brent Memorial Boat Racing Association
Date: 1 Day—Sunday before Labor Day
Regulated Area: Lake Ferguson, Greenville, MS
13. Arkansas National Drag Boat Races
Sponsor: Mid-South Drag Boat Association
Date: 2 Days—Saturday and Sunday before Labor Day
Regulated Area: Lake Langhofer, Arkansas River miles 71.0–71.5, Pine Bluff, AR
14. The Great River Cook-Off Ski Exhibition
Sponsor: North Little Rock Junior League
Date: 2nd Weekend in September
Regulated Area: Arkansas River miles 118.8–119.1, Little Rock, AR

GROUP MOBILE

1. Air Sea Rescue
Sponsor: Gulf Coast Shows
Date: 1st or 2nd Weekend in February
Regulated Area: Mobile River ½ mile upriver and ½ mile down river from the Mobile Convention Center, Mobile, AL
2. Bass Tournament Weigh-In
Sponsor: Gulf Coast Shows
Date: 2 Days—3rd or 4th Weekend in February
Regulated Area: Mobile River ½ mile upriver and ½ mile down river from the Mobile Convention Center, Mobile, AL
3. Water Ski Demonstrations
Sponsor: Gulf Coast Shows
Date: 2 Days—3rd or 4th Weekend in February
Regulated Area: Mobile River ½ mile upriver and ½ mile down river from the Mobile Convention Center, Mobile, AL
4. Mobile Boat and Sportsman Show
Sponsor: Gulf Coast Shows
Date: Last week of February
Regulated Area: Mobile River, ½ mile upriver and ½ mile down river from the Mobile Convention Center, Lower Mobile River
5. Blessing of the Fleet—Biloxi, MS
Sponsor: St. Michael's Catholic Church
Date: 1 Day—1st or 2nd Sunday in May
Regulated Area: Entire Biloxi Channel, Biloxi, MS
6. Blessing of the Fleet—Bayou La Batre, AL
Sponsor: St. Margaret Church
Date: 1 Day—2nd or 3rd Sunday in May
Regulated Area: Entire Bayou La Batre, Bayou La Batre, AL
7. Annual Krewe of Billy Bowlegs Pirate Festival
Sponsor: Krewe of Billy Bowlegs of Okaloosa County, Inc.
Date: First weekend in June
Regulated Area: Santa Rosa Sound, east of the Brooks Bridge to Fort Walton Yacht Club at Smack Point at the western end of Choctowatchee Bay and Cinco Bayou
8. Independence Day Fireworks, Destin, FL
Sponsor: City of Destin
Date: 1 Day—4th of July
Regulated Area: The entire Destin East Pass Between and Including Buoys 5 to 11, Destin, FL
9. Independence Day Fireworks, Gulf Shores, AL
Sponsor: City of Gulf Shores
Date: 1 Day—4th of July
Regulated Area: 500 yard radius around fireworks platform adjacent to Main Pavilion at Gulf Shore Public Beach, Gulf Shores, AL
10. Independence Day Fireworks, Panama City, FL
Sponsor: US Navy MWR NSWCCSS CP21
Date: 1 Day—4th of July
Regulated Area: 500 yard radius around fireworks platform adjacent to Hathaway Bridge in St. Andrews Bay, Panama City, FL
11. Independence Day Fireworks, Niceville & Valparaiso, FL
Sponsor: Niceville-Valparaiso Bay Chamber of Commerce
Date: 1 Day—4th of July
Regulated Area: Entire Boggy Bayou, Valparaiso, FL
12. Fourth of July Fireworks, Mobile
Sponsor: Mobile Register
Date: 1 Day—4th of July
Regulated Area: 500 feet from the east bank of the Lower Mobile River between latitudes 30–41.34N and 30–41.24N.
13. Flag Day Parade
Sponsor: Warrior River Boating Association
Date: 1 Day—July 5th
Regulated Area: Warrior River Bankhead Lake River miles 368.4–386.4, Cottondale, AL
14. Blue Angels Air Show, Pensacola Beach
Sponsor: Naval Air Station, Pensacola, FL
Date: 2nd weekend in July
Regulated Area: A 5 nautical mile radius from a center point located 1500 feet out from the Pensacola Beach shoreline in front of the Pensacola Beach water tank.
15. MWR Fort to Fort Swim
Sponsor: Morale, Welfare and Recreation, Naval Air Station, Pensacola, FL
Date: First weekend in August
Regulated Area: Fort Pickens Pier to Barrancas Beach, crossing the Gulf Intracoastal Water Eay at statute mile 180, between buoys 13, 14, 15, and 16.
16. Annual Labor Day Fireworks
Sponsor: City of Destin, FL
Date: Day of or day before Labor Day
Regulated Area: The entire Destin East Pass Between and Including Buoys 5 to 11, Destin, FL
17. Christmas Afloat, Tuscaloosa, AL
Sponsor: Christmas Afloat, Inc.
Date: 1 Day—2nd or 3rd Weekend in December
Regulated Area: Warrior River miles 338.0–341.0, Tuscaloosa County, AL

GROUP NEW ORLEANS

1. Blessing of The Fleet
Sponsor: Our Lady of Prompt Succor Catholic Church, Golden Meadow, LA
Date: 1 Day—2nd Saturday in May
Regulated Area: Bayou Lafourche in the area between Galliano, LA to the area of downtown Golden Meadow, LA
2. The Blessing of the Fleet and Fireworks Display, Morgan City, LA
Sponsor: LA Shrimp And Petroleum Festival and Fair Assoc., Inc.
Date: 1 Day—Sunday of Labor Day Weekend
Regulated Area: Berwick Bay From Junction of the Lower Atchafalaya River at Morgan City, LA to Berwick Locks Buoy 1 (LLNR 18445)
3. July Fourth Fireworks Display
Sponsor: City of Morgan City, LA
Date: 1 Day—4th of July
Regulated Area: Mile marker 0.0–1.0, Morgan City Port Allen Route
4. Annual Patterson Pirogue Race, Patterson, LA
Sponsor: Rotary Club of Patterson
Date: 1 Day—4th of July
Regulated Area: Lower Atchafalaya River—Jennings Bridge to 1 mile South of Jennings Bridge, Patterson, LA
5. USS KIDD Star Spangled Celebration, Baton Rouge, LA
Sponsor: USS KIDD and Nautical Center
Date: 1 Day—4th of July
Regulated Area: Lower Mississippi

River miles 229.4–229.6, Baton Rouge, LA

6. Uncle Sam Jam Fireworks, Alexandria, LA
   Sponsor: Champion Broadcasting of Alexandria
   Date: 1 Day—4th of July
   Regulated Area: Red River, miles 83.0–87.0, Alexandria, LA
7. Monroe Jaycees Fireworks, Monroe, LA
   Sponsor: Monroe Jaycees
   Date: 1 Day—4th of July
   Regulated Area: Ouachita River, miles 164.0–169.0, at the Parish Court House, Monroe, LA
8. Boomtown Casino Fireworks, Harvey, LA
   Sponsor: Boomtown Casino
   Date: 1 Day—4th of July
   Regulated Area: Harvey Canal, miles 3.5—5.5, the entire width of the canal, Harvey, LA
9. Kenner Fireworks, Kenner, LA
   Sponsor: City of Kenner
   Date: 1 Day—4th of July
   Regulated Area: 500 yard radius around fireworks platform in Lake Pontchartrain at Williams Blvd, Kenner, LA
10. Bally's Casino Fireworks, New Orleans, LA
    Sponsor: Bally's Casino
    Date: 1 Day—4th of July
    Regulated Area: 500 yard radius around fireworks platform in Lake Pontchartrain, ¼ miles North of Bally's Casino, New Orleans, LA
11. Riverfront Marketing Fireworks, New Orleans, LA
    Sponsor: Riverfront Marketing Group
    Date: 1 Day—4th of July
    Regulated Area: 500 yard radius around fireworks platform adjacent to Woldenburg Park in Mississippi River, New Orleans, LA
12. Annual Hogdown Fireworks, Mandeville, LA
    Sponsor: Mr. R. C. Lunn
    Date: 1 Day—4th of July
    Regulated Area: 500 yard radius around fireworks platform adjacent to intersection of Tangipahoa River and Lake Pontchartrain, Mandeville, LA
13. Riverfront Marketing Fireworks, New Orleans
    Sponsor: Jax Brewery
    Date: 1 Day—December 31
    Regulated Area: 500 yard radius around fireworks platform in Mississippi River adjacent to Woldenburg Park, New Orleans, LA
14. Riverfront Marketing Fireworks, New Orleans
    Sponsor: Riverfront Marketing Group
    Date: 1 Day—Lundi Gras Day
    Regulated Area: 500 yard radius around fireworks platform in Mississippi River adjacent to Algiers Point, New Orleans, LA

GROUP GALVESTON

1. Neches River Festival, Beaumont, TX
   Sponsor: Neches River Festival, Inc.
   Date: 2 Days—3rd Weekend in April
   Regulated Area: Neches River from Collier's Ferry Landing to Lawson's Crossing at the end of Pine St. Beaumont, TX
2. Contraband Days Fireworks Display, Lake Charles, LA
   Sponsor: Contraband Days Festivities, Inc.
   Date: 1 Day—2nd Saturday of May
   Regulated Area: 500 foot radius from the fireworks barge in Lake Charles anchored at approximate position 30°13′54″ N–093°13′42″ W, Lake Charles, LA
3. National Safe Boating Week
   Sponsor: Houston Power Squadron
   Date: Last weekend in May or first weekend in June
   Regulated Area: Clear Creek Channel from Light 2 up to, but not including, the South Shore Harbor Marina.
4. Sylvan Beach Fireworks Display, Sylvan Beach, Houston, TX
   Sponsor: City of LaPorte
   Date: 1 Day—End of June or Early July
   Regulated Area: Rectangle Extending 250 feet East, 250 feet West; 1000 feet North, and 1000 feet South, centered around fireworks barge at Sylvan Beach, Houston, TX
5. Neches River 4th of July Celebration, Beaumont, Texas
   Sponsor: City of Beaumont
   Date: 1 Day—4th of July
   Regulated Area: River Front Park, Beaumont, TX—All waters of the Neches River, bank to bank, from the Trinity Industries Dry Dock to the northeast corner of the Port of Beaumont's dock No. 5
6. Clear Lake Fireworks Display, Clear Lake, Houston, TX
   Sponsor: Clear Lake Chamber of Commerce
   Date: 1 Day—4th of July
   Regulated Area: Rectangle extending 500 feet East, 500 feet West; 1000 feet North, and 1000 feet South, centered around fireworks barge at Light #19 on Clear Lake, Houston, TX
7. Blessing of the Fleet
   Sponsor: Clear Lake Elks Club
   Date: First Sunday in August
   Regulated Area: Clear Creek Channel from Light 2 up to, but not including, the South Shore Harbor Marina.
8. Galveston Harbor Lighted Boat Parade
   Sponsor: Historic Downtown/Strand Partnership
   Date: Last Saturday in November
   Regulated Area: Galveston Channel from Pier 9 to the Pelican Island Bridge
9. Christmas on the Neches River, Port Neches Park
   Sponsor: Port Neches Chamber of Commerce
   Date: 1 Day—1st Saturday in December
   Regulated Area: The areas of the Neches River from Neches River light 26 to Neches River light 30, Neches River Front Park, Port Neches, TX
10. Christmas Boat Parade on Clear Lake
    Sponsor: Clear Lake Area Chamber of Commerce
    Date: 2nd Saturday in December
    Regulated Area: Clear Lake, Texas. From South Shore Harbor Marina down Clear Lake Channel, to Clear Creek Channel Light 2.

GROUP CORPUS CHRISTI

1. Buccaneer Days Fireworks Display
   Sponsor: Buccaneer Commission, Inc.
   Date: 1 Day—Last Friday in April or First Friday in May
   Regulated Area: Bayfront, All Waters inside Corpus Christi Marina Levee, Corpus Christi Bay, TX
2. SPI Windsurf Blowout
   Sponsor: South Padre Island Convention and Visitors Bureau
   Date: 2 Day—First Saturday and Sunday in May
   Regulated Area: Rectangle extending one mile East, Half mile North and Half mile South from Position 26–08N, 97–10.5W, in the Laguna Madre area known as "The Flats", South Padre Island, TX
3. Corpus Christi 4th of July Fireworks Display
   Sponsor: City of Corpus Christi
   Date: 1 Day—4th of July
   Regulated Area: Bayfront, All Waters inside Corpus Christi Marina Levee, Corpus Christi Bay, TX
4. City of Port Aransas 4th of July Fireworks Display
   Sponsor: City of Port Aransas
   Date: 1 Day—4th of July
   Regulated Area: 600 foot radius from a point half way between Port Aransas Harbor Daybeacon 2 to Port Aransas Ferry landing in the Corpus Christi Ship Channel, Port Aransas, TX
5. Bayfest Fireworks Display
   Sponsor: Bayfest, Inc.
   Date: 2 Days—3rd Friday & Saturday in September
   Regulated Area: Bayfront, All Waters inside Corpus Christi Marina Levee, Corpus Christi Bay, TX
6. Great Tugboat Challenge
   Sponsor: Bayfest Inc.

Date: 2 Days—3rd Friday & Saturday in September
Regulated Area: Bayfront, All Waters inside Corpus Christi Marina Levee, Corpus Christi Bay, TX

7. Harbor Lights
Sponsor: City of Corpus Christi
Date: 1 Day—1st Saturday in December
Regulated Area: Bayfront, All Waters inside Corpus Christi Marina Levee, Corpus Christi Bay, TX

Dated: July 11, 2000.

K.J. Eldridge.

Commander, Eighth Coast Guard District, Acting.

[FR Doc. 00–19221 Filed 7–28–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[USCG–1999–5700]

RIN 2115–AF84

Traffic Separation Schemes: Off San Francisco, in the Santa Barbara Channel, in the Approaches to Los Angeles-Long Beach, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the existing Traffic Separation Schemes (TSS's) off San Francisco and in the Santa Barbara Channel. The amendments have been adopted by the International Maritime Organization and validated by several recent vessel routing studies. The amended TSS's will route commercial vessels farther offshore, providing an extra margin of safety and environmental protection in the Monterey Bay National Marine Sanctuary and adjacent waters. This rule codifies descriptions of these TSS's into the Code of Federal Regulations.

DATES: This final rule is effective on August 30, 2000.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–1999–5700 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, contact Lieutenant Commander Brian Tetreault, Vessel Traffic Management Officer, Eleventh Coast Guard District, telephone 510–437–2951, e-mail btetreault@d11.uscg.mil; Mike Van Houten, Aids to Navigation Section Chief, Eleventh Coast Guard District, telephone 510–437–2968, e-mail MvanHouten@d11.uscg.mil; or George Detweiler, Office of Vessel Traffic Management, Coast Guard, at 202–267–0574; e-mail Gdetweiler@comdt.uscg.mil. For questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Regulatory History

In 1989, we published a notice of proposed rulemaking (NPRM) entitled "Traffic Separation Schemes and Shipping Safety Fairways Off the Coast of California" (CGD 83–032, 54 FR 18258). The NPRM proposed implementing several IMO-adopted amendments to the existing TSS's and establishing a shipping safety fairway along the California coast. We elected to postpone implementing the amendments until the studies on the Monterey Bay National Marine Sanctuary (MBNMS) and on oil tanker routing along the California coast (the "Tanker Free Zone" study mandated by the Oil Pollution Act of 1990) were complete.

On June 17, 1999, we published an NPRM entitled "Traffic Separation Schemes: Off San Francisco, in the Santa Barbara Channel, in the Approaches to Los Angeles-Long Beach, California" in the **Federal Register** (64 FR 32451). We received six letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

This rule amends the Traffic Separation Schemes (TSS's) off San Francisco and in the Santa Barbara Channel adopted by the International Maritime Organization (IMO) in 1990 and 1985, respectively ("Ships" Routeing", Sixth Edition 1991, IMO). These amendments—

a. Shift the southern leg of the TSS off San Francisco westward to provide a true north/south alignment; and

b. Extend the existing TSS in the Santa Barbara Channel 18 nautical miles westward beyond Point Conception to Point Arguello.

In addition, this rule codifies these TSS's into Title 33 part 167 of the Code of Federal Regulations (CFR). It also adds the IMO definition of "Area to be avoided" in 33 CFR 167.5.

Discussion of Comments and Changes

We received six written comments in response to our NPRM entitled "Traffic Separation Schemes Off San Francisco, in the Santa Barbara Channel, and in the Approaches to Los Angeles-Long Beach, California" (64 FR 32451, June 17, 1999). Five comments were strongly in favor of the proposed rule without changes. One comment was in favor of the proposed rule, but requested that additional information be included about the underlying Sword Unit leases that would be affected by the extension of the Santa Barbara Channel. The comment wanted the regulations to alert readers of potential future conflicts between vessels transiting the extended TSS in the Santa Barbara Channel and the development of Sword Unit leases. Sword Unit leases, OCS–P 0319, 0320, 0322 and 0323A, underlie the proposed TSS extension. Exploration activities may occur on the Sword Unit as early as 2002, with development occurring as early as 2007. To accommodate exploration and development on the Sword Unit, we may temporarily suspend or amend the TSS, based on historical practice and sections 3.12 and 7.6 of the IMO publication, "Ships" Routeing", Sixth Edition 1991. We intend to work collaboratively with all of the agencies involved to develop and implement appropriate measures to facilitate both oil production and safe and efficient shipping. Close coordination throughout delineation drilling and any subsequent production phase will allow us to select appropriate measures based on the circumstances, as we know them at the time. While we agree that potential future conflicts may occur, to include information concerning Sword Unit leases in the CFR is beyond the scope of this rulemaking.

The section entitled "Off San Francisco: Area to be avoided" was created by removing § 167.401(c) from the NPRM and inserting it as § 167.406 in this rule. This presents the information in the regulations as it is in "Ships" Routeing", Sixth Edition 1991, International Maritime Organization.

Section 167.452 of the NPRM was divided into §§ 167.451 and 167.452 in this rule. This presents the information in the regulations as it is in "Ships" Routeing", Sixth Edition 1991, International Maritime Organization.

Sections 167.500 through 167.503 were proposed in the NPRM but were removed from this rule. As stated in the NPRM, we intended to codify the

existing Los Angeles-Long Beach TSS. Because of major port improvement projects to the ports of Los Angeles and Long Beach, we will temporarily suspend the TSS effective September 1, 2000. To avoid confusion, these sections will be codified after the improvement projects are completed.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. A summary of the costs and benefits of this rule follows:

Costs

The amendments to the TSS's in the Santa Barbara Channel and off San Francisco will result in a slight increase in transit times and operating costs for vessels using them. Most of the vessels using the TSS are large commercial vessels such as containerships. The northbound transit distance through the TSS's will increase by 2.4 nautical miles (nm) and the southbound transit distance will increase by 4.1 nm. The time per transit will increase by approximately 8 minutes (.14 hours) northbound and 14 minutes (.23 hours) southbound. This corresponds to northbound 219.43 ((1 hour/17.5 nm) × 2.4 nm × 1600 transits/year)) and southbound 374.86 ((1 hour/17.5 nm) × 4.1 nm × 1600 transits/year)) additional hours per year. Assuming a fuel cost of approximately $600 per hour, the estimated increase in costs for industry would be $356,574 per year ((219.43 hours + 374.86 hours) × $600/hour).

Vessel operators will incur the minimal cost of plotting new coordinates on their existing charts or purchasing updated charts, when available.

Benefits

Amendments to the TSS in the Santa Barbara Channel. By extending the TSS 18 miles, this rule decreases the risk of allisions and groundings and resulting injuries, pollution, and property damage, by routing vessels farther away from oil platforms and Point Conception. The TSS extension also provides an increased margin of safety should future development in this area occur.

Amendments to the TSS off San Francisco. This rule rotates the approach lanes in a westward direction which reduces the risk of collisions and groundings and resulting injuries, pollution, and property damage. Vessels will transit farther offshore when entering or departing San Francisco Bay with their closest approach to land increased from 3 to 6 nautical miles. This increased distance provides an added margin of safety for vessels experiencing casualties (e.g. loss of power or steering) and more time for response vessels to reach a disabled vessel before it drifts ashore. The rotation also eliminates conflicts between large commercial vessels and fishing vessel fleets operating closer to shore.

Small Entities

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

This rule will have a minimal economic impact on vessels operated by small entities. The rule amends two existing TSS's. This action improves safety for commercial vessels using the TSS's by reducing the risk of collisions, allisions, and groundings. Vessels voluntarily transiting the TSS in the Santa Barbara Channel will have to transit an additional 2 to 4 nautical miles per trip, depending on the direction traveled. This additional transit distance results in increased vessel operating costs ranging from approximately $80 to $140 per trip. Vessels that tend to use the TSS's are commercial vessels such as containerships, freighters, and tankers. These vessels by their very nature are large in size and capable of operating in an offshore environment. Because of their large size most of them would not qualify as small entities. However, even if a vessel does qualify as a small entity, the impact of the additional $80 to $140 per trip would be an insignificant increase to the overall cost of its complete voyage. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in this rulemaking. If the rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. George Detweiler, Coast Guard, Marine Transportation Specialist, at 202–267–0574.

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

Collection of Information

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

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that it does not have implications for federalism under that Order.

Title I of the Ports and Waterways Safety Act (33 U.S.C. 1221 *et seq.*) (PWSA) authorizes the Secretary to promulgate regulations to designate and amend traffic separation schemes (TSS's) to protect the marine environment. In enacting PWSA in 1972, Congress found that advance planning and consultation with the affected States and other stakeholders was necessary in the development and implementation of a TSS. Throughout the history of the development of the TSS's off San Francisco and in the Santa Barbara Channel, California, we have consulted with the San Francisco Harbor Safety Committee ("HSC"), the affected state and federal pilot's associations, vessel operators, users, and all affected stakeholders. The San Francisco HSC, which was established by the State of California, includes all the principal waterway users of the San Francisco ports and other key agencies. The HSC was an active participant in various meetings with the Coast Guard and has contributed to this rulemaking.

Presently, there are no California State laws or regulations concerning the same subjects as are contained in this proposed rule. We understand the state does not contemplate issuing any such rules. However, it should be noted, that by virtue of the PWSA authority, the TSS's in this rule will preempt any state rule on the same subject.

In order to be effective against foreign flag vessels on the high seas, TSS's must be submitted to, approved by, and implemented by the International Maritime Organization (IMO). Individual states are not represented at IMO; that is the role of the federal government. The Coast Guard is the principal United States agency responsible for advancing the interests of the United States at IMO. We recognize, however, the interest of all local stakeholders as we work at IMO to advance the goals of these TSS's. We will continue to work closely with such stakeholders to implement the final rule to ensure that the waters off San Francisco and in the Santa Barbara Channel affected by this rule are made safer and more environmentally secure.

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The Coast Guard has agreed that, to accommodate exploration and development on the Sword Unit, the TSS may be temporarily suspended or amended, based on historical practice and sections 3.12 and 7.6 of the IMO publication, "Ships' Routeing", Sixth Edition 1991.

Civil Justice Reform

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

Protection of Children

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

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(I), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. This rule adjusts two existing TSS's. These adjustments will enhance safety in the MBNMS and adjacent waters by allowing additional response time for a vessel that is adrift, thus preventing groundings, and by routing vessels away from sensitive areas. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 167

Harbors, Marine safety, Navigation (water), Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 167 as follows:

PART 167—OFFSHORE TRAFFIC SEPARATION SCHEMES

1. The authority citation for part 167 continues to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46.

2. In § 167.5, redesignate paragraphs (a) through (f) as paragraphs (b) through, (g), respectively, and add new paragraph (a) to read as follows:

§ 167.5 Definitions.

(a) *Area to be avoided* means a routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and which should be avoided by all ships or certain classes of ships.

* * * * *

3. Following § 167.350, add the undesignated center heading "Pacific West Coast" and §§ 167.400 through 167.406, and 167.450 through 167.452, to read as follows: Pacific West Coast

§ 167.400 Off San Francisco Traffic Separation Scheme: General.

The Off San Francisco Traffic Separation Scheme consists of six parts: a Precautionary Area, a Northern Approach, a Southern Approach, a Western Approach, a Main Ship Channel, and an Area to Be Avoided. The specific areas in the Off San Francisco TSS and Precautionary Area are described in §§ 167.401 through 167.406 of this chapter. The geographic coordinates in §§ 167.401 through 167.406 are defined using North American Datum 1983 (NAD 83).

§ 167.401 Off San Francisco: Precautionary area.

(a)(1) A precautionary area is established bounded to the west by an arc of a circle with a radius of 6 miles centering upon geographical position 37°45.00′N, 122°41.50′W and connecting the following geographical positions:

Latitude	Longitude
37°42.70′ N	122°34.60′ W.
37°50.30′ N	122°38.00′ W.

(2) The precautionary area is bounded to the east by a line connecting the following geographic positions:

Latitude	Longitude
37°42.70′ N	122°34.60′ W.
37°45.90′ N	122°38.00′ W.
37°50.30′ N	122°38.00′ W.

(b) A pilot boarding area is located near the center of the precautionary area described in paragraph (a) of this section. Due to heavy vessel traffic, mariners are advised not to anchor or linger in this precautionary area except to pick up or disembark a pilot.

§ 167.402 Off San Francisco: Northern approach.

(a) A separation zone is bounded by a line connecting the following geographical positions:

Latitude	Longitude
37°48.40′ N	122°47.60′ W
37°56.70′ N	123°03.70′ W
37°55.20′ N	123°04.90′ W
37°47.70′ N	122°48.20′ W

(b) A traffic lane for north-westbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
37°49.20′ N	122°46.70′ W.
37°58.00′ N	123°02.70′ W.

(c) A traffic lane for south-eastbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
37°53.90′ N	123°06.10′ W.
37°46.70′ N	122°48.70′ W.

§ 167.403 Off San Francisco: Southern approach.

(a) A separation zone is bounded by a line connecting the following geographical positions:

Latitude	Longitude
37°39.10′ N	122°40.40′ W.
37°27.00′ N	122°40.40′ W.
37°27.00′ N	122°43.00′ W.
37°39.10′ N	122°43.00′ W.

(b) A traffic lane for northbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
37°39.30′ N	122°39.20′ W.
37°27.00′ N	122°39.20′ W.

(c) A traffic lane for southbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
37°27.00′ N	122°44.30′ W.
37°39.40′ N	122°44.30′ W.

§ 167.404 Off San Francisco: Western approach.

(a) A separation zone is bounded by a line connecting the following geographical positions:

Latitude	Longitude
37°41.90′ N	122°48.00′ W.
37°38.10′ N	122°58.10′ W.
37°36.50′ N	122°57.30′ W.
37°41.10′ N	122°47.20′ W.

(b) A traffic lane for south-westbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
37°42.80′ N	122°48.50′ W.
37°39.60′ N	122°58.80′ W.

(c) A traffic lane for north-eastbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
37°35.00′ N	122°56.50′ W.
37°40.40′ N	122°46.30′ W.

§ 167.405 Off San Francisco: Main ship channel.

(a) A separation line connects the following geographical positions:

Latitude	Longitude
37°45.90′ N	122°38.00′ W.
37°47.00′ N	122°34.30′ W.
37°48.10′ N	122°31.00′ W.

(b) A traffic lane for eastbound traffic is established between the separation line and a line connecting the following geographical positions:

Latitude	Longitude
37°45.80′ N	122°37.70′ W.
37°47.80′ N	122°30.80′ W.

(c) A traffic lane for westbound traffic is established between the separation line and a line connecting the following geographical positions:

Latitude	Longitude
37°46.20′ N	122°37.90′ W.
37°46.90′ N	122°35.30′ W.
37°48.50′ N	122°31.30′ W.

§ 167.406 Off San Francisco: Area to be avoided.

A circular area to be avoided, with a radius of half of a nautical mile, is centered upon geographic position:

Latitude	Longitude
37°45.00′ N	122°41.50′ W.

§ 167.450 In the Santa Barbara Channel Traffic Separation Scheme: General.

The Traffic Separation Scheme in the Santa Barbara Channel is described in §§ 167.451 and 167.452. The geographic coordinates in §§ 167.451 and 167.452 are defined using North American Datum 1983 (NAD 83).

§ 167.451 In the Santa Barbara Channel: Between Point Vicente and Point Conception.

(a) A separation zone is bounded by a line connecting the following geographical positions:

Latitude	Longitude
34°20.90′ N	120°30.16′ W
34°04.00′ N	119°15.96′ W.
33°44.90′ N	118°35.75′ W.
33°43.20′ N	118°36.95′ W.
34°02.20′ N	119°17.46′ W.
34°18.90′ N	120°30.96′ W.

(b) A traffic lane for north-westbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
34°21.80′ N	120°29.96′ W.
34°04.80′ N	119°15.16′ W.
33°45.80′ N	118°35.15′ W.

(c) A traffic lane for south-eastbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
33°42.30′ N	118°37.55′ W.
34°01.40′ N	119°18.26′ W.
34°18.00′ N	120°31.16′ W.

§ 167.452 In the Santa Barbara Channel: Between Point Conception and Point Arguello.

(a) A separation zone is bounded by a line connecting the following geographical positions:

Latitude	Longitude
34°20.90′ N	120°30.16′ W.
34°18.90′ N	120°30.96′ W.
34°25.70′ N	120°51.81′ W.
34°23.75′ N	120°52.51′ W.

(b) A traffic lane for westbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
34°21.80′ N	120°29.96′ W.
34°26.60′ N	120°51.51′ W.

(c) A traffic lane for eastbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
34°18.00′ N	120°31.16′ W.
34°22.80′ N	120°52.76′ W.

Dated: July 18, 2000.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–19220 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6840–9]

Commonwealth of Virginia: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Commonwealth of Virginia has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the Commonwealth's changes through this immediate final action.

EPA is publishing this rule to authorize the changes without a prior proposal because we view this as a routine program change and do not expect comments that oppose this approval. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize Virginia's changes to its hazardous waste program will take effect as provided below. If we get comments that oppose this action, or portions thereof, we will publish a document in the **Federal Register** withdrawing this rule, or portions thereof, before it takes effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on September 29, 2000, unless EPA receives adverse written comment by August 30, 2000. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Send written comments to Joanne Cassidy, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103; phone number: (215) 814–3381.

You can view and copy Virginia's application from 8:15 a.m. to 4:30 p.m., Monday through Friday, at the following addresses:

Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219; phone number: (804) 698–4213;

Virginia Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia 24019; phone number: (540) 562–6700; and

EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103; phone number: (215) 814–5254.

FOR FURTHER INFORMATION CONTACT: Joanne Cassidy, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103; phone number: (215) 814–3381.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received Final authorization from EPA under section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

EPA concludes that Virginia's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, EPA grants Virginia Final authorization to operate its hazardous waste program with the changes described in the authorization application. Virginia has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Virginia, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Virginia subject to RCRA will have to comply with the authorized Commonwealth requirements instead of the equivalent Federal requirements in order to comply with RCRA. Virginia has enforcement responsibilities for violations of its program, but EPA retains authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Perform inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions regardless of whether the Commonwealth has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Virginia is being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the Commonwealth program changes. If EPA receives comments which oppose this authorization or portion(s) thereof, that document will serve as a proposal to authorize such changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization decision, or portion(s) thereof, we will withdraw this authorization decision, or portion(s) thereof, by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the Commonwealth program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If EPA receives comments that oppose only the authorization of a particular change to the Commonwealth hazardous waste program, we may withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Virginia Previously Been Authorized for?

The Commonwealth of Virginia initially received Final authorization on December 4, 1984, effective December 18, 1984 (49 FR 47391) to implement the RCRA hazardous waste management

program. Since receiving final authorization, the Commonwealth has restructured its hazardous waste management program and revised its statutes and regulations. Virginia's Attorney General's Statement, dated June 26, 1984, amended by letter dated September 5, 1984, which was a component of the Commonwealth's original final authorization, cited the Virginia Waste Management Act (VWMA) contained in Title 32.1 of the Code of Virginia (Va. Code) as the controlling statute for the Commonwealth's hazardous waste program. Since then, the statutes have undergone a number of revisions, and in 1988, the Virginia General Assembly recodified the VWMA in the Va. Code, Chapter 14, Title 10.1.

The Virginia Waste Management Act was originally written to give the primary implementation of the hazardous waste program to the Virginia Department of Health. In 1986, the Virginia General Assembly created the Department of Waste Management under the new cabinet-level Secretary of Natural Resources. This action made the new department the successor in interest to the Department of Health in authority, duty and responsibility for solid, hazardous, and radioactive waste. The Assembly also retained in effect all the regulations that the Board of Health had issued in those areas. In 1992, the General Assembly established the new Department of Environmental Quality (DEQ) consisting of the Department of Air Pollution Control, the Department of Waste Management, the State Water Control Board, and the Council on the Environment. Based on legislative authority, the DEQ has the sole responsibility for the administration of laws and regulations concerning hazardous wastes. In 1993, the functions of the Hazardous Waste Program were vested in the DEQ Division of Waste Programs and six regional offices. This transfer of authority for the management of the Hazardous Waste Program was approved by EPA as an authorized program revision effective August 13, 1993 (58 FR 32855).

The Virginia General Assembly has made numerous amendments to the regulations promulgated under the Commonwealth's Waste Management Act in order to remain consistent with, and equivalent to, the Federal regulations promulgated under RCRA Subtitle C. Specifically, Virginia has revised the format of its hazardous waste regulations from one of incorporation of the full text of the Federal regulatory language with modifications, to "incorporation by reference" with modifications.

G. What Revisions Are We Authorizing With Today's Action?

Over a period of years, Virginia submitted several sets of draft regulations and elements of a draft authorization application to EPA for review and comment. The Agency reviewed each submission and provided comments to Virginia. On June 23, 2000, Virginia submitted an official, complete program revision application, seeking authorization for the restructuring of its hazardous waste program, as well as authorization of its program revisions, in accordance with 40 CFR 271.21. EPA Region III worked closely with Virginia in the development of the authorization package; therefore, EPA's comments relating to Virginia's legal authority to carry out the Federally delegated programs, the scope of and coverage of activities regulated, Commonwealth procedures, including the criteria for permit reviews, public participation and enforcement capabilities, were addressed before the submission of the final application by the Commonwealth. The Commonwealth solicited public comments on its draft regulations. EPA reviewed Virginia's application, and now makes an immediate final decision, subject to receipt of adverse written comment, that the Commonwealth's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant Virginia final authorization for the program modifications contained in the program revision application.

Virginia's program revision application includes Commonwealth regulatory changes that are equivalent to the Federal regulations published in the July 1, 1995 version of Title 40 of the Code of Federal Regulations, parts 124, 260 through 266, 268, 270, and 273, except for the final rules published in the **Federal Register** on September 10, 1992 (57 FR 41566); May 3, 1993 (58 FR 26420); June 17, 1993 (58 FR 33341); March 4, 1994 (59 FR 10550); December 6, 1994 (59 FR 62896); January 3, 1995 (60 FR 241); January 13, 1995 (60 FR 3089); February 9, 1995 (60 FR 7824); April 4, 1995 (60 FR 17001); April 17, 1995 (60 FR 19165); May 12, 1995 (60 FR 25619); May 19, 1995 (60 FR 26828); and on June 29, 1995 (60 FR 33911).

Virginia is today seeking authority to administer the Federal requirements that are listed in the chart below. This chart also lists the Commonwealth analogs that are being recognized as no less stringent than the analogous Federal requirements. Unless otherwise stated, the Commonwealth's statutory references are to the Code of Virginia (Va. Code) Title 10.1, Chapter 14, §§ 10.1–1400 through 1457 (1999 Replacement Volume). The regulatory references are to Title 9, Virginia Administrative Code (9 VAC) effective February 17, 1999.

Federal requirement [1]	Analogous Virginia authority
Part 260—Hazardous Waste Management System: General, as of July 1, 1995.	Code of Virginia (Va. Code) §§ 10.1–1400, 10.1–1402(1), 10.1–1402(11); Title 9, Virginia Administrative Code (9 VAC) §§ 20–60–12, 20–60–14, 20–60–17A, 20–60–18, 20–60–260, 20–60–1370, 20–60–1380, 20–60–1390, 20–60–1400, 20–60–1410 A, 20–60–1420 A&B, 20–60–1420 C1, 20–60–1430 A1–4. (More stringent provisions are: 20–60–1370 B, 20–60–1420 B2, 20–60–1420 C1a).
Part 261—Identification and Listing of Hazardous Waste, as of July 1, 1995.	Va. Code §§ 10.1–1402(8), 10.1–1402(11), 10.1–1402(22); 9 VAC §§ 20–60–18, 20–60–261, 20–60–1430 A5. (More stringent provisions are: 20–60–261 B1 and 20–60–261 B5).
Part 262—Standards Applicable to the Generators of Hazardous Wastes, as of July 1, 1995.	Va. Code §§ 10.1–1402(1), 10.1–1402(7), 10.1–1402(11), 10.1–1426(B) and 10.1–1450; 9 VAC §§ 20–60–18, 20–60–262, 20–60–305, 20–60–315, 20–60–325. (More stringent provisions are: 260–60–262 B4 and 20–60–262 B6).
Part 263—Standards Applicable to the Transporters of Hazardous Wastes, as of July 1, 1995.	Va. Code §§ 10.1–1402(1), 10.1–1402(7), 10.1–1402(11), 10.1–1402(18), 10.1–1426(A) & (B) and 10.1–1450; 9 VAC §§ 20–60–263, 20–60–305, 20–60–315, 20–60–325, 20–60–420A–D, 20–60–430, 20–60–440, 20–60–450H, 20–60–460, 20–60–470, 20–60–480, 20–60–490, 20–60–500. (More stringent provisions are: 20–60–440 C, 20–60–480 G2, 20–60–490 C & D).
Part 264—Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, as of July 1, 1995.	Va. Code §§ 10.1–1402(1), 10.1–1402(7), 10.1–1402(11), 10.1–1402(18), 10.1–1426(A), (B) & (C) 10.1–1427(B) and 10.1–1428; 9 VAC §§ 20–60–17B, 20–60–18, 20–60–264, 20–60–305, 20–60–315, 20–60–325, 20–60–1410B, 20–60–1420 C2.

Federal requirement[1]	Analogous Virginia authority
	(More stringent provisions are: 20–60–264 B4, 20–60–264 B5, 20–60–264 B11, 20–60–264 B14, 20–60–264 B15a).
Part 265—Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, as of July 1, 1995.	Va. Code §§ 10.1–1402(1), 10.1–1402(11), 10.1–1426(A). 9 VAC §§ 20–60–17B, 20–60–18, 20–60–265, 20–60–305, 20–60–315, 20–60–325, 20–60–1410B, 20–60–1420 C2.
	(More stringent provisions are: 20–60–265 B3, 20–60–265 B4, 20–60–265 B5, 20–60–265 B6, 20–60–265 B7, 20–60–265 B15, 20–60–265 B16, 20–60–265 B17).
Part 266—Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities, as of July 1, 1995.	Va. Code §§ 10.1–1402(1), 10.1–1402(7), 10.1–1402(11), 10.1–1402(18), 10.1–1426(A), (B) & (C) 10.1–1427(B) and 10.1–1428; 9 VAC §§ 20–60–18, 20–60–266, 20–60–420F.
	(More stringent provisions are: 20–60–266 B1–3).
Part 268—Land Disposal Restrictions, as of July 1, 1995.	Va. Code §§ 10.1–1402(1), 10.1–1402(11); 9VAC §§ 20–60–18, 20–60–268, 20–60–1410C.
Part 270—The Hazardous Waste Permit Program and Part 124—Permit Procedures, as of July 1, 1995.	Va. Code §§ 10.1–1402, 10.1–1426, 10.1–1427, 2.1–342(A); 9 VAC §§ 20–60–14 B2 & B4, 20–60–17A, 20–60–18, 20–60–70 E & F, 20–60–124, 20–60–270, 20–60–970 through 20–60–1250, Appendix 11.2.
	(More stringent provisions are: 20–60–270 B4, 20–60–970 C, 20–60–1010 B5, 20–60–1010 B10, 20–60–1010 K3d, 20–60–1010 K4b, 20–60–1060 L1&2a, 20–60–1170 B4, 20–60–1170 C4, 20–60–1170 C7, 20–60–1200 C1b, 20–60–1200 E, Appendix 11.2 entries A(4)(b), B(1)(d), B(2)(b), B(5)(a)&(b), C(1)(a), C(3), I(3)&(4), and L(8)).
Part 273—Standards for Universal Waste Management, as of July 1, 1995.	Va. Code §§ 10.1–1402(1), 10.1–1402(7), 10.1–1402(8), 10.1–1402(11), 10.1–1450, 10.1–1426(A) & (C); 9 VAC §§ 20–60–273, 20–60–305, 20–60–315, 20–60–325.
	(More stringent provision is: 20–60–273 B3).
Non-HSWA Cluster II	
Radioactive Mixed Waste (MW) (RCRA §§ 1004(27) and 3001(b)).	Va. Code §§ 10.1–1400 "Solid waste", 10.1–1402(22); 9VAC 20–60–261 B8.
HSWA Cluster I	
Sharing of Information With the Agency for Toxic Substances and Disease Registry (SI) (RCRA § 3019(b)).	Va. Code §§ 10.1–1402(1), 10.1–1402(2) and 10.1–1402(9).

[1] Federal Regulations as published in the 40 CFR, as of July 1, 1995 (Base Program through RCRA Cluster V), except rules published in the **Federal Register** as noted above.

H. Where Are the Revised Commonwealth Rules Different From the Federal Rules?

The Virginia hazardous waste program contains several provisions which are more stringent than is required by the RCRA program as codified in the July 1, 1995 edition of Title 40 of the Code of Federal Regulations (CFR). These more stringent provisions are part of the Federally authorized program and are Federally enforceable. The specific more stringent provisions are noted in the table above and the Commonwealth's authorization application, and include, but are not limited to, the following:

1. At 9 VAC 20–60–1420 C 1 a, (analog to 40 CFR 260.41(a)), Virginia requires compliance with all of 40 CFR part 262, including subpart B, the manifest requirements. Under the Federal code, the Administrator may only require compliance with subparts A, C, D and E of 40 CFR part 262.

2. In 9 VAC 20–60–261 B 5 (partial analog to 40 CFR 261.5(g)(3)(iv) & (v)), a conditionally exempt small quantity generator cannot send exempt hazardous waste to a solid waste facility unless that facility has written permission from the Department to receive such wastes.

3. In 9 VAC 20–60–262 B 4, prior to March 1, 1988, generators accumulating hazardous waste in accordance with 40 CFR 262.34 were required to notify the Department of that activity. Generators intending to open an accumulation area after March 1, 1988 are required to notify the Department of that intent 15 days before establishing the accumulation area. New generators are required to identify the location of accumulation areas when filing a Notification of Hazardous Waste Activity.

4. In 9 VAC 20–60–263 B 1, transporters of hazardous waste must comply with Part VII of the Virginia regulations. Part VII contains some provisions that are more stringent than the Federal requirements of 40 CFR part 263. Specifically, 9 VAC 20–60–440 C requires that identification numbers be placed on correspondence and spill documents; 9 VAC 20–60–480 G2 requires that any manifest be revised instead of allowing the designation by generators of an alternate facility on the manifest; and 9 VAC 20–60–490 C and D require that additional parties be notified in the case of a discharge.

5. In 9 VAC 20–60–264 B14, 9 VAC 20–60–265 B17, and 9 VAC 20–60–270 B4, underground injection of hazardous waste is prohibited. From the initiation of the hazardous waste program in Virginia, the Commonwealth determined that suitable geological conditions for underground injection facilities do not exist.

6. In addition to the requirements of 40 CFR 265.91, at 9 VAC 20–60–265 B7, Virginia requires that a log must be made of each groundwater monitoring well describing the soils and rock encountered, the permeability of formations, and the cation exchange capacity of soils encountered, and a copy of the log with appropriate maps must be sent to the Department.

7. In Part XI, nine types of permit modifications (e.g., waste pile management practices and substitution of non-hazardous waste fuel) are considered to be more extensive modifications than the Federal program requires at 40 CFR 270.42. That is, EPA has three "classes" of permit

modifications triggering three types of procedures to affect their approval. These procedures consist of simple notification, agency approval, or public involvement. In some instances, Virginia re-designates EPA classes of permit modifications, requiring a more rigorous procedure for approval.

The Commonwealth's regulations do not include a number of provisions analogous to the Federal rules listed below. The following provisions are not part of the Commonwealth's program being authorized by today's action:

Virginia is not seeking authorization at this time for the final rules published in the **Federal Register** on December 6, 1994 (59 FR 62896); January 3, 1995 (60 FR 241); January 13, 1995 (60 FR 3089); February 9, 1995 (60 FR 7824); April 4, 1995 (60 FR 17001); April 17, 1995 (60 FR 19165); May 12, 1995 (60 FR 25619); May 19, 1995 (60 FR 26828), and on June 29, 1995 (60 FR 33911).

The Commonwealth's regulations include a number of provisions that are not part of the Commonwealth's program being authorized by today's action. Such provisions include, but are not limited to, the following:

1. Virginia is not seeking authorization for hazardous waste procedures or the review of petitions regarding equivalent testing, or for excluding certain recycled wastes from being classified as solid waste.

2. Virginia has regulations defining how program information is to be shared with the public, but is not seeking authorization at this time for the Availability of Information requirements relative to RCRA § 3006(f).

3. At 9 VAC 20–60–279, Virginia has adopted provisions addressing the used oil management standards, as published in the **Federal Register** on September 10, 1992 (57 FR 41566); May 3, 1993 (58 FR 26420); June 17, 1993 (58 FR 33341); and March 4, 1994 (59 FR 10550) (40 CFR part 279). However, the Commonwealth is not seeking authorization for this portion of the program at this time.

4. Section 38.2–2200 of the Code of Virginia allows the Commonwealth to act directly against the insurer or guarantor of an owner's or operator's financial responsibility. This provision is similar to the ability of the Federal government to act under section 3004(t) of RCRA. EPA does not delegate its authority to act under the Federal statute; therefore, in this situation, the Virginia law creates a parallel cause of action viable in State courts, but the cause of action does not limit the availability of the Federal action. The Commonwealth's cause of action is separate and in addition to any Federal action.

5. At 9 VAC 20–60–262 A, 20–60–262 B2 and 20–60–262 B3, Virginia has adopted the requirements addressed by 40 CFR 262.12, 262.53, 262.54, 262.55, 262.56 and 262.57, and has correctly left the implementation authority with EPA for the non-delegable hazardous waste import and export requirements. Similarly, at 9 VAC 20–60–268 A and 20–60–268 B3, the Commonwealth has correctly left the implementation authority with EPA for the non-delegable provisions at 40 CFR 268.5, 268.6, 268.10, 268.11, 268.12, 268.40(b), 268.42(b) and 268.44(a) through (g).

The Commonwealth's regulations contain several requirements that are broader in scope than the Federal program, and are not part of the program being authorized by today's action. EPA cannot enforce these broader-in-scope requirements. Although compliance with these requirements is appropriate in accordance with Commonwealth law, they are not RCRA requirements. Such provisions include but are not limited to the following:

1. At 9 VAC 20–60–420 E, 20–60–450, 20–60–490 B 3 and Appendix 7.1, Virginia requires all transporters, including universal waste transporters, to obtain a transporter permit and pay a permit application fee if they handle shipments that originate or terminate in the Commonwealth.

2. At 9 VAC 20–60–266 B 3, to the degree Virginia places requirements beyond Federal requirements on transporters for shipments of spent lead-acid batteries destined for recovery, Virginia is broader in scope.

3. In Part XII, Virginia requires permit application fees from hazardous waste storage, treatment and disposal facilities.

I. Who Handles Permits After the Authorization Takes Effect?

After authorization, Virginia will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until the timing and process for effective transfer to the Commonwealth are mutually agreed upon. Until such time as formal transfer of EPA permit responsibility to the Commonwealth occurs and EPA terminates its permit, EPA and the Commonwealth agree to the joint administration (*e.g.* modifications) of the EPA and Commonwealth permits so they remain consistent over time. EPA will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Virginia is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in Virginia?

Virginia is not seeking authority to operate the program on Indian lands, since there are no Federally-recognized Indian Lands in the Commonwealth.

K. What Is Codification and Is EPA Codifying Virginia's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the Commonwealth's statutes and regulations that comprise the Commonwealth's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized Commonwealth rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart VV, for such future use.

L. Regulatory Analysis and Notices

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.

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 Commonwealth, local and/or tribal governments already exist under the Virginia program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of Commonwealth programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the Commonwealth, this action does not impose a Federal intergovernmental mandate because UMRA does not apply to 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 TSDFs, they are already subject to the regulatory requirements under the existing Commonwealth 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.

Certification Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's action on small entities, a small entity is defined as: (1) A small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this authorization on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that are hazardous waste generators, transporters, or owners and/or operators of TSDFs are already subject to the regulatory requirements under the Commonwealth laws which EPA is now authorizing. This action merely authorizes for the purpose of RCRA section 3006 those existing Commonwealth requirements.

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).

Compliance With Executive Order 12866

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

Compliance With Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." "Policies that have Federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has Federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This authorization does not have Federalism implications. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because this rule affects only one State. This action simply approves Virginia's proposal to be authorized for updated requirements of the hazardous waste program that the Commonwealth has voluntarily chosen to operate.

Further, as a result of this action, newly authorized provisions of the Commonwealth's program apply in Virginia in lieu of the equivalent Federal program provisions implemented by EPA under HSWA. Affected parties are subject only to those authorized Commonwealth program provisions, as opposed to being subject to both Federal and Commonwealth regulatory requirements. Thus the requirements of section 6 of the Executive Order do not apply.

Compliance With Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) The Office of Management and Budget determines is "economically significant" as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is

preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 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 Executive Order 13045 because it authorizes a State program.

Compliance With Executive Order 13084

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

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule is not subject to Executive Order 13084 because it does not significantly or uniquely affect communities of Indian tribal governments. Virginia is not authorized to implement the RCRA hazardous waste program in Indian country, since there are no Federally-recognized Indian lands in the Commonwealth.

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.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action 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: July 17, 2000.

Bradley M. Campbell,

Regional Administrator, EPA Region III.

[FR Doc. 00–19114 Filed 7–28–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21 and 74

[MM Docket 97–217; FCC 00–244]

MDS and ITFS Two-Way Transmissions

AGENCY: Federal Communications Commission.

ACTION: Final rule; further reconsideration.

SUMMARY: Previously, the Commission adopted a series of legal and technical rule changes to enhance the ability of Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") licensees to provide non-video services, including transmission of high speed computer data applications such as Internet access. We later expanded the streamlined application processing system to cover all major modifications of ITFS facilities, modified certain rules related to interference issues, modified certain other rules related to the obligations of ITFS licensees and clarified certain other rules. The FCC is taking two actions. The first action, a rule, which is described in detail below, modifies rules related to ITFS leases, modifies some technical rules and clarifies other rules. The modifications and clarifications are designed to increase the flexibility of the service, lessen the burdens on the parties and preserve the services' interference protections. The second action is the proposed rulemaking, which is published elsewhere in this issue of the **Federal Register**.

DATES: Effective September 29, 2000, except for §§ 21.902(m), 21.913(b) introductory text, 21.913(b)(8), 21.913(e)(4)(ix), 74.931(d)(1), 74.985(b)(8), and 74.985(e)(4)(ix), which contain information collection requirements that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date of these sections.

FOR FURTHER INFORMATION CONTACT: Dave Roberts (202) 418–1600, Video Services Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order on Further Reconsideration and Further Notice of Proposed Rulemaking* ("*Further Reconsideration Order*"), MM Docket, 97–217, FCC 00–244, adopted July 7, 2000 and released July 20, 2000. The full text of this *Further Reconsideration Order* is available for inspection and copying during normal business hours in the FCC Reference Room, Room CY–A257, Portals II, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. ("ITS"), Portals II, 445 12th Street, S.W. Room CY–B402, Washington, D.C. 20554.

Synopsis of Report and Order on Further Reconsideration and Further Notice of Propose Rulemaking

I. Introduction

1. This *Further Reconsideration Order* is adopted by the Commission after receiving petitions for further reconsideration of its *Reconsideration Order*, 64 FR 63727 (November 22, 1999), in this docket. Previously, the *Two-Way Order*, 63 FR 65087 (November 25, 1998), was issued

following a notice of proposed rulemaking, which arose from a petition for rulemaking filed by a group of 111 educators and participants in the wireless cable industry (collectively, "Petitioners"), comprised of MDS and ITFS licensees, wireless cable operators, equipment manufacturers, and industry consultants and associations. In the *Two-Way Order*, the Commission amended parts 21 and 74 of our rules to provide MDS and ITFS licensees with substantially increased operational and technical flexibility. Traditionally, the MDS service traditionally functioned as a one-way point-to-multipoint video transmission service that is often referred to as "wireless cable," whereas ITFS licensees ordinarily used their frequencies for one-way transmission of educational and instructional material to students.

2. The *Two-Way Order* (1) Permitted both MDS and ITFS licensees to provide two-way services on a regular basis; (2) permitted increased flexibility on permissible modulation types; (3) permitted increased flexibility in spectrum use and channelization, including combining multiple channels to accommodate wider bandwidths, dividing 6 MHz channels into smaller bandwidths, and channel swapping; (4) adopted a number of technical parameters to mitigate the potential for interference among service providers and to ensure interference protection to existing MDS and ITFS services; (5) simplified and streamlined the licensing process for stations used in cellularized systems; and (6) modified the ITFS programming requirements in a digital environment. Following the release of the *Two-Way Order*, we received petitions for reconsideration which focused primarily on requests that we expand our new streamlined processing system to cover all ITFS modifications; formalize an interference complaint process; modify some rules regarding ITFS leased capacity and make certain technical clarifications to our rules. In the *Reconsideration Order*, we expanded on some of our MDS/ITFS rules and clarified others. In response to that decision, we received further petitions for reconsideration, asking that we: (1) Permit certain lease provisions; (2) review the treatment of boosters stations and receive sites; and (3) further refine our technical rules. In this document, we make additional modifications and clarifications to our MDS/ITFS rules in order to facilitate further the provision of these services to the public. The *Further Notice of Proposed Rulemaking* section of this document is published elsewhere in this issue of the **Federal Register**.

II. Changes to the Rules

A. Lease Assignments

3. In both the *Two-Way Order* and the *Reconsideration Order*, we determined to leave in place the existing ban on excess-capacity lease terms that would require assumption of the lease obligations by any assignee or transferee. BellSouth asked us to reconsider this position. We do not believe that there is any contradiction between an ITFS licensee performing its educational mission and that same licensee securing financial returns from the lease of its excess capacity. In fact, those financial returns can and do provide substantial resources to the ITFS licensee in the performance of its educational mission. We believe that the probable loss to ITFS licensees unable to freely negotiate an existing lease outweighs the potential effect on some hypothetical future transfer. Therefore, we will permit ITFS licensees to agree to clauses in excess capacity leases that would require that the lease be assigned if the underlying license is assigned. We do emphasize that no ITFS licensee is required to accept an assignment clause and any licensee is free to reject such a clause in its lease.

B. Lease Renewals

4. We have been asked to reconsider our decision not to grandfather ITFS leases entered into prior to March 31, 1997 that contain automatic renewal provisions effective after March 31, 1997. In the *Reconsideration Order*, we did not grant this relief because we were concerned that this could permit leases that would avoid compliance with the new rules into perpetuity. Petitioners argue that the class of leases for which they were seeking grandfathering could only have a total term of ten years. Because these leases cannot be continued without end, we will grant the requested relief. Therefore, ITFS excess capacity leases entered into prior to March 31, 1997 which contain a provision for automatic renewal which would be effective after March 31, 1997 are grandfathered provided that the total term for such a lease does not exceed fifteen years. Although the Petitioners only referred to leases with a total term of ten years in the petition for reconsideration, we will also grandfather any leases entered into during the relevant time that contained both an automatic renewal provision and the automatic five-year extension period we previously grandfathered.

C. Booster Station Licenses

5. In the *Reconsideration Order*, we authorized ITFS excess capacity lessees to hold booster station licenses on their leased frequencies subject to written approval by the ITFS licensee. We also required that the relevant lease contain a provision that the lessee must offer to assign the license to the ITFS licensee for purely nominal consideration at the end of the lease term. ITFS licensees argue that this amounts to reallocation of the spectrum and urge us to reconsider this point. BellSouth asks us to clarify that a party leasing capacity from an MDS licensee also is permitted to hold a booster station license on those frequencies subject to the same terms.

6. We modify our rules to state that lessees of ITFS excess capacity, who hold booster station licenses on that leased capacity, must either assign the booster station license to the underlying ITFS licensee or, if the ITFS licensee does not want the booster station license, turn the license into the Commission at the end of the lease term. Furthermore, the lessee must meet the educational set aside requirement that would be required if the ITFS licensee held the booster license in its own name. In addition, we will permit lessees of MDS capacity to hold booster station licenses on their leased channels. We will still require the lessee to either assign the booster license to the underlying MDS licensee or turn it into the Commission if the MDS licensee does not wish to receive the license at the end of the lease term.

7. Petitioners have requested that we exempt ITFS booster stations operating within their protected service area ("PSA"), but in areas where the licensee has no educational mission, from the minimum programming rules, but not from the reservation and recapture rules. Otherwise, the Petitioners argue that the affected spectrum would lie fallow because a party would be precluded from using it unless and until the ITFS licensee determined that it had an educational mission in that area. We agree with the Petitioners. We will permit a lessee of an ITFS channel to construct and operate a station on the leased frequency, even if the ITFS licensee has no need to utilize a station in that part of its PSA at the time of construction. However, the lessee must at all times set aside capacity on the channel in accord with the reservation and recapture rules. In no event, will we waive the reservation and recapture rules.

8. The Petitioners have also made an unopposed request that we defer booster

service area protection for low powered boosters until after the initial filing window established in the *Two-Way Order*. Because low-powered boosters are often cross-polarized relative to their main transmitter in order to minimize intra-system co-channel interference, and main antennas of neighboring systems are cross-polarized relative to each other in order to minimize inter-system interference, the result is that a low-power booster is often co-polarized to a neighboring system. This makes interference protection and system design particularly difficult and provides an unwarranted preference to these low-powered boosters. Therefore, we will grant the Petitioners request. We note that these boosters will not be left completely unprotected because they will benefit from the protection accorded their PSA or Basic Trading Area.

D. Treatment of Receive Sites

9. In the *Two-Way Order*, we granted a PSA to every ITFS licensee and granted individual protection to all receive sites registered through the date of adoption of the *Two-Way Order*. In the *Reconsideration Order*, we stated that the ITFS licensee's PSA is a 35 mile circle centered either on the fixed reference point of the associated wireless cable system, or on the authorized ITFS main station transmitter site, as elected by the ITFS licensee.

10. BellSouth asks that we exclude limited, point-to-point ITFS stations from the category of stations granted a 35-mile PSA and to clarify that licensees of "secondary" ITFS facilities are not entitled to an automatic 35-mile PSA. Notably, stations operating on a primary basis are not required to give protection to those stations operating on a secondary basis. We agree with BellSouth that point-to-point ITFS stations authorized on a secondary basis should not receive PSA protection. These stations, which operate mostly as studio to transmitter links have traditionally been subordinate to primary stations and we see no reason to change that arrangement. We do not agree with BellSouth, however, that all point-to-point stations should lose PSA protection. Licensees of primary ITFS point-to-point stations are making use of their allotted spectrum. Although their educational needs at this time only necessitate the use of point-to-point transmissions, those needs could easily change as the licensees exploit the benefits of two-way systems.

11. The Catholic Television Network ("CTN") asks that we "clarify" our rules and state that ITFS receive sites outside the 35-mile PSA can request a waiver and be treated as registered as of September 17, 1998. We decline to adopt this clarification. As we made clear in the *Reconsideration Order*, providing this kind of protection outside of the 35-mile radius is "inconsistent with the plain meaning of the rule. Limiting protection to a 35 mile radius provides certainty to co-channel and adjacent channel entities, especially now that booster stations can originate signals." ITFS licensees operating outside of their PSA are like any other qualified applicant and will have their sites protected only against subsequently filed applications.

12. CTN also asks that we clarify that an ITFS receive site that is registered does not lose that status even if it engages in substantial technical modifications, such as channel swapping. We agree with CTN's requested clarification. We also affirm that licensees may participate in channel shifting and channel swapping whether their operations are digital or analog. There is no reason to limit the flexibility provided by channel shifting and swapping to digital systems. Furthermore, some systems may be partially analog and partially digital and permitting channel shifting and swapping will help parties in those systems to make the most efficient use of their licensed spectrum.

13. Petitioners ask that we permit channel shifting and channel swapping without regard to whether the affected licensees are part of "the same system." We agree with the Petitioners that these activities should not be limited to licensees in the same system and should be allowed in any situation where they will facilitate the most efficient use of the spectrum.

E. Interference Resolution

14. CTN asks us to clarify that all ITFS and MDS licensees are obligated to help identify sources of harmful interference in connection with resolving complaints of interference. We emphasize that cooperation is essential to identify the source of interference and to attempt to resolve any interference issues once the source has been located.

F. Technical Issues

15. IPWireless requests that we conform the out-of-band emission limitations for MDS and ITFS low power response stations (i.e., response stations with an EIRP not exceeding –6 dBW) employing digital modulation to those adopted for certain fixed and mobile wireless stations in other frequency bands. Specifically, IPWireless requests the following requirements be applied to such stations: (a) At the edge of a 6 MHz channel, out-of-band power shall be attenuated by 25 dB relative to the power (P) within the 6 MHz channel; (b) Attenuated along a linear slope to at least 40 dB or 33+10log(P) dB, whichever is the lesser attenuation, at 250 kHz beyond the nearest channel edge; and, (c) Attenuated along a linear slope from that level to at least 60 dB or 43+10log(P) dB, whichever is the lesser attenuation, at all other frequencies removed from the channel. We agree with IPWireless that it would be unreasonable to require low power response stations to comply with emission limitations crafted for much higher power levels. Therefore, we amend our rules as requested by IPWireless.

16. Also, with respect to low power MDS and ITFS response stations, IPWireless requests that the Commission amend its rules to incorporate into them certain provisions which were included in the *Reconsideration Order* in the form of a waiver of the rules. Specifically, referring to the blanket waiver in the *Reconsideration Order* of the requirement that low power response stations must use directional antennas, IPWireless states that "* * * the Commission must assure fixed wireless subscribers that they have a clear and unequivocal legal right under the Commission's Rules to use an omnidirectional antenna in connection with any MDS/ITFS Response Station equipment they purchase at retail."

17. The issue of the waiver was first raised by Qualcomm, which presented a type of low power response station which was small enough to easily be placed on a desktop or shelf and could be used as part of a very localized system of many such units, all communicating with a nearby hub station. The antenna for this unit is a very short 'whip' type metal rod, which is omnidirectional, i.e., radiates and receives signals equally on all azimuthal headings. Qualcomm contended, and we agreed, that the use of such antennas at low power stations posed very little risk of interference to neighboring systems and should therefore be permitted. With respect to the impact of omnidirectional antennas on interference from neighboring systems, we conditioned our waiver of the rules by requiring that all interference calculations involving protection of low power/omnidirectional response stations be conducted as if those station were using a directional antenna for reception. This proviso was included so

that the use of omnidirectional antennas for reception would not result in such stations receiving greater interference protection than that provided to non-omnidirectional stations. Although we believe that our blanket waiver of the pertinent rules was sufficient to provide the relief sought by Qualcomm, we believe that IPWireless has presented sufficient justification for amending our rules in order to codify our position on this matter. We therefore amend our rules as requested by IPWireless.

18. We also amend our rules to clarify the relationship between the provisions that permit subdivision of 6 MHz channels and the provisions that limit the number of response stations that may be operated. It was not our intent to impose a ceiling on the maximum number of permissible response stations within a 6 MHz channel that would limit the flexibility of licensees to create subchannels. In footnote 44 of the *Two-Way Order,* we explained how the power for a 6 MHz channel was to be subdivided when the channel was subdivided, and in §§ 21.902 and 74.903 governing interference protection standards for two-way systems, we required that, for channels other than 6 MHz in width, a power spectral density adjustment be applied to the interference criteria in order to account for the actual bandwidth in use. Nevertheless, in light of the concern for clarity expressed by the Wireless Communications Association ("WCA"), we amend our rules to clearly state that the numerical limitations imposed on the response stations in a 6 MHz channel are subject to adjustment, without Commission approval, when the 6 MHz channel is subdivided, so long as the appropriate power flux density requirements are observed. With respect to the CTN's position that such flexibility should be permissible only if the Commission also amends its rules to require that all subchannels be within the original 6 MHz response service area ("RSA"), we agree with WCA that such a requirement already exists and can be found in §§ 21.909(g)(1) and 74.939(g)(1). The creation of an RSA without an application for, and approval of, a separate hub station license is not permitted by our rules.

19. We recently released a revised version of the Appendix D of the *Two-Way Order,* the Methodology for Predicting Interference from Response Station Transmitters and to Response Station Hubs and for Supplying Data on Response Station Systems ("Methodology"), which addresses all of the issues raised by these parties and we have also incorporated a number of clarifying amendments on our own motion. The full text of the revised Methodology can be found at *http://www.fcc.gov/mmb/vsd/files/methodology.doc.*

G. Other Matters

20. We have made some minor changes to our application filing and service rules. The data files required pursuant to the Methodology and the demonstrations and certifications required by our rules are to be filed with the Commission's Reference Room, rather than with the Commission's copy contractor. We will require that the Appendix D data files be in ASCII format on either CD–ROM or 3.5 inch diskette media. No hard copy version of these data files will be required. Demonstrations and certifications may be in either hard copy or ASCII or PDF format on CD–ROM or 3.5 inch diskette media. (If CD–ROM or 3.5 inch diskette media are used, no hard copy version is required.) Applicants serving the data files, demonstrations and certifications on other applicants and/or licensees will be required to do so using the same format(s) and media as used in their submissions to the Commission's Reference Room.

21. The *Further Notice of Proposed Rulemaking* section of this *Further Reconsideration Order* is published elsewhere in this issue of the **Federal Register**. The *Further Notice of Proposed Rulemaking* section addresses the issue of possible Gaussian noise interference that can occur in certain limited circumstances.

III. Second Supplemental Final Regulatory Analysis

22. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, a Final Regulatory Flexibility Analysis (FRFA) was incorporated in Appendix B of the *Two-Way Order* and a Supplement was incorporated in Appendix B of the *Reconsideration Order* in this proceeding. The Commission's Second Supplemental Final Regulatory Flexibility Analysis (Second Supplemental FRFA) in the *Further Reconsideration Order* reflects revised or additional information to that contained in the FRFA and Supplement. This Second Supplemental FRFA is thus limited to matters raised in response to the *Two-Way Order* and the *Reconsideration Order* and that are granted on reconsideration in the *Further Reconsideration Order.* The Second Supplemental FRFA conforms to the RFA, as amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA); see generally 5 U.S.C. 601 et seq. Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

A. Need For and Objectives of Action

23. In the *Two-Way Order,* we amended parts 21 and 74 of our rules to enhance the ability of MDS and ITFS licensees to provide two-way communication services. The actions taken in the *Further Reconsideration Order* are in response to petitions for reconsideration, clarification or expansion of the rules and policies adopted in the *Two-Way Order* and the *Reconsideration Order.* The petitions have been granted in part and denied in part. The *Further Reconsideration Order* grants the petitions that sought to allow excess capacity leases between ITFS licensees and MDS operators to contain a provision that would require that the lease be assigned if the underlying license is assigned. We also grant those petitions that request we grandfather ITFS leases entered into prior to March 31, 1997 that contain automatic renewal provisions effective after March 31, 1997. We further grant those petitions for reconsideration that sought a modification of our rules to allow ITFS/MDS excess capacity to hold booster station licenses provided that at the end of the lease time such lessees either assign the booster station license to the underlying licensee or, if the ITFS licensee does not want the booster station license, turn the license into the Commission. We also grant those petitions that request that we permit lessees of ITFS capacity to request waivers of the ITFS programming requirements in areas within its Protected Service Area where the ITFS licensee does not yet provide educational service. Moreover, we grant those petitions seeking that we clarify our rules that an ITFS receive site does not lose its register status even if it engages in substantial technical modifications such as channel swapping. Finally, we grant those petitions seeking that we defer booster service area protection for low powered boosters until after the initial filing window. We believe these final rule amendments will facilitate further two-way transmission and other improvements to the MDS and ITFS services.

B. Significant Issues Raised by the Public in Response to the Initial Analysis

24. No comments were received specifically in response to the FRFA contained in the *Two-Way Order* or the Supplement in the *Reconsideration Order.*

C. Description and Number of Small Entities Involved

25. The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act ("SBA"). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Small Business Act, 15 U.S.C. 632.

26. The Commission has defined "small entity" for the auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. 47 CFR 21.961(b)(1). This definition of a small entity in the context of MDS auctions has been approved by the SBA. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas. Of 67 winning bidders, 61 qualified as small entities. One of these small entities, O'ahu Wireless Cable, Inc., was subsequently acquired by GTE Media Ventures, Inc., which did not qualify as a small entity for purposes of the MDS auction.

27. MDS is also heavily encumbered with licensees of stations authorized prior to the auction. The SBA has developed a definition of small entities for pay television services, which includes all such companies generating $11 million or less in annual receipts. 13 CFR 121.201. This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators which did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of $11 million annually. Therefore, for purposes of this FRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, and some of these providers may take advantage of our amended rules to provide two-way MDS.

28. There are presently 2032 ITFS licensees. All but 100 of these licenses are held by educational institutions (these 100 fall in the MDS category, above). Educational institutions may be included in the definition of a small entity. *See* 5 U.S.C. 601(3)–(5). ITFS is a non-pay, non-commercial broadcast service that, depending on SBA categorization, has, as small entities, entities generating either $10.5 million or less, or $11.0 million or less, in annual receipts. *See* 13 CFR 121.210 (SIC 4833, 4841, and 4899). However, we do not collect, nor are we aware of other collections of, annual revenue data for ITFS licensees. Thus, we find that up to 1932 of these educational institutions are small entities that may take advantage of our amended rules to provide two-way ITFS.

D. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

29. *The Further Reconsideration Order* adopts the following proposals that include reporting, recordkeeping, and compliance requirements: We refined our rules to require that lessees of ITFS excess capacity, who hold booster station licenses on that leased capacity, must either assign the booster station license to the underlying ITFS licensee, or if the ITFS licensee does not want the booster station license, turn it into the Commission at the end of the lease term. We allowed lessees of ITFS capacity to request waivers of the ITFS programming requirements in areas within the ITFS licensee's Protected Service Area where that ITFS licensee does not yet provide educational service. As stated above, we extended our filing requirements to allow filings to the Commission to be submitted electronically and via CD–ROM. These provisions are intended to give an added measure of flexibility to applicants and at the same time provide for administrative convenience.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

30. The following step was taken in the *Further Reconsideration Order* to minimize the significant economic impact on small entities: We extended our filing requirements to allow filings to the Commission to be submitted electronically and via CD–ROM. This provision is intended to give an added measure of flexibility to applicants and at the same time provide for administrative convenience.

F. Report to Congress

31. The Commission will send a copy of the *Further Reconsideration Order*, including this Second Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Further Reconsideration Order*, including the Second Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Further Reconsideration Order* and Second Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

IV. Procedural Matters

A. Ordering Clauses

32. Accordingly, the above-referenced petitions for further reconsideration and/or clarification of the Order Are Granted in Part and Denied in Part, as described.

33. *It is Further Ordered* that, pursuant to the authority contained in Sections 4(i) and (j), 301, 303(f), 303(g), 303(h), 303(r), 308(b), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 301, 303(f), 303(g), 303(h), 303(j), 308(b), 403, and 405, this Report and Order on Further Reconsideration is Adopted, the Order Is Modified and Clarified to the extent specified, and parts 21 and 74 of the Commission's Rules, 47 CFR 21 and 74, Are Amended.

34. The *Notice is Hereby Given* and *Comment is Sought* on the proposed clarification described in the Further Notice of Proposed Rulemaking.

35. The rule amendments set forth not pertaining to new or modified reporting or recordkeeping requirements will become effective September 29, 2000, except for §§ 21.902(m), 21.913(b) introductory text, 21.913(b)(8), 21.913(e)(4)(ix), 74.931(d)(1), 74.985(b)(8), and 74.985(e)(4)(ix), which contain information collection requirements that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date of these sections.

36. The Commission's Office of Public Affairs, Reference Operations Division, Shall Send a copy of this Report and Order on Further Consideration and Further Notice of Proposed Rulemaking including the Supplemental Final and Initial Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 21

Communications common carriers, Communications equipment, Reporting and recordkeeping requirements, Television.

47 CFR Part 74

Communications equipment, Education, Reporting and Recordkeeping requirements, Television.

Federal Communications Commission.
Magalie Román Salas,
Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 21 and 74 as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

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

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

2. In § 21.23, paragraph (c)(2) is revised to read as follows:

§ 21.23 Amendment of applications.

* * * * *

(c) * * *

(2) Except during the sixty (60) day amendment period provided for in § 21.27(d), any amendment to an application for a new or modified response station hub, booster station or point-to-multipoint I channel(s) station or to an application for a modified main station that reflects any change in the technical specifications of the proposed facility, includes any new or modified analysis of potential interference to another facility or submits any interference consent from a neighboring licensee, shall result in the application being assigned a new file number and being treated as newly filed.

* * * * *

3. In § 21.31, paragraph (a) is revised to read as follows:

§ 21.31 Mutually exclusive applications.

(a) Except with respect to applications for new or modified response stations hubs, booster stations, and point-to-multipoint I channel stations, and to applications for modified main stations, filed on the same day or during the same window, the Commission will consider applications to be mutually exclusive if their conflicts are such that grant of one application would effectively preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more of the other applications.

* * * * *

4. In § 21.42, paragraph (c)(8) is revised to read as follows:

§ 21.42 Certain modifications not requiring prior authorizations.

* * * * *

(c) * * *

(8) A change to a sectorized antenna system comprising an array of directional antennas, provided that such system does not change polarization or result in an increase in radiated power by more than one dB in any horizontal or vertical direction; provided, however, that notice of such change is provided to the Commission on FCC Form 331 within ten (10) days of installation.

* * * * *

5. In § 21.106, paragraph (a)(2) is revised to read as follows:

§ 21.106 Emission limitations.

(a) * * *

(2) When using transmissions employing digital modulation techniques (see § 21.122(b)) in situations other than those covered by subpart K of this part:

* * * * *

6. In § 21.902, paragraphs (c) introductory text and (i)(1) are revised, and paragraph (m) is added to read as follows:

§ 21.902 Interference.

* * * * *

(c) The following interference studies must be prepared:

* * * * *

(i) * * *

(1) For each application for a new station, or amendment thereto, proposing MDS facilities, filed on October 1, 1995, or thereafter, on or before the day the application or amendment is filed, the applicant must prepare an analysis demonstrating that operation of the MDS applicant's transmitter will not cause harmful electrical interference to each receive site registered as of September 17, 1998, nor within a protected service area as defined in paragraph (d)(1) of this section, of any cochannel or adjacent channel ITFS station licensed, with a conditional license, or proposed in a pending application on the day such MDS application is filed, with an ITFS transmitter site within 50 miles of the coordinates of the MDS station's proposed transmitter site.

* * * * *

(m) The following information formats and storage media are to be used in connection with applications for new and modified MDS and ITFS stations:

(1) The data file prepared for submission to the Commission's Reference Room pursuant to the requirements set out at paragraph 74 of Appendix D to the *Report and Order* in MM Docket 97–217, FCC 98–231, must be in ASCII format on either CD–ROMs or 3.5″ diskettes. Any supplementary information submitted in connection with Appendix D may be in either ASCII or PDF format (graphics must be in PDF format) on either CD–ROMs or 3.5″ diskettes. Applicants serving such data/information on other applicants and/or licensees should do so using the same format(s) and media as used in their submission to the Commission's Reference Room.

(2) Demonstrations and certifications prepared for submission to the Commission's Reference Room may be in either hard copy or in ASCII or PDF format on CD–ROM's or 3.5″ diskettes. (Graphics must be either hard copy or PDF format) Applicants serving such demonstrations and certifications on other applicants and/or licensees should do so using the same format(s) and media as used in their submission to the Commission's Reference Room.

7. In § 21.906, paragraph (d) is revised to read as follows:

§ 21.906 Antennas.

* * * * *

(d) Directive receiving antennas shall be used at all points other than response station hubs and response stations operating with an EIRP no greater than −6 dBW per 6 MHz channel and shall be elevated no higher than necessary to assure adequate service. Receiving antenna height shall not exceed the height criteria of Part 17 of this chapter, unless authorization for use of a specific maximum height (above ground and mean sea level) for each location has been obtained from the Commission prior to the erection of the antenna. (See part 17 of this chapter concerning construction, marking and lighting of antenna structures.) A response station operating with an EIRP no greater than −6 dBW per 6 MHz channel may use an omnidirectional receiving antenna. However, for the purpose of interference protection, such response stations will be treated as if utilizing a receive antenna meeting the requirements of the reference receiving antenna of Figure 1 of § 21.902(f)(3).

8. In § 21.908, paragraph (d) is revised to read as follows:

§ 21.908 Transmitting equipment.

* * * * *

(d) The maximum out-of-band power of an MDS response station using all or part of a 6 MHz channel, employing digital modulation and transmitting with an EIRP greater than –6 dBW per 6 MHz channel shall be attenuated (as measured in accordance with paragraph (e) of this section) at the 6 MHz channel

edges at least 25 dB relative to the average 6 MHz channel power level, then attenuated along a linear slope to at least 40 dB at 250 kHz beyond the nearest channel edge, then attenuated along a linear slope from that level to at least 60 dB at 3 MHz above the upper and below the lower licensed channel edges, and attenuated at least 60 dB at all other frequencies. The maximum out-of-band power of an MDS response station using all or part of a 6 MHz channel, employing digital modulation and transmitting with an EIRP no greater than –6 dBW per 6 MHz channel shall be attenuated (as measured in accordance with paragraph (e) of this section) at the channel edges at least 25 dB relative to the average 6 MHz channel transmitter output power level (P), then attenuated along a linear slope to at least 40 dB or 33+10log(P) dB, whichever is the lesser attenuation, at 250 kHz beyond the nearest channel edge, then attenuated along a linear slope from that level to at least 60 dB or 43+10log(P) dB, whichever is the lesser attenuation, at 3 MHz above the upper and below the lower licensed channel edges, and attenuated at least 60 dB or 43+10log(P) dB, whichever is the lesser attenuation, at all other frequencies. Where MDS response stations with digital modulation utilize all or part of more than one contiguous 6 MHz channel to form a larger channel (*e.g.*, a channel of width 12 MHz), the above-specified attenuations shall be applied only at the upper and lower edges of the overall combined channel. Notwithstanding these provisions, should harmful interference occur as a result of emissions outside the assigned channel(s), additional attenuation may be required by the Commission.

* * * * *

9. In § 21.909, paragraphs (c)(1), (c)(2), (d), (d)(1), (g)(3), (g)(4), (g)(6), (g)(6)(i), (g)(6)(ii), (g)(6)(iii), (h) and (o) are revised to read as set forth below and paragraphs (c)(3) and (g)(6)(iv) are removed.

§ 21.909 MDS response stations.

* * * * *

(c) * * *

(1) File FCC Form 331 with Mellon Bank, and certify on that form that it has complied with the requirements of paragraphs (c)(2) and (d) of this section and that the interference data submitted under paragraph (d) of this section is complete and accurate. Failure to certify compliance and to comply completely with the requirements of paragraphs (c)(2) and (d) of this section shall result in dismissal of the application or revocation of the response station hub license, and may result in imposition of a monetary forfeiture; and

(2) Submit the following (see § 21.902(m) for permissible formats and media) to the Commission's Reference Room:

(i) The data files required by Appendix D to the *Report and Order* in MM Docket 97–217, FCC 98–231, "Methods For Predicting Interference From Response Station Transmitters And To Response Station Hubs And For Supplying Data on Response Station Systems"; and

(ii) The demonstrations and certifications required by paragraph (d) of this section.

(d) An applicant for a response station hub license shall prepare the following:

(1) A demonstration describing the system channel plan, to the extent that such information is not contained in the data file required in (c)(2)(i) of this section; and

* * * * *

(g) * * *

(3) No response station shall operate with an EIRP in excess of that specified in the application for the response station hub for the particular regional class of characteristics with which the response station is associated, and such response station shall not operate with an EIRP in excess of 33 dBW + 10log(X/6) dBW, where X is the channel width in MHz, and

(4) Each response station shall employ a transmission antenna oriented towards the response station hub with which the response station communicates and such antenna shall be no less directive than the worst-case outer envelope pattern specified in the application for the response station hub for the regional class of characteristics with which the response station is associated; and

* * * * *

(6) The response stations transmitting simultaneously at any given time within any given region of the response service area utilized for purposes of analyzing the potential for interference by response stations shall conform to the numerical limits for each class of response station proposed in the application for the response station hub license. Notwithstanding the foregoing, where a response station hub licensee subchannelizes pursuant to § 21.909(a) and limits the maximum EIRP emitted by any individual response station proportionately to the fraction of the channel that the response station occupies, the licensee may operate simultaneously on each subchannel the number of response stations specified in the license. Moreover, the licensee of a response station hub may alter the number of response stations of any class operated simultaneously in a given region, without prior Commission authorization, provided that the licensee:

(i) Files with the Commission (see § 21.902(m) for permissible format(s) and media) a demonstration indicating the number of response stations of such class(es) to be operated simultaneously in such region and a certification that it has complied with the requirements of paragraphs (g)(6)(ii) and (iii) of this section and that the interference data submitted pursuant to paragraph (g)(6)(ii) is complete and accurate; and

(ii) Provides the Commission's Reference Room (see § 21.902(m) for permissible formats and media) with an update of the previously-filed response station data and with a demonstration that such alteration will not result in any increase in interference to the protected service area or protected receive sites of any existing or previously-proposed, cochannel or adjacent channel MDS or ITFS station or booster station, to the protected service area of any MDS Basic Trading Area or Partitioned Service Area licensee entitled to protection pursuant to paragraph (d)(3) of this section, or to any existing or previously-proposed, cochannel or adjacent channel response station hub, or response station under § 21.949 or § 74.949 of this chapter; or that the applicant for or licensee of such facility has consented to such interference; and

(iii) Serves a copy of such demonstration and certification upon each party entitled to be served pursuant to paragraph (d)(3) of this section; and

* * * * *

(h) Applicants must comply with Part 17 of this chapter concerning notification to the Federal Aviation Administration of proposed antenna construction or alteration for all hub stations and associated response stations.

* * * * *

(o) Interference calculations shall be performed in accordance with Appendix D (as amended) to the *Report and Order* in MM Docket 97–217, FCC 98–231, "Methods For Predicting Interference From Response Station Transmitters and To Response Station Hubs and For Supplying Data on Response Station Systems." (Note: This document is subject to change and will be updated/amended as needed without prior notification. Applicants should always utilize the most current version of the document, as found at the Commission's internet web site, http://

www.fcc.gov/mmb/vsd/files/methodology.doc). Compliance with out-of-band emission limitations shall be established in accordance with § 21.908(e).

10. In § 21.913, paragraphs (a), (b) introductory text, (b)(2), (e) introductory text, (e)(4)(vi), (e)(4)(viii) are revised, and paragraphs (b)(8) and (e)(4)(ix) are added to read as follows:

§ 21.913 Signal booster stations.

(a) An MDS booster station may reuse channels to repeat the signals of MDS stations or to originate signals on MDS channels. The aggregate power flux density generated by an MDS station and all associated signal booster stations and all simultaneously operating cochannel response stations may not exceed −73 dBW/m² (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see § 21.902(b)(7)(i)) at or beyond the boundary of the protected service area, as defined in §§ 21.902(d) and 21.933, of the main MDS station whose channels are being reused, as measured at locations for which there is an unobstructed signal path, unless the consent of the affected cochannel licensee is obtained.

(b) A licensee or conditional licensee of an MDS station, or the capacity lessee of such MDS station upon the written consent of the licensee or conditional licensee, may secure a license for a high power signal booster station that has a maximum EIRP in excess of −9 dBW + 10 log(X/6) dBW where X is the channel width in MHz, if it complies with the out-of-band emission requirements of § 21.908. Any licensee of a high-power booster station that is a capacity lessee shall, upon termination or expiration of the capacity lease, automatically assign the booster station license to the licensee or conditional licensee of the MDS station by and upon written notice to the Commission signed by the lessee and such licensee or conditional licensee. If upon termination or expiration of the capacity lease the licensee or conditional licensee no longer desires or needs the high-power booster station license, such a license must be returned to the Commission. The applicant for a high-power station, or for modification thereto, where not subject to § 21.41 or § 21.42, shall file FCC Form 331 with Mellon Bank, and certify on that form that the applicant has complied with the additional requirements of this paragraph (b), and that the interference data submitted under this paragraph is complete and accurate. Failure to certify compliance and to comply completely with the following requirements of this paragraph (b) shall result in dismissal of the application or revocation of the high-power MDS signal booster station license, and may result in imposition of a monetary forfeiture. The applicant is additionally required to submit (see § 21.902(m) for permissible format(s) and media) to the Commission's Reference Room the following information:

* * * * *

(2) A study which demonstrates that the aggregate power flux density of the MDS station and all associated booster stations and simultaneously operating cochannel response stations licensed to or applied for by the applicant, measured at or beyond the boundary of the protected service area of the MDS station whose channels are to be reused, does not exceed −73 dBW/m² (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see § 21.902(b)(7)(i)) at locations for which there is an unobstructed signal path, unless the consent of the affected licensees has been obtained; and

* * * * *

(8) If the applicant is a capacity lessee, a certification that:

(i) The licensee or conditional licensee has provided its written consent to permit the capacity lessee to apply for the booster station license; and

(ii) The applicant and the licensee or conditional licensee have entered into a lease that is in effect at the time of such filing.

* * * * *

(e) A licensee or conditional licensee of an MDS station, or the capacity licensee of such MDS station upon the written consent of the licensee or conditional licensee, shall be eligible to install and operate a low power signal booster station that has a maximum EIRP of −9 dBW + log10(X/6) dBW, where X is the channel width in MHz. A low-power MDS signal booster station may operate only on one or more MDS channels that are licensed to the licensee of the MDS booster station, but may be operated by a third party with a fully-executed lease or consent agreement with the MDS conditional licensee or licensee. Any licensee of a low-power booster station that is a capacity lessee shall, upon termination or expiration of the capacity lease, automatically assign the booster station license to the licensee or conditional licensee of the MDS station by and upon written notice to the Commission signed by the lessee and such licensee or conditional licensee. If upon termination or expiration of the capacity lease the licensee or conditional licensee no longer desires or needs the low-power booster station license, such a license must be returned to the Commission. An MDS licensee, conditional licensee, or capacity lessee thereof, may install and commence operation of a low-power MDS signal booster station for the purpose of retransmitting the signals of the MDS station or for originating signals. Such installation and operation shall be subject to the condition that for sixty (60) days after installation and commencement of operation, no objection or petition to deny is filed by the licensee of a, or applicant for a previously-proposed, cochannel or adjacent channel ITFS or MDS station with a transmitter within 8.0 kilometers (5 miles) of the coordinates of the low-power MDS signal booster station. An MDS licensee, conditional licensee, or capacity lessee thereof seeking to install a low-power MDS signal booster station under this rule must submit a FCC Form 331 to the Commission within 48 hours after installation. In addition, the MDS licensee, conditional licensee, or capacity lessee must submit the following information (see § 21.902(m) for permissible format(s) and media) to the Commission's Reference Room:

* * * * *

(4) * * *

(vi) The aggregate power flux density of the MDS station and all associated booster stations and simultaneously operating cochannel response stations licensed to or applied for by the applicant, measured at or beyond the boundary of the protected service areas of the MDS stations whose channels are to be reused, does not exceed −73 dBW/m² (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see § 21.902(b)(7)(i)) at locations for which there is an unobstructed signal path, unless the consent of the affected licensees has been obtained; and

* * * * *

(viii) The applicant understands and agrees that, in the event harmful interference is claimed by the filing of an objection or petition to deny, it must terminate operation within two (2) hours of notification by the Commission, and must not recommence operation until receipt of written authorization to do so by the Commission; and

(ix) If the applicant is a capacity lessee, a certification that:

(A) The licensee or conditional licensee has provided its written consent to permit the capacity lessee to apply for the booster station license; and

(B) The applicant and the licensee or conditional licensee have entered into a lease that is in effect at the time of such filing.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILLIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

11. The authority for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), and 554.

12. In § 74.902, paragraphs (f) and (i) are revised to read as follows:

§ 74.902 Frequency assignments.

* * * * *

(f) An ITFS licensee may apply to exchange evenly one or more of its assigned channels with another ITFS licensee, or with an MDS licensee or conditional licensee, except that an ITFS licensee may not exchange one of its assigned channels for MDS channel 2A. The licensees seeking to exchange channels shall file in tandem with the Commission separate pro forma assignment of license applications, each attaching an exhibit which clearly specifies that the application is filed pursuant to a channel exchange agreement. The exchanged channel(s) shall be regulated according to the requirements applicable to the assignee; provided, however, that an ITFS licensee which receives one or more E or F Group channels through a channel exchange with an MDS licensee or conditional licensee shall not be subject to the restrictions on ITFS licensees who were authorized to operate on the E or F Group channels prior to May 26, 1983.

* * * * *

(i) On the E and F-channel frequencies, a point-to-point ITFS station may be involuntarily displaced by an MDS applicant or licensee, provided that suitable alternative spectrum is available and that the MDS entity bears the expenses of the migration. Suitability of spectrum will be determined on a case-by-base basis; at a minimum, the alternative spectrum must be licensable by ITFS operators on a primary basis (although it need not be specifically allocated to the ITFS service), and must provide a signal that is equivalent to the prior signal in picture quality and reliability, unless the ITFS licensee will accept an inferior signal. Potential expansion of the ITFS licensee may be considered in determining whether alternative available spectrum is suitable.

* * * * *

13. In § 74.903, paragraphs (b)(4), (c) and (d) are revised to read as follows:

§ 74.903 Interference.

* * * * *

(b) * * *

(4) In lieu of the interference analyses required by paragraphs (b)(1) and (2) of this section, an applicant may submit (a) statement(s) from the affected cochannel or adjacent channel licensee(s) that any resulting interference is acceptable.

* * * * *

(c) Existing licensees and prospective applicants, including those who lease or propose to lease excess capacity pursuant to § 74.931(c) or (d), are expected to cooperate fully and in good faith in attempting to resolve problems of potential interference before bringing the matter to the attention of the Commission.

(d) Each authorized or previously-proposed applicant, or licensee must be protected from harmful electrical interference at each of its receive sites registered previously as of September 17, 1998, and within a protected service area as defined at § 21.902(d) of this chapter and in accordance with the reference receive antenna characteristics specified at § 21.902(f) of this chapter. An ITFS entity which did not receive protected service area protection prior to September 17, 1998 shall be accorded such protection by a cochannel or adjacent channel applicant for a new station or station modification, including a booster station, response station or response station hub, where the applicant is required to prepare an analysis, study or demonstration of the potential for harmful interference. An ITFS entity receiving interference protection provided by this section will continue to receive such protection if it elects to swap channels with another ITFS or MDS station as specified in § 74.902(f).

14. In § 74.911, paragraphs (b), (d), and (e) are revised to read as follows:

§ 74.911 Processing of ITFS station applications.

* * * * *

(b) A new file number will be assigned to an application for a new station or for major changes in the facilities of an authorized station, when it is amended so as to effect a major change, as defined in paragraph (a)(2) of this section, or results in a situation where the original party or parties to the application do not retain control of the applicant as originally filed. An application for change in the facilities of any existing station will continue to carry the same file number even though (pursuant to Commission approval) an assignment of license or transfer of control of such licensee has taken place if, upon consummation, the application is amended to reflect the new ownership.

* * * * *

(d) Notwithstanding any other provisions of this part, effective as of September 17, 1998, there shall be a one-week window, at such time as the Commission shall announce by public notice, for the filing of applications for all major changes, high-power signal booster station, response station hub, and I channels point-to-multipoint transmissions licenses, during which all applications shall be deemed to have been filed as of the same day for purposes of 74.939 and 74.985. Following the publication of a public notice announcing the tendering for filing of applications submitted during that window, applicants shall have a period of sixty (60) days to amend their applications, provided such amendments do not result in any increase in interference to any previously-proposed or authorized station, or to facilities proposed during the window, absent consent of the applicant for or licensee of the station that would receive such additional interference. At the conclusion of that sixty (60) day period, the Commission shall publish a public notice announcing the acceptance for filing of all applications submitted during the initial window, as amended during the sixty (60) day period. All petitions to deny such applications must be filed within sixty (60) days of such second public notice. On the sixty-first (61st) day after the publication of such second public notice, applications for major changes, new or modified response station hub, high powered signal booster and booster station licenses may be filed and will be processed in accordance with the provisions of 74.939 and 74.985. Each application submitted during the initial window shall be granted on the sixty-first (61st) day after the Commission shall have given such public notice of its acceptance for filing, unless prior to such date either a party in interest timely files a formal petition to deny or for other relief pursuant to § 74.912, or the Commission notifies the applicant that its application will not be granted. Where an application is granted pursuant to the provisions of this paragraph, licensee shall maintain a copy of the application at the transmitter site or response station hub

until such time as the Commission issues a license.

(e) Except as provided in paragraph (d) of this section, major change applications may be filed at any time. Except during the sixty (60) day amendment period provided for in paragraph (d) of this section, any amendment to a major change application that reflects any change in the technical specifications of the proposed facility, includes any new or modified analysis of potential interference to another facility, or submits any interference consent from a neighboring licensee, shall cause the application to be considered newly-filed. Notwithstanding any other provision of part 74, major change applications meeting the requirements of part 74 shall cut-off applications that are filed on a subsequent day for facilities that would cause harmful electromagnetic interference to the facilities proposed in the major change application. A facility proposed in a major change application shall not be entitled to protection from interference caused by any facilities proposed on or prior to the day the major change application is filed. A facility proposed in a major change application shall not be required to protect from interference facilities proposed on or after the day the major change application is filed. Except as provided by paragraph (d) of this section, any petition to deny a major change application shall be filed no later than the sixtieth (60th) day after the date of public notice announcing the filing of such application. Except as provided in paragraph (d) of this section a major change application that meets the requirements of part 74 shall be granted on the sixty-first (61st) day after the Commission shall have given public notice of the acceptance for filing of it, unless prior to such date either a party in interest files a timely petition to deny or files for other relief pursuant to § 74.912, or the Commission notifies the applicant that its application will not be granted at such time. Where an application is granted pursuant to the provisions of this paragraph, the licensee shall maintain a copy of the application at the facility until such time as the Commission issues a license for that facility's operations.

15. In § 74.931, paragraphs (c) and (d) are revised, paragraphs (e), (f), (g), (h), (i) and (j) are redesignated as paragraphs (f), (g), (h), (i), (j) and (k), and a new paragraph (e) is added to read as follows:

§ 74.931 Purpose and permissible service.

* * * * *

(c) A licensee solely utilizing analog transmissions may use excess capacity on each channel to transmit material other than the ITFS subject matter specified in paragraphs (a) and (b) of this section, subject to the following conditions:

(1) Before leasing excess capacity on any one channel, the licensee must provide at least 20 hours per week of ITFS educational usage on that channel, except as provided in paragraph (c)(2) and (c)(3) of this section. An additional 20 hours per week per channel must be strictly reserved for ITFS use and not used for non-ITFS purposes, or reserved for recapture by the ITFS licensee for its ITFS educational usage, subject to one year's advance, written notification by the ITFS licensee to its lessee and accounting for all recapture already exercised, with no economic or operational detriment to the licensee. These hours of recapture are not restricted as to time of day or day of the week, but may be established by negotiations between the ITFS licensee and the lessee. This 20 hours per channel per week ITFS educational usage requirement and this recapture and/or reservation requirement of an additional 20 hours per channel per week shall apply spectrally over the licensee's whole actual service area.

(2) For the first two years of operation, an ITFS entity may lease excess capacity if it provides ITFS educational usage for at least 12 hours per channel per week, provided that the entity does not employ channel loading technology.

(3) The licensee may shift its requisite ITFS educational usage onto fewer than its authorized number of channels, via channel mapping or channel loading technology, so that it can lease full-time channel capacity on its ITFS station and/or associated ITFS booster stations, subject to the condition that it provide a total average of at least 20 hours per channel per week of ITFS educational usage on its authorized channels. The use of channel mapping or channel loading consistent with the Rules shall not be considered adversely to the ITFS licensee in seeking a license renewal. The licensee also retains the unabridgeable right to recapture, subject to six months' advance written notification by the ITFS licensee to its lessee, an average of an additional 20 hours per channel per week, accounting for all recapture already exercised. Regardless of whether the licensee has educational receive sites within its psa, the licensee may lease booster stations in the entire psa, provided that the licensee maintains the unabridgeable right to ready recapture at least 40 hours per channel per week for ITFS educational usage. The licensee may agree to the transmission of this recapture time on channels not authorized to it, but which are included in the wireless system of which it is a part. A licensee under this paragraph which leases excess capacity on any one of its channels to an operator may "channel shift" pursuant to and under the conditions of paragraph (d)(2) of this section.

(4) An ITFS applicant or licensee may specify an omnidirectional antenna for point-to multipoint transmissions to facilitate the leasing of excess capacity.

(5) Leasing activity may not cause unacceptable interference to cochannel or adjacent channel operations.

(6) When an ITFS licensee makes capacity available on a common carrier basis, it will be subject to common carrier regulation.

(i) A licensee operating as a common carrier is required to comply with all policies and rules applicable to that service. Responsibility for making the initial determination of whether a particular activity is common carriage rests with the ITFS licensee. Initial determinations by the licensees are subject to Commission examination and may be reviewed at the Commission's discretion.

(ii) An ITFS licensee also may alternate, without further authorization required, between rendering service on a common carrier and non-common carrier basis, provided that the licensee notifies the Commission of any service status changes at least 30 days in advance of such changes. The notification shall state whether there is any affiliation or relationship to any intended or likely subscriber or program originator.

(iii) Licensees under paragraph (c)(6) of this section additionally shall comply with the provisions of §§ 21.304, 21.900(b), 21.903(b)(1) and (2) and (c), and 21.910 of this chapter.

(d) A licensee utilizing digital transmissions on any of its licensed channels may use excess capacity on each channel to transmit material other than the ITFS subject matter specified in paragraphs (a) and (b) of this section, subject to the following conditions:

(1) The licensee must reserve a minimum of 5% of the capacity of its channels for instructional purposes only, and may not lease this reserved capacity. In addition, before leasing excess capacity, the licensee must provide at least 20 hours per licensed channel per week of ITFS educational usage. This 5% reservation and this 20 hours per licensed channel per week ITFS educational usage requirement shall apply spectrally over the licensee's

whole actual service area. However, regardless of whether the licensee has an educational receive sites within its psa served by a booster, the licensee may lease excess capacity without making at least 20 hours per licensed channel per week of ITFS educational usage, provided that the licensee maintains the unabridgeable right to recapture on one months' advance notice such capacity as it requires over and above the 5% reservation to make at least 20 hours per channel per week of ITFS educational usage.

(2) The licensee may shift its requisite ITFS educational usage onto fewer than its authorized number of channels, via channel mapping or channel loading technology, and may shift its requisite ITFS educational usage onto channels not authorized to it, but which are included in the wireless system of which it is a part ("channel shifting"), so that it can lease full-time channel capacity on its ITFS station, associated ITFS booster stations, and/or ITFS response stations and associated response station hubs, subject to the condition that it provide a total average of at least 20 hours per licensed channel per week of ITFS educational usage. The use of channel mapping, channel loading, and/or channel shifting consistent with the Rules shall not be considered adversely to the ITFS licensee in seeking a license renewal. In addition, an ITFS entity receiving interference protection provided by § 74.903, will continue to receive such protection if it elects to swap channels with another ITFS or MDS station as specified in § 74.902(f).

(3) An ITFS applicant or licensee may specify an omnidirectional antenna for point-to-multipoint transmissions to facilitate the leasing of excess capacity.

(4) Leasing activity may not cause unacceptable interference to cochannel or adjacent channel operations.

(5) A licensee leasing any of its licensed channels to be used as response channels shall be required to maintain at least 25% of the capacity of its channels for point-to-multipoint transmissions during the term of the lease and following termination of the leasing arrangement. This 25% preservation may be over the licensee's own authorized channels or over channels not authorized to it, but which are included in the wireless system of which it is a part.

(6) When an ITFS licensee makes capacity available on a common carrier basis, it will be subject to common carrier regulation.

(i) A licensee operating as a common carrier is required to comply with all policies and rules applicable to that service. Responsibility for making the initial determination of whether a particular activity is common carriage rests with the ITFS licensee. Initial determinations by the licensees are subject to Commission examination and may be reviewed at the Commission's discretion.

(ii) An ITFS licensee also may alternate, without further authorization required, between rendering service on a common carrier and non-common carrier basis, provided that the licensee notifies the Commission of any service status changes at least 30 days in advance of such changes. The notification shall state whether there is any affiliation or relationship to any intended or likely subscriber or program originator.

(iii) Licensees under paragraph (d)(6) of this section additionally shall comply with the provisions of §§ 21.304, 21.900(b), 21.903(b)(1) and (2) and (c), and 21.910 of this chapter.

(e) ITFS excess capacity leases entered into prior to March 31, 1997, which contain a provision for automatic renewal which would be effective after March 31, 1997, are exempt for the duration of said lease from compliance with subsequently adopted Commission rules. However, the total term of such applicable lease may not exceed fifteen years.

* * * * *

16. § 74.936(f) is revised to read as follows:

§ 74.936 Emissions and bandwidth.

* * * * *

(f) The maximum out-of-band power of an ITFS response station using all or part of a 6 MHz channel, employing digital modulation and transmitting with an EIRP greater than −6 dBW per 6 MHz channel shall be attenuated (as measured in accordance with § 21.908(e)) at the 6 MHz channel edges at least 25 dB relative to the average 6 MHz channel power level, then attenuated along a linear slope to at least 40 dB at 250 kHz beyond the nearest channel edge, then attenuated along a linear slope from that level to at least 60 dB at 3 MHz above the upper and below the lower licensed channel edges, and attenuated at least 60 dB at all other frequencies. The maximum out-of-band power of an ITFS response station using all or part of a 6 MHz channel, employing digital modulation and transmitting with an EIRP no greater than −6 dBW per 6 MHz channel shall be attenuated (as measured in accordance with § 21.908(e)) at the channel edges at least 25 dB relative to the average 6 MHz channel transmitter output power level (P), then attenuated along a linear slope to at least 40 dB or 33+10log(P) dB, whichever is the lesser attenuation, at 250 kHz beyond the nearest channel edge, then attenuated along a linear slope from that level to at least 60 dB or 43+10log(P) dB, whichever is the lesser attenuation, at 3 MHz above the upper and below the lower licensed channel edges, and attenuated at least 60 dB or 43+10log(P) dB, whichever is the lesser attenuation, at all other frequencies. Where ITFS response stations with digital modulation utilize all or part of more than one contiguous 6 MHz channel to form a larger channel (*e.g.*, a channel of width 12 MHz), the above-specified attenuations shall be applied only at the upper and lower edges of the overall combined channel. Notwithstanding these provisions, should harmful interference occur as a result of emissions outside the assigned channel(s), additional attenuation may be required by the Commission.

* * * * *

17. In § 74.937, the text of paragraph (a) preceding Figure 1 and paragraph (b) are revised to read as follows:

§ 74.937 Antennas.

(a) In order to minimize the hazard of harmful cochannel and adjacent channel interference from other stations, directive receiving antennas should be used at all receiving locations other than response station hubs and response stations operating with an EIRP no greater than −6 dBW per 6 MHz channel. The choice of receiving antennas is left to the discretion of the licensee. However, for the purpose of interference calculations, except as set forth in § 74.939, the general characteristics of the reference receiving antenna shown in Figure 1 of this section (*i.e.*, a 0.6 meter (2 foot) parabolic reflector antenna, are assumed to be used in accordance with the provisions of § 74.903(a)(3) unless pertinent data is submitted of the actual antenna in use for reception. Licensees may install receiving antennas with general characteristics superior to those of the reference antenna. Should interference occur and it can be demonstrated that the existing receiving antenna is inadequate, a more suitable antenna should be installed. In such cases, installation of the new receiving antenna will be the responsibility of the system operator serving the receive site. A response station operating with an EIRP no greater than −6 dBW per 6 MHz channel may use an omnidirectional receiving antenna. However, for the purpose of interference

protection, such response stations will be treated as if utilizing a receive antenna meeting the requirements of the reference receiving antenna shown in Figure 1 of this section.

* * * * *

(b) Except as set forth in § 74.931(c)(4) and (d)(3), directive transmitting antennas shall be used whenever feasible so as to minimize interference to other licensees. The radiation pattern shall be designed to minimize radiation in directions where no reception is intended. When an ITFS station is used for point-to-point service, an appropriate directional antenna must be used. Notwithstanding these provisions, response stations operating with an EIRP no greater than −6 dBW per 6 MHz channel may utilize omnidirectional transmitting antennas.

* * * * *

18. In § 74.939, paragraphs (c)(2), (d) introductory text, (d)(1), (g)(3), (g)(4), (g)(6), (h), (l)(2), and (q) are revised as set forth below and paragraph (c)(3) is removed:

§ 74.939 ITFS response stations.

* * * * *

(c) * * *

(2) Submit the following (see § 21.902(m) for permissible formats and media) to the Commission's Reference Room:

(i) The data files required by Appendix D (as amended) to the *Report and Order* in MM Docket 97–217, FCC 98–231, "Methods For Predicting Interference From Response Station Transmitters And To Response Station Hubs And For Supplying Data on Response Station Systems"; and

(ii) The demonstrations and certifications required by paragraph (d) of this section.

(d) An applicant for a response station hub license shall prepare the following:

(1) A demonstration describing the system channel plan, to the extent that such information is not contained in the data file required in (c)(2)(i) of this section; and

* * * * *

(g) * * *

(3) No response station shall operate with an EIRP in excess of that specified in the application for the response station hub for the particular regional class of characteristics with which the response station is associated, and such response station shall not operate with an EIRP in excess of 33 dBW + 10log(X/6) dBW, where X is the channel width in MHz, and

(4) Each response station shall employ a transmission antenna oriented towards the response station hub with which the response station communicates and such antenna shall be no less directive than the worst-case outer envelope pattern specified in the application for the response station hub for the regional class of characteristics with which the response station is associated; and

* * * * *

(6) The response stations transmitting simultaneously at any given time within any given region of the response service area utilized for purposes of analyzing the potential for interference by response stations shall conform to the numerical limits for each class of response station proposed in the application for the response station hub license. Notwithstanding the foregoing, where a response station hub licensee subchannelizes pursuant to § 74.939(a) and limits the maximum EIRP emitted by any individual response station proportionately to the fraction of the channel that the response station occupies, the licensee may operate simultaneously on each subchannel the number of response stations specified in the license. Moreover, the licensee of a response station hub may alter the number of response stations of any class operated simultaneously in a given region, without prior Commission authorization, provided that the licensee:

(i) Files with the Commission (see § 21.902(m) for permissible format(s) and media) a demonstration indicating the number of response stations of such class(es) to be operated simultaneously in such region and a certification that it has complied with the requirements of paragraphs (g)(6)(ii) and (iii) of this section and that the interference data submitted pursuant to paragraph (g)(6)(ii) is complete and accurate; and

(ii) Provides the Commission's Reference Room (see § 21.902(m) for permissible formats and media) with an update of the previously-filed response station data and with a demonstration that such alteration will not result in any increase in interference to the protected service area or protected receive sites of any existing or previously-proposed, cochannel or adjacent channel MDS or ITFS station or booster station, to the protected service area of any MDS Basic Trading Area or Partitioned Service Area licensee entitled to protection pursuant to paragraph (d)(3) of this section, or to any existing or previously-proposed, cochannel or adjacent channel response station hub, or response station under § 21.949 or § 74.949 of this chapter; or that the applicant for or licensee of such facility has consented to such interference; and

(iii) Serves a copy of such demonstration and certification upon each party entitled to be served pursuant to paragraph (d)(3) of this section; and

* * * * *

(h) Applicants must comply with part 17 of this chapter concerning notification to the Federal Aviation Administration of proposed antenna construction or alteration for all hub stations and associated response stations.

* * * * *

(l) * * *

(2) Submit to the Commission's Reference Room (see § 21.902(m) for permissible format(s) and media) the following:

* * * * *

(q) Interference calculations shall be performed in accordance with Appendix D (as amended) to the *Report and Order* in MM Docket 97–217, FCC 98–231, "Methods For Predicting Interference From Response Station Transmitters and To Response Station Hubs and For Supplying Data on Response Station Systems." (Note: This document is subject to change and will be updated/amended as needed without prior notification. Applicants should always utilize the most current version of the document, as found at the Commission's internet web site, http://www.fcc.gov/mmb/vsd/files/methodology.doc). Compliance with out-of-band emission limitations shall be established in accordance with § 21.908(e) of this chapter.

* * * * *

19. In § 74.951, paragraph (b) is revised to read as follows:

§ 74.951 Modification of transmission systems.

* * * * *

(b) Any change in the antenna system affecting the direction of radiation, directive radiation pattern, antenna gain, or radiated power; provided, however, that a licensee may install a sectorized antenna system without prior consent if such system does not change polarization or result in an increase in radiated power by more than one dB in any direction, and notice of such installation is provided to the Commission on FCC Form 331 within ten (10) days of installation. When an applicant proposes to employ a directional antenna, or a licensee notifies the Commission pursuant to this paragraph of the installation of a sectorized antenna system, the applicant shall provide the Commission with information regarding the orientation of the directional antenna(s), expressed in

degree of azimuth, with respect to true north, and the make and model of such antenna(s).

* * * * *

20. In § 74.985, paragraphs (b) introductory text, (b)(5), (b)(7), (d), (e) introductory text, (e)(4)(viii) are revised, and paragraphs (b)(8), (e)(4)(ix) are added, to read as follows:

§ 74.985 Signal booster stations.

* * * * *

(b) A licensee or the capacity lessee of such ITFS station upon the written consent of the licensee, may secure a license for a high power signal booster station that has a maximum EIRP in excess of −9 dBW + 10 log(X/6) dBW where X is the channel width in MHz, if it complies with the out-of-band emission requirements of § 21.908. Any licensee of a high-power booster station that is a capacity lessee shall, upon termination or expiration of the capacity lease, automatically assign the booster station license to the licensee of the ITFS station by and upon written notice to the Commission signed by the lessee and such. If upon termination or expiration of the capacity lease the licensee no longer desires or needs the high-power booster station license, such a license must be returned to the Commission. Furthermore, such capacity lessee must reserve 20 hours per week per channel for ITFS use, or reserve for recapture by the ITFS licensee for its ITFS educational usage, subject to one year's advance, written notification by the ITFS licensee to its lessee and accounting for all recapture already exercised, with no economic or operational detriment to the licensee, for a lessor using analog transmissions. Alternatively, the capacity lessee must reserve a minimum of 5% of the capacity of its channels for instructional purposes only and provide at least 20 hours per licensed channel per week of ITFS educational usage for the lessor using digital transmissions. The applicant for a high-power station, or for modification thereto, shall file FCC Form 331 with the Commission Reference Room in Washington, DC, and certify on that form that the applicant has complied with the additional requirements of this paragraph (b), and that the interference data submitted under this paragraph is complete and accurate. Failure to certify compliance and to comply completely with the following requirements of this paragraph (b) shall result in dismissal of the application or revocation of the high-power ITFS signal booster station license, and may result in imposition of a monetary forfeiture. The applicant is additionally required to submit (see § 21.902(m) for permissible format(s) and media) to the Commission's Reference Room the following information:

* * * * *

(5) In lieu of the requirements of § 74.903, a study which demonstrates that the proposed signal booster station will cause no harmful interference (as defined in § 74.903(a)(1) and (2)) to cochannel and adjacent channel, authorized or previously-proposed ITFS and MDS stations with protected service area center coordinates as specified in § 21.902(d) of this chapter, to any authorized or previously-proposed response station hubs, booster service areas, or I channel stations associated with such ITFS and MDS stations, or to any ITFS receive sites registered as of September 17, 1998, within 160.94 kilometers (100 miles) of the proposed booster station's transmitter site. Such study shall consider the undesired signal levels generated by the proposed signal booster station, the main station, all other licensed or previously-proposed associated booster stations, and all simultaneously operating cochannel response stations licensed to or applied for by the applicant. In the alternative, a statement from the affected MDS or ITFS licensee stating that it does not object to operation of the high-power ITFS signal booster station may be submitted; and

* * * * *

(7) A certification that copies of the materials set forth in paragraph (b) of this section have been served upon the licensee of each station (including each response station hub and booster station) required to be studied pursuant to paragraph (b)(5) of this section, and upon any affected holder of a BTA or PSA authorization pursuant to paragraph (b)(4) of this section.

(8) If the applicant is a capacity lessee, a certification that:

(i) The licensee has provided its written consent to permit the capacity lessee to apply for the booster station license; and

(ii) The applicant and the licensee have entered into a lease that is in effect at the time of such filing.

* * * * *

(d) Notwithstanding the provisions of § 74.912 and except as provided in § 74.911(e), any petition to deny an application for a high-power ITFS signal booster station license shall be filed no later than the sixtieth (60th) day after the date of public notice announcing the filing of such application or major amendment thereto. Except as provided in § 74.911(e), an application for a high-power ITFS signal booster station license that meets the requirements of paragraph (b) of this section shall be granted on the sixty-first (61st) day after the Commission shall have given public notice of the acceptance for filing of it, or of a major amendment to it if such major amendment has been filed, unless prior to such date either a party in interest timely files a formal petition to deny or for other relief pursuant to § 74.912, or the Commission notifies the applicant that its application will not be granted. Where an application is granted pursuant to the provisions of this paragraph, the licensee shall maintain a copy of the application at the ITFS booster station until such time as the Commission issues a high-power ITFS signal booster station license.

(e) A licensee or the capacity lessee of such ITFS station upon the written consent of the licensee, shall be eligible to install and operate a low power signal booster station that has a maximum EIRP of −9 dBW +log10(X/6) dBW, where X is the channel width in MHz. A low-power ITFS signal booster station may operate only on one or more ITFS channels that are licensed to the licensee of the ITFS booster station, but may be operated by a third party with a fully-executed lease or consent agreement with the ITFS licensee. Any licensee of a low-power booster station that is a capacity lessee shall, upon termination or expiration of the capacity lease, automatically assign the booster station license to the licensee of the ITFS station by and upon written notice to the Commission signed by the lessee and such licensee. If upon termination or expiration of the capacity lease the licensee no longer desires or needs the low-power booster station license, such a license must be returned to the Commission. An ITFS licensee or capacity lessee thereof may install and commence operation of a low-power ITFS signal booster station for the purpose of retransmitting the signals of the ITFS station or for originating signals. Such installation and operation shall be subject to the condition that for sixty (60) days after installation and commencement of operation, no objection or petition to deny is filed by the licensee of a, or applicant for a previously-proposed, cochannel or adjacent channel ITFS or MDS station with a transmitter within 8.0 kilometers (5 miles) of the coordinates of the low-power ITFS signal booster station. An ITFS licensee or capacity lessee thereof seeking to install a low-power ITFS signal booster station under this rule must submit a FCC Form 331 to the Commission within 48 hours after

installation. In addition, the ITFS licensee, or capacity lessee must submit the following information (see § 21.902(m) for permissible format(s) and media) to the Commission's Reference Room:

(4) * * *

(viii) The applicant understands and agrees that in the event harmful interference is claimed by the filing of an objection or petition to deny, it must terminate operation within two (2) hours of notification by the Commission, and must not recommence operation until receipt of written authorization to do so by the Commission; and

(ix) If the applicant is a capacity lessee, a certification that:

(A) The licensee has provided its written consent to permit the capacity lessee to apply for the booster station license; and

(B) The applicant and the licensee have entered into a lease that is in effect at the time of such filing.

* * * * *

[FR Doc. 00–19034 Filed 7–28–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF DEFENSE

48 CFR Parts 208, 212, 213, 214, 215, 232, and 252

[DFARS Case 98–D026]

Defense Federal Acquisition Regulation Supplement; Streamlined Payment Practices

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 require use of the Governmentwide commercial purchase card as the method of purchase and/or method of payment for purchases valued at or below the micro-purchase threshold, unless an exception is authorized. Use of the purchase card streamlines purchasing and payment procedures and, therefore, increases operational efficiency.

EFFECTIVE DATE: July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Susan L. Schneider, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; telefax (703) 602–0350. Please cite DFARS Case 98–D026.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the DFARS to require use of the Governmentwide commercial purchase card as the method of purchase and/or method of payment for DoD purchases valued at or below the micro-purchase threshold of $2,500, unless an exception is authorized. The rule implements a policy memorandum issued by the Principal Deputy Under Secretary of Defense (Acquisition and Technology) on October 2, 1998, Subject: Streamlined Payment Practices for Awards/Orders Valued at or below the Micro-Purchase Threshold; and a policy memorandum issued by the Under Secretary of Defense (Personnel and Readiness) on September 25, 1998, Subject: Use of Government-Wide Purchase Cards. The October 2, 1998, memorandum is available via the Internet at http://www.acq.osd.mil/dp/micro2.pdf. The September 25, 1998, memorandum is available via the Internet at http://purchasecard.sarda.army.mil/deleon.htm.

DoD published a proposed rule at 64 FR 38878 on July 20, 1999. Six sources submitted comments on the proposed rule. DoD considered all comments in the development of the final rule.

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

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the Governmentwide commercial purchase card is similar in nature to commercial credit cards that are commonly used in the commercial marketplace.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final 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 208, 212, 213, 214, 215, 232, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 208, 212, 213, 214, 215, 232, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 208, 212, 213, 214, 215, 232, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Section 208.405–2 is amended by revising paragraph (4) to read as follows:

208.405–2 Order placement.

* * * * *

(4) If permitted under the schedule contract, use of the Governmentwide commercial purchase card—

(i) Is mandatory for placement of orders valued at or below the micro-purchase threshold; and

(ii) Is optional for placement of orders valued above the micro-purchase threshold.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

3. Section 212.301 is amended by adding paragraph (f)(vi) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(f) * * *

(vi) Use the clause at 252.232–7009, Mandatory Payment by Governmentwide Commercial Purchase Card, as prescribed in 232.1110.

4. Section 212.303 is added to read as follows:

212.303 Contract format.

Structure awards valued above the micro-purchase threshold (*e.g.*, contract line items, delivery schedule, and invoice instructions) in a manner that will minimize the generation of invoices valued at or below the micro-purchase threshold.

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

5. Section 213.101 is added to read as follows:

213.101 General.

Structure awards valued above the micro-purchase threshold (*e.g.*, contract line items, delivery schedule, and invoice instructions) in a manner that will minimize the generation of invoices valued at or below the micro-purchase threshold.

6. Subpart 213.2 is added to read as follows:

Subpart 213.2—Actions at or Below the Micro-Purchase Threshold

Sec.
213.270 Use of the Governmentwide commercial purchase card.

213.270 Use of the Governmentwide commercial purchase card.

Use the Governmentwide commercial purchase card as the method of purchase and/or method of payment for purchases valued at or below the micro-purchase threshold. This policy applies to all types of contract actions authorized by the FAR unless—

(a) The Deputy Secretary of Defense has approved an exception for an electronic commerce/electronic data interchange system or operational requirement that results in a more cost-effective payment process;

(b)(1) A general or flag officer or a member of the Senior Executive Service (SES) makes a written determination that—

(i) The source or sources available for the supply or service do not accept the purchase card; and

(ii) The contracting office is seeking a source that accepts the purchase card.

(2) To prevent mission delays, if an activity does not have a resident general or flag officer of SES member, delegation of this authority to the level of the senior local commander or director is permitted; or

(c) The purchase or payment meets one or more of the following criteria:

(1) The place of performance is entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(2) The purchase is a Standard Form 44 purchase for aviation fuel or oil.

(3) The purchase is an overseas transaction by a contracting officer in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(8).

(4) The purchase is a transaction in support of intelligence or other specialized activities addressed by Part 2.7 of Executive Order 12333.

(5) The purchase is for training exercises in preparation for overseas contingency, humanitarian, or peacekeeping operations.

(6) The payment is made with an accommodation check.

(7) The payment is for a transportation bill.

(8) The purchase is under a Federal Supply Schedule contract that does not permit use of the Governmentwide commercial purchase card.

(9) The purchase is for medical services and—

(i) It involves a controlled substance or narcotic;

(ii) It requires the submission of a Health Care Summary Record to document the nature of the care purchased;

(iii) The ultimate price of the medical care is subject to an independent determination that changes the price paid based on application of a mandatory CHAMPUS Maximum Allowable Charge determination that reduces the Government liability below billed charges;

(iv) The Government already has entered into a contract to pay for the services without the use of a purchase card;

(v) The purchaser is a beneficiary seeking medical care; or

(vi) The senior local commander or director of a hospital or laboratory determines that use of the purchase card is not appropriate or cost-effective. The Medical Prime Vendor Program and the DoD Medical Electronic Catalog Program are two examples where use of the purchase card may not be cost-effective.

PART 214—SEALED BIDDING

7. Section 214.201–1 is added to read as follows:

214.201–1 Uniform contract format.

Structure awards valued above the micro-purchase threshold (*e.g.*, contract line items, delivery schedule, and invoice instructions) in a manner that will minimize the generation of invoices valued at or below the micro-purchase threshold.

PART 215—CONTRACTING BY NEGOTIATION

8. Section 215.204–1 is added to read as follows:

215.204–1 Uniform contract format.

Structure awards valued above the micro-purchase threshold (*e.g.*, contract line items, delivery schedule, and invoice instructions) in a manner that will minimize the generation of invoices valued at or below the micro-purchase threshold.

PART232—CONTRACT FINANCING

9. Subpart 232.11—is added to read as follows:

Subpart 232.11–Electronic Funds Transfer

Sec.
232.1108 Payment by Governmentwide commercial purchase card.
232.1110 Solicitation provision and contract clauses.

232.1108 Payment by Governmentwide commercial purchase card.

The Governmentwide commercial purchase card is the mandatory EFT payment method for purchases valued at or below the micropurchase threshold, except as provided in 213.270.

232.1110 Solicitation provision and contract clauses.

Use the clause at 252.232–7009, Mandatory Payment by Governmentwide Commercial Purchase Card, in solicitations, contracts, and agreements when—

(1) Placement of orders or calls valued at or below the micropurchase threshold is anticipated; and

(2) Payment by Governmentwide commercial purchase card is required for orders or calls valued at or below the micropurchase threshold under the contract or agreement.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Section 252.232–7009 is added to read as follows:

252.232–7009 Mandatory Payment by Governmentwide Commercial Purchase Card.

As prescribed in 232.1110, use the following clause:

Mandatory Payment by Governmentwide Commercial Purchase Card

(JUL 2000)

The Contractor agrees to accept the Governmentwide commercial purchase card as the method of payment for orders or calls valued at or below $2,500 under this contract or agreement.

(End of clause)

[FR Doc. 00–19111 Filed 7–28–00; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 250

[DFARS Case 2000–D016]

Defense Federal Acquisition Regulation Supplement; Repeal of Reporting Requirements Under Public Law 85–804

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 remove policy on submission of reports to Congress

regarding contractor requests for extraordinary contractual relief. The statutory requirement for these reports has been repealed.

EFFECTIVE DATE: July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Layser, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0293; telefax (703) 602–0350. Please cite DFARS Case 2000–D016.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule removes DFARS 250.104. This section contained requirements for preparation of reports to Congress regarding actions taken on contractor requests for relief under the authority of Public Law 85–804. Section 901(r)(1) of the Federal Reports Elimination Act of 1998 (Public Law 105–362) repealed this reporting requirement, formerly found at 50 U.S.C. 1434.

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 affects DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2000–D016.

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 Part 250

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 250 is amended as follows:

1. The authority citation for 48 CFR part 250 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

250.104 [Removed]

2. Section 250.104 is removed.

[FR Doc. 00–19110 Filed 7–28–00; 8:45 am]

BILLING CODE 5000–04–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1808, 1811, 1813, 1816, 1819, 1835, 1842, 1851, and 1852

Procedural Revisions for Awards Resulting From Broad Agency Announcements

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule amends the NASA FAR Supplement (NFS) to: allow grant officers to waive the submission of certain documents as part of the purchase request (PR) package for a grant; provide for the award of purchase orders, when appropriate, for awards less than the simplified acquisition threshold resulting from broad agency announcements; and make miscellaneous editorial and technical corrections.

EFFECTIVE DATE: July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Tom Deback, NASA Headquarters Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546, (202) 358–0431, e-mail: tdeback@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The newly revised Grant Handbook no longer requires the submission of the NASA Research Announcement (NRA), results of the technical evaluation, and other documents as part of the PR package. The revised guidance also provides that if an action resulting from a broad agency announcement is to be awarded as a contract action and is less than the simplified acquisition threshold, the action may be completed as a purchase order. This final rule brings the NFS into agreement with the Grant handbook. Additionally, miscellaneous editorial and technical corrections are made to sections 1801.106, 1808.002–72, 1811.1, 1819.7206, 1842.7001, 1852.242–73, and Parts 1816 and 1831 to update listing of OMB approvals; correct citations, terminology, and titles; and provide consistent guidance on clause modification.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub Law 98–577 and publication for comments is not required. However, NASA will consider comments from small entities concerning the affected NFS subparts in accordance with 5 U.S.C. 610.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any recordkeeping or 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 1801, 1808, 1811, 1813, 1816, 1819, 1835, 1842, 1851, and 1852

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1801, 1808, 1811, 1813, 1816, 1819, 1835, 1842, 1851, and 1852 are amended as follows:

1. The authority citation for 48 CFR parts 1801, 1808, 1811, 1813, 1816, 1819, 1835, 1842, 1851, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1)

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. In section 1801.106, revise the chart in paragraph (1) to read as follows:

1801.106 OMB approval under the Paperwork Reduction Act.

(1) * * *

NFS Segment	OMB Control No.
1804.470	2700–0098
1804.74	2700–0097
1819	2700–0073
1819.72	2700–0078
1827	2700–0052
1831	2700–0080
1843	2700–0054
1843.71	2700–0094
NF 533	2700–0003
NF 1018	2700–0017

* * * * *

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

1808.002–72 [Amended]

3. In section 1808.002–72, amend paragraph (j) by removing "%" whenever it appears and adding "percent" in its place.

PART 1811—DESCRIBING AGENCY NEEDS

4. Add Subpart 1811.1 title to read as follows:

Subpart 1811.1—Selecting and Developing Requirements Documents

* * * * *

PART 1813—SIMPLIFIED ACQUISITION PROCEDURES

5. Revise section 1813.000 to read as follows:

1813.000 Scope of part.

FAR Part 13 and 1813 do not apply to NASA Research Announcements (NRA) and Announcements of Opportunity (AO). These acquisitions shall be conducted in accordance with the procedures in 1835.016–71 and 1872, respectively. However, awards resulting from NRAs or AOs that are to be made as procurement instruments, can be made as either a contract or a purchase order. When a purchase order is used, it must not exceed the simplified acquisition threshold and must include the appropriate clauses pertaining to data rights, key personnel requirements, and any other requirements determined necessary by the contracting officer. Contracting officers must determine whether obtaining the contractor's acceptance of the order is necessary (see FAR 13.302–3(a)).

PART 1816—TYPES OF CONTRACTS

1816.405–274 [Amended]

6. In section 1816.405–274, amend the first sentence of paragraph (g)(4) by removing the words "(f)(1) through (f)(3)" and adding the words "(g)(1) through (g)(3)" in its place.

1816.505 [Amended]

7. In section 1816.505, amend paragraph (b)(5) by removing the reference "1815.70" and adding "1815.7001" in its place.

1816.505–70 [Amended]

8. In section 1816.505–70, amend paragraph (b) by removing the reference "1816.404–270(a)" and adding the reference "1816.104–70(a)" in its place.

PART 1819—SMALL BUSINESS PROGRAMS

1819.7206 [Amended]

9. In section 1819.7206, amend the first sentence of paragraph (a) by removing the words "as a subfactor" from the end of the sentence.

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

1831.205–670 [Amended]

10. In section 1831.205–670, amend paragraphs (a) introductory text, (b) introductory text, (c)(1) and (2), (e), (f), and (g) by removing the word "shall" and adding "must" in its place.

1831.205–32 [Amended]

11. In section 1831.205–32, amend paragraphs (2) and (3) by removing the word "shall" and adding "must" in its place.

1831.205–70 [Amended]

12. Amend section 1831.205–70 by removing the word "shall" and adding "must" in its place.

1831.205–671 [Amended]

13. Amend section 1831.205–671 by removing the word "shall" and adding "must" in its place.

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

14. In section 1835.016–71, revise paragraphs (d)(8)(i) and (ii) to read as follows:

1835.016–71 NASA Research Announcements.

* * * * *

(d) * * *

(8) * * *

(i) A copy of the NRA (This requirement may be waived in the case of a grant award at the discretion of the grant officer);

(ii) The results of the technical evaluation, including the total number of proposals received, the selection statement, and the listing of proposal(s) selected for funding (These requirements may be waived in the case of a grant award at the discretion of the grant officer if the purchase request specifically references the NRA number and states that the proposal forwarded for funding was selected under the NRA.);

* * * * *

PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

15. In section 1842.7001, revise paragraph (c) to read as follows:

1842.7001 Observance of legal holidays.

* * * * *

(c) The clause may be used with its Alternate II in cost-reimbursement contracts when it is desired that administrative leave be granted contractor personnel in special circumstances, such as inclement weather or potentially hazardous conditions. This alternate may be appropriately modified for fixed-price contracts.

PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS

1851.102 [Amended]

16. In section 1851.102, amend paragraph (e)(3) at the end of the section by removing "NHB 4100.1" and adding "NPG 4100.1" in its place.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.242–73 [Amended]

17. In section 1852.242–73, revise the date "(JULY 1997)" to read "(JULY 2000)" and amend paragraph (a) by removing the words "Policy Guidance" and adding the words "Procedures and Guidelines" in its place.

[FR Doc. 00–19269 Filed 7–28–00; 8:45 am]
BILLING CODE 7510–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–7648]

RIN 2127–AH 86

Federal Motor Vehicle Safety Standards; Child Restraint Anchorage Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule, response to petitions for reconsideration.

SUMMARY: This document responds to a number of issues raised by petitions for reconsideration of the agency's March 1999 final rule establishing Federal Motor Vehicle Safety Standard No. 225, *Child Restraint Anchorage Systems*, and of the agency's August 1999 final rule responding to the first round of petitions. Standard No. 225 has required vehicle manufacturers to provide the upper (tether) anchorage of a child restraint anchorage system in some of their vehicles since September 1, 1999. It also requires the installation of the lower anchorages of those systems in some vehicles beginning September 1, 2000.

In response to concerns of several petitioners about leadtime for and the

stringency of the anchorage strength and other requirements in the March 1999 final rule, our August 1999 rule permits vehicle manufacturers to meet alternative requirements during an initial several year period. During this period, manufacturers have the alternative of meeting either the requirements for tether anchorages set by the March 1999 final rule or those previously established by Transport Canada. Manufacturers also have the alternative of meeting the requirements for lower anchorages set by the March 1999 final rule, or those consistent with a draft standard being developed by a working group of the International Organization for Standardization (ISO). The temporary alternative for tether anchorages was to last until September 1, 2001, and that for lower anchorages until September 1, 2002. In response to petitions for reconsideration, today's rule extends the temporary alternatives until September 1, 2004.

This document also addresses certain other issues that need to be resolved or clarified concerning the installation of child restraint anchorage systems in vehicles and how those systems are to be tested in the agency's compliance tests. Other issues raised by the petitions for reconsideration will be addressed in a subsequent document.

DATES: The amendments made in this rule are effective August 30, 2000.

If you wish to petition for reconsideration of this rule, your petition must be received by September 14, 2000.

ADDRESSES: If you wish to petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street S.W., Washington, D.C., 20590.

FOR FURTHER INFORMATION CONTACT:

For nonlegal issues: Michael Huntley, (202–366–0029), Office of Crashworthiness Standards, NHTSA.

For legal issues: Deirdre R. Fujita, Office of the Chief Counsel (202–366–2992), NHTSA.

You can reach both of these officials at the National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Overview

a. The Most Important Changes Made by this Final Rule

1. Extension of Compliance Options Until 2004

This final rule responds to petitions for reconsideration of final rules published March 5, 1999 and August 31, 1999 establishing Federal motor vehicle safety requirements for child restraint anchorage systems. This document extends the period within which vehicle manufacturers may choose certain compliance options in certifying to Standard No. 225. Manufacturers were given the option of certifying tether anchorages to (1) Requirements that are consistent with those set by Transport Canada, or (2) the requirements set forth in the March 1999 final rule. The option was to expire September 1, 2001. Vehicle manufacturers also were given the option of certifying the lower anchorages of the anchorage system to (1) Requirements consistent with those set by a draft ISO standard, or (2) requirements set forth in the March 1999 final rule. The option was to expire September 1, 2002. This rule extends both of these expiration dates to September 1, 2004.

2. Other Issues Relating to Testing of Anchorage Systems

This final rule also addresses other issues that need to be resolved or clarified concerning the installation of child restraint anchorage systems in vehicles. It addresses the configuration requirements for the bars in S15 of Standard No. 225, and various aspects of the procedures for testing anchorages. It also addresses several issues concerning the applicability of the standard to manufacturers of particular types of vehicles.

b. Putting This Rule in Perspective

1. March 1999 Final Rule

On March 5, 1999, NHTSA published a final rule establishing Federal Motor Vehicle Safety Standard No. 225, *Child Restraint Anchorage Systems* (64 FR 10786, docket 98–3390, notice 2). The standard requires vehicle manufacturers to equip vehicles with child restraint anchorage systems that are standardized and independent of the vehicle seat belts.

The new system has two lower anchorages and one tether anchorage. Each lower anchorage includes a rigid round rod or bar onto which the connector of a child restraint system can be snapped. The bars will be located at the intersection of the vehicle seat cushion and seat back. The upper

anchorage is a fixture to which the tether of a child restraint system can be hooked.

For convenience, this document refers to the three-point child restraint anchorage system as the "LATCH" system. "LATCH" stands for the phrase "Lower Anchors and Tether for Children." LATCH was coined by some manufacturers and retailers for use in educating the public on the availability and use of the new system, and in marketing the system.

The standard required vehicle manufacturers to begin phasing-in the tether anchorage of the LATCH system in the production year beginning September 1, 1999, with full implementation beginning September 1, 2000. Manufacturers are required to begin phasing-in the lower anchorages in the production year beginning on September 1, 2000, with full implementation beginning September 1, 2002.[1]

2. Petitions for Reconsideration of the March 1999 Final Rule

We received petitions for reconsideration of the March 1999 final rule from the Alliance of Automobile Manufacturers ("Alliance")(whose members were then BMW, DaimlerChrysler, Ford, General Motors, Mazda, Nissan, Toyota, Volkswagen, and Volvo),[2] and from Honda, Volkswagen, Porsche, DaimlerChrysler, General Motors, Mitsubishi, the National Truck Equipment Association, Kolcraft, E–Z–On Products, Cosco, Toyota, Ford, the Coalition of Small Volume Automobile Manufacturers, and Indiana Mills and Manufacturing. *See* NHTSA Docket No. 98–3390, Notice 2.

The vehicle manufacturers asked us to reconsider certain performance and other requirements. Some of them expressed concern about the strength requirements for the tether anchorage and the lower bars, and asserted that:

(1) There is no safety need for requirements as stringent as those specified (*i.e.*, for a 15,000 N strength requirement for tether anchorages (S6.3 and S8.1) and a 11,000 N strength requirement for the LATCH system lower anchorages (S9.4.1(a))[3];

(2) They could provide tether and lower anchorages meeting less-stringent Canadian requirements for the tether anchorage and less-stringent requirements for lower anchorages set forth in a draft standard being developed by a working group of the International Organization for Standardization (ISO)[4], by the compliance dates set forth in the March 1999 final rule, but they could not provide tether and lower anchorages meeting the more-stringent strength requirements established in that rule by those dates; and

(3) Because the March 1999 final rule applied to LATCH and tether anchorages voluntarily installed on vehicles after September 1, 1999, manufacturers would have to tear out LATCH and tether anchorages that they had voluntarily installed beyond the number required by the March 1999 rule because the anchorages could not meet the strength requirements of the rule.

The Alliance suggested that the agency either delay the effective date of the rule or adopt the Canadian requirements for the tether anchorage and the draft ISO requirements for the lower anchorages.[5]

3. August 1999 Final Rule Responding to Petitions for Reconsideration

In response to concerns of several of the petitioners about leadtime for and the stringency of the anchorage strength and other requirements in the March 1999 final rule, NHTSA published a final rule on August 31, 1999 (64 FR 47566, docket 99–6160). Among other things, the August 1999 rule permitted vehicle manufacturers to meet alternative requirements during an initial several year period. Until September 1, 2001, manufacturers were permitted to meet either the requirements in the March 1999 final rule or the less-stringent Canadian requirements for tether anchorages. Until September 1, 2002, manufacturers were permitted to meet the requirements for the lower anchorages consistent with those set forth in the draft ISO standard.

NHTSA balanced the benefits associated with vehicle manufacturers providing the new tether and lower anchorages, albeit ones meeting the less-stringent Canadian and draft ISO requirements, in accordance with the original schedule against the possible consequences of not providing for that alternative means of compliance. One possible consequence could have been a delay in the introduction of the new tether and lower anchorages. We might have had to extend the leadtime for installation of anchorages that met the strength requirements of the March 1999 rule by several years or establish a more drawn out phase-in schedule. Another consequence could have been that manufacturers would have had to remove voluntarily-installed tether anchorages and LATCH systems that did not meet the requirements of the March 1999 final rule, even if they did meet the Canadian and draft ISO requirements.

We concluded that, on balance, safety would be best served if the Canadian and draft ISO requirements were allowed as a compliance option for an interim period. We determined that the early availability of tether anchorages, even ones meeting the Canadian requirements, would promote safety by increasing the likelihood that parents will attach a top tether on a child restraint system. Compared to an untethered child restraint, a tethered child restraint offers improved protection against head impact in a crash. A tether anchorage that complies with the Canadian strength requirement will offer a level of safety that is significantly better than the one that would exist with no tether anchorage at all. We similarly concluded that lower anchorages meeting the draft ISO requirements would provide safety benefits for parents who have difficulty attaching a child restraint correctly in a vehicle or whose vehicle seats are incompatible with child restraints. Thus, the agency's adoption of these interim compliance alternatives made it possible to begin reaping the benefits of LATCH systems sooner than would

[1] The March 1999 final rule specified that, beginning September 1, 1999, 80 percent of a manufacturer's passenger cars were required to be equipped with tether anchorages, while all vehicles covered by the standard (including light trucks, vans, and multipurpose passenger vehicles with gross vehicle weight rating (GVWR) of 8,500 or less and buses with a GVWR of 10,000 pounds or less) are required to comply with the requirements by September 1, 2000. The final rule specified a 3-year phase-in period for the lower vehicle anchorages, which required 20 percent of each manufacturer's fleet to be equipped with compliant lower anchorages beginning September 1, 2000, 50 percent beginning September 1, 2001, and 100 percent beginning September 1, 2002.

[2] Later submissions from the Alliance on Standard No. 225 list Fiat, Mitsubishi, and Isuzu also as members of the group.

[3] Not all petitioners addressing this subject believe the strength requirements were too stringent. Petitioner E–Z–On Products suggested in its petition for reconsideration that we should consider *increasing* the strength requirements for the tether anchorage.

[4] The ISO is a worldwide voluntary federation of ISO member bodies. The draft ISO standard, ISO/22/12/WG1, is under development by Working Group 1 of the ISO.

[5] The most significant differences between the Canadian requirements and those in our March 1999 final rule are Canada's specification of a lower force (10,000 Newtons (N), instead of 15,000 N) and Canada's method of applying the force (permitting the manufacturer the option of specifying the force application rate, instead of specifying a range of application rates that the agency could use). The draft ISO standard differs from our rule with respect to, among other issues, the magnitude of the force that is applied to the lower anchorages (8,000 N, instead of 11,000 N) and the rate of application of the force. For a discussion of these and other differences, see the August 31, 1999 final rule, footnotes 6 and 10, 64 FR at 47569–47571.

have been possible under the March 1999 final rule.

The August 1999 final rule also responded to other issues. With regard to some issues, such as some of the technical ones addressing specifics on how an anchorage is to be tested and limiting the information that manufacturers have to provide in vehicle owners manuals on LATCH systems, the agency granted requests to amend the March 1999 rule. For some of the other issues, the agency denied or partially granted the petitions for reconsideration, which prompted some manufacturers to re-petition the agency to reconsider the decisions based on new information.

4. Petitions for Reconsideration of the August 1999 Final Rule

Petitions for reconsideration of the August 1999 final rule were submitted by the Alliance, Ford, Volkswagen, and Keiper GmbH & Co. (Keiper).

The petitions from the Alliance and Volkswagen [6] repeated or elaborated on many issues that were in the Alliance's original petition for reconsideration of the March 1999 final rule and that were not addressed by the August 1999 document (see I.b.6, below). The Alliance's petition also made the following key requests pertaining to the decisions we made in the August 1999 final rule. We were asked to reconsider our decisions:

A. To limit availability of the option that manufacturers may meet Canadian requirements for the tether anchorage until August 31, 2001 (manufacturers asked for a one-year extension of the interim tether requirements, until August 31, 2002);

B. To adopt specifications from the draft ISO standard that limit the design flexibility of the configuration of the lower bars;

C. To deny the request to shorten the rate of application of the applied forces and the length of time the force is held (Keiper also made this request);

D. To deny the request to require only two tether anchorages for multipurpose passenger vehicles (MPVs) [7] with five or fewer designated seating positions, and to deny the request to remove the requirement for a tether anchorage at a center rear seating position; [8]

E. On aspects of the test procedures used in compliance tests of anchorages, including our denial of the recommendation to use a device other than the 3-dimensional H-point machine to determine whether a tether anchorage is within the required zone;

F. To permit foldable or storable lower anchorages only during the period within which manufacturers may meet the draft ISO standard (this request was also made by Keiper);

G. On reducing the size of the child restraint fixture (manufacturers ask that the fixture be further reduced); and

H. To deny a request to remove the requirement that vehicle manufacturers provide step-by-step instructions on attaching a child restraint tether to the vehicle's tether anchorage.

Ford petitioned for reconsideration of the August 1999 final rule's amendments to several aspects of the test procedure for testing tether anchorages, making the following key requests. We were asked to reconsider our decisions:

I. To change the point at which displacement is measured when testing a tether anchorage using the test device that attaches to the vehicle seat by the vehicle's seat belt system; and

J. To use a cable to apply the test forces to the tether anchorages, instead of high-strength webbing material.

Ford also asked for clarification of various requirements set forth in Standard No. 225, and suggested technical corrections to the figures referenced in Standard No. 213.

5. To What Issues From the Petitions for Reconsideration Does This Rule Respond?

This final rule:

(1) Extends the period within which manufacturers may meet Canadian requirements for tether anchorages and draft ISO requirements for lower anchorages (addressing issue "A" in section I.b.4, *supra*); and addresses issues relating to—

(2) The configuration requirements for the bars set forth in S15 of Standard No. 225, (issue "B" in section I.b.4);

(3) Various aspects of the test procedures for testing anchorages (issues "E" and "G" in section I.b.4): and

(4) The applicability of the standard (to small manufacturers; to manufacturers of vehicles that cannot meet the pitch, roll and yaw requirements with the child restraint fixture installed; and to manufacturers of vehicles temporarily exempted from Standard No. 208's requirement to provide an air bag at the front passenger seating position).

This final rule also:

(5) Denies a request from the Alliance asking for a one-year deferral of the requirement for detailed instructions in vehicle owner's manuals on attaching a child restraint's tether strap to the vehicle's anchorage (issue "H" in section I.b.4).

6. The Remaining Key Issues

The key issues that we have yet to resolve from the petitions for reconsideration of the March and August 1999 final rules are listed below.

We will be addressing issues relating to the requirements establishing the strength of the anchorages. Key issues pertain to:

—The 15,000 N strength requirement for tether anchorages (S6.3 and S8.1) and the 11,000 N strength requirement for the LATCH system lower anchorages (S9.4.1(a));

—The displacement limit of 125 mm; and

—The rate of application of the applied forces and length of time the force is held.

As noted above, we received a number of petitions for reconsideration of the strength requirements of the

[6] Volkswagen (VW) also asked in its October 14, 1999 petition whether a tether anchorage would comply with the March 1999 final rule if it consists of (1) a fixed and permanent anchorage installed in a vehicle seatback structure and (2) "a deployable tether attachment device that could be removed without the use of any tools other than a screwdriver or a coin and separately stored until needed for attachment of a child restraint tether hook." We interpret Standard No. 225 as precluding such a tether anchorage. S3 of the standard defines "tether anchorage" as a user-ready, permanently installed vehicle system. S6.1 requires tether anchorages to be accessible without the need for any tools (other than a screwdriver or coin) and once accessed, be ready for use without the need for any tools. These requirements are intended to ensure that a vehicle owner will be able to use the tether anchorage when needed, without having to search for a part or to install an attachment device. VW asked for reconsideration of S6.1 if the requirements precluded such a tether anchorage. VW's request appears untimely. S6.1 was adopted by the March 1999 final rule and we did not receive any petition for reconsideration of the "user-ready" and "permanency" requirements. Under our rulemaking regulation (49 CFR Part 553), petitions for reconsideration must be received within 45 days after publication of a final rule. Petitions for reconsideration received after that period will be considered petitions filed under our rulemaking procedures (Part 552). We note further that VW's document is incomplete as a petition for rulemaking. It does not provide sufficient information setting forth facts establishing that an order is necessary, and does not set forth a brief description of the substance of the order which VW believes should be issued (§ 552.4(c) and (d)). We will not process the document as a petition for rulemaking until further information is received from the petitioner.

[7] "Multipurpose passenger vehicle" is defined in 49 CFR § 571.3 as "a motor vehicle with motive power, except a low-speed vehicle or trailer, designed to carry 10 persons or less which is constructed either on a truck chassis or with special features for occasional off-road operation."

[8] In allowing manufacturers the option of meeting Canadian requirements for tether anchorages, the August 1999 final rule permitted the installation of only two tether anchorages during the optional compliance period. The rule also relieved manufacturers from the requirement that one of the tether anchorages must be at a center seating position during the optional compliance period.

March 1999 final rule. Many petitioners believe that the strength requirements were too stringent and discussed their reasons for that conclusion. In elaborating on its petition submitted in response to the March 1999 final rule in favor of reducing the strength requirements, the Alliance submitted a paper dated February 29, 2000 (entry 6160–11 in the docket) entitled, "Engineering Basis for Strength Tests of Child Restraint Anchors (FMVSS 225) (February 16, 2000)." The paper found that, based on a 27 kg mass (total mass of a child restraint system and child occupant) and a 27 g peak acceleration of a 1999 Dodge Intrepid vehicle in a frontal 30 mile per hour (mph) rigid barrier impact, the expected peak force on the child and child restraint is 7,200 N. Based on this, the report concluded that Standard No. 225 should specify a pull force of 8,000 N, and not 15,000 N. However, in following up on the analysis, Transport Canada substituted the crash pulses it had obtained in frontal 30 mph rigid barrier crash tests of 1995 to 1999 model year vehicles. Transport Canada found that peak accelerations of many of these vehicles were higher than the 27 g used in the Alliance report and, if a heavy child restraint and child were using a child restraint anchorage system, the forces on the child restraint anchorage system could be higher than 12,000 N (entry 6160–19). We are considering the merits of these comments.

Ford suggested in a submission dated December 17, 1999 (6160–8, page 3) that the displacement criterion of 125 mm be applied in forward pull tests only at an 8,000 N force (9,000 N for SFAD 2 with tether strap attached), and that the "ability to withstand" criterion be the measure of compliance at higher forces. Ford suggests:

> To allow a single test to determine compliance with both Standard 225 and the ISO standard, the 8 kN force should be applied with an approximately linear increase in force over 2 seconds, with ISO displacement measured after 0.25 seconds and Standard 225 displacement measured at the end of a 1 second hold period. After the hold period, force would increase roughly linearly to 15 kN over 25 seconds (11 kN for an untethered SFAD 2), followed by a 2 second hold period (for both the 11 kN and 15 kN tests).

We are considering the merits of this comment. An issue raised by the suggestion is the need for Standard No. 225's requirement for a 10-second hold period for the lower LATCH anchorages.

The Alliance suggested in its February 29 submission (6160–11) that an alternative approach to measuring displacement for determining compliance of the lower anchorages of a LATCH system is to use a sliding scale of excursion limits based on the available space where the child restraint system would be anchored. An excursion limit of 125 mm would be used in smaller vehicles while vehicles with larger seating areas could have larger limits (page 17 *et seq.*).

We are considering the merits of a sliding scale approach for determining compliance of the lower anchorages and the tether anchorage of LATCH systems. The sliding scale approach is also under consideration by Transport Canada for possible inclusion in that country's proposal for child restraint anchorage systems (6160–19).

We will also be addressing whether to:

—Make the configuration requirements for the lower bars (S9.1) consistent with today's amendments to S15.1.2;
—Expand the zone in which the lower bars may be placed (S9.2);
—Permit foldable or storable lower anchorages past August 31, 2004; and
—Remove the requirement for a tether anchorage in a center seating position and a third tether anchorage in some MPVs.

On the requirements that (1) all passenger vehicles with three forward-facing rear designated seating positions must have three tether anchorages at those positions and (2) all passenger vehicles with a center rear designated seating position must have a tether anchorage at that seat position, the Alliance submitted a document dated October 20, 1999 to supplement its petition for reconsideration of the August 1999 final rule (see docket 6160–6). The document suggests reasons why NHTSA should exclude certain vehicles from the requirements (page 8 *et seq.*). The Alliance included a suggestion that the following exclusions be added to the standard:

—A middle seating position which does not meet the requirements of the Society of Automotive Engineers (SAE) Recommended Practice J1819, "Securing Child Restraint Systems in Motor Vehicle Rear Seats," provided that the manufacturer provides language in its vehicle owners manual specifically instructing owners that the seating position is not recommended for use with child restraints;
—A middle seating position where the seatback is divided into two or more sections which may be folded independently of each other, and the division between two sections lies substantially along the seating reference plane of the middle seating position; and
—A middle seating position with a folding seat where an installed child restraint would bar access to the rear seats.

Further, the Alliance suggested in a June 2, 2000 submission that if an additional rear seating position is available in the vehicle, NHTSA should require this position to be equipped with a tether anchorage as a replacement for the exempted non-outboard anchorage position.

We are considering the merits of the suggestion.

We will also respond to the petitions for reconsideration that asked us to:

—Permit a LATCH system in the front passenger seating position in vehicles with or without an air bag on-off switch or an advanced air bag;
—Change the marking requirements (S9.5) for the lower bars; and
—Exclude backless booster seats from the requirement in Standard No. 213 to provide the attachments for connecting to the lower anchors of a LATCH system.

We will also be addressing the issues Ford raised in its petition for reconsideration of the August 1999 final rule.

II. Extending the Compliance Options Until 2004

a. What Did the Petitioners Request?

The Alliance asked in its petition for reconsideration of the August 1999 final rule that we extend the time period in which they are permitted to meet the alternative compliance options adopted in the rule. In its petition, the Alliance requested a one-year extension of the compliance option for tether anchorages, *i.e.*, until September 1, 2002. (October 15, 1999 petition for reconsideration.) Later, the petitioner asked that the compliance option for tether anchorages and for lower anchorages be extended until September 1, 2004. (Letters dated December 23, 1999, February 28, 2000, and April 13, 2000.)

Members of the Alliance, and other manufacturers, have indicated in submissions to Docket NHTSA 99–6160 that they are experiencing many difficulties designing and incorporating anchorages that meet the requirements prescribed in Standard No. 225 on several vehicles, especially sport utility vehicles (SUVs) and light trucks. They stated that they will need to make extensive structural changes to the affected vehicle models to meet the strength requirements of the March 1999 final rule. They said that those changes will substantially increase the cost and mass of the vehicles (Ford and General

Motors have quantified the increases in submissions that have been granted confidentiality by NHTSA), and may result in possible elimination of some desirable features now offered as options to customers, such as adjustable front passenger seats and split bench seats. That elimination might be the necessary result of our requirements because, unlike sedans that can meet the strength requirements of the March 1999 final rule because the rear filler panel just behind the top of the rear seat provides a stiff anchor area, vehicles such as station wagons, hatchbacks, pickups and SUVs have no comparable place to anchor a tether strap straight behind the top of the seat. The seats and the vehicle structure would have to be substantially strengthened to withstand the strength requirements, which would require plant modifications and retooling of assembly lines. Petitioners have stated that these impacts are unwarranted, given their belief that the strength requirements are overly stringent and demand margins of safety much beyond what is necessary for reasonable crash protection.

Manufacturers also raised concerns about how they are to design future vehicles to the rule's strength requirements. They stated that they petitioned for reconsideration of the March 1999 strength requirements in April 1999 and have not yet learned how the agency will resolve the issues. NHTSA has deferred responding to the objections to the strength requirements, partly to analyze the proposed regulation that Transport Canada will be issuing on the three-point child restraint anchorage system and the strength requirements of the proposal.[9] This deferral of our response has made it difficult for manufacturers to decide whether to expend large resources to redesign model year (MY) 2002 and 2003 vehicles.

b. NHTSA Decides To Extend the Compliance Options

Extending the compliance options until September 1, 2004 (through MY 2004) will reduce the uncertainty facing manufacturers. We are continuing to consider the petitions for reconsideration of the strength requirements of the March 1999 rule. Today's final rule extending the availability of the alternative compliance options will provide us additional time to complete our analysis of the petitions for reconsideration and decide whether the strength requirements should be amended.

Manufacturers have provided information supporting their contention that meeting the strength requirements of the March 1999 rule when the compliance options expire would entail extensive structural changes to their vehicles, resulting in considerable increases in the cost and mass of the vehicles. They state that they must now begin changing manufacturing processes for the vehicles produced after September 1, 2002 (MY 2003). If the compliance options were not extended, manufacturers would have to decide whether to change their processes, on the assumption that NHTSA will not amend the requirements of the March 1999 final rule, and substantially redesign vehicles which could not comply, at substantial cost. Alternatively, they could decide not to change their manufacturing processes, on the assumption that NHTSA will amend the requirements of the March 1999 final rule. However, they would not be allowed to sell those vehicles if NHTSA were not to amend the March 1999 rule and their vehicles could not comply.

Extending the compliance options until September 1, 2004 will help facilitate the installation of LATCH systems in vehicles. Manufacturers have indicated that, if the compliance options were not extended to 2004, they would be unable to meet the current phase-in schedule established by the March 1999 rule, even if they could use the lower strength anchorages through the end of the phase-in schedule. Further, if the compliance options were not extended, many voluntarily-installed tether anchorages would be removed from the designs of MY 2002 vehicles and many voluntarily-installed LATCH systems would be removed from the designs of MY 2003 vehicles, because the systems do not meet the March 1999 final rule and manufacturers do not know the requirements we will ultimately adopt. Accordingly, for the reasons stated above, we have decided to extend the compliance options until August 31, 2004.

III. Changes to the Alternative ISO-Based Lower Anchorages Requirements of S15

a. Why Are Changes Needed to S15?

In its petition for reconsideration of the August 1999 final rule, the Alliance petitioned NHTSA to amend some aspects of the agency's incorporation of the draft ISO requirements for lower anchorages into S15 of Standard No. 225. (S15 sets forth the temporary compliance option available to manufacturers to meet draft ISO requirements for the lower anchorages.) The Alliance believes that there are inconsistencies between the draft ISO requirements and our August rule concerning the features of the lower anchorages (S15.1.2.1). Manufacturers that have been designing lower anchorages to meet the draft ISO requirements will not be able to meet Standard No. 225 because of those inconsistencies. The petitioner believes that there is no reason for them and has petitioned us to remove them. Petitioner also asked for clarification of several other requirements.

We have reviewed the petition and generally agree that the inconsistencies should be resolved.[10] In adding the provisions of the draft ISO standard into Standard No. 225, we did not make any significant changes to the ISO provisions. However, some manufacturers have raised concerns that a few of the ISO provisions were meant to be design guides for vehicle manufacturers and were not intended as regulatory requirements. For instance, the ISO draft has a provision, which the August 1999 final rule added, that states that the lower anchorage bars must be 280 mm apart, center-to-center (S15.1.2.1(e)). As discussed immediately below, manufacturers have petitioned for reconsideration of the requirement in S15, believing that the distance should be *nominally* 280 mm, and not precisely 280 mm. A letter from the Alliance dated April 13, 2000 explains these differences in detail.

b. Are the specific provisions of S15.1.2.1(d) and (e) necessary?

S15.1.2.1(d) and (e) require that lower anchorage bars be made so that they can be connected to, over their entire 25 mm length, by the connectors of a child restraint system, and are 280 mm apart, measured from the center of the length of one bar to the center of the length of the other bar. The Alliance asked whether the requirements could be deleted as unnecessary. Our answer is yes. The requirements were adopted to ensure that the bars are sufficiently long and adequately spaced to couple effectively with the connectors of a child restraint system. These purposes can be achieved using the "child restraint fixture" (CRF) referenced in

[9] Transport Canada has announced it is considering proposing a regulation that would set strength requirements for tether anchorages at 15,000 N, and which would specify strength requirements for lower anchorages at the 11,000 N level.

[10] Some of the provisions in S9.1.1 of Standard No. 225 are identical to the ones in S15 addressed today. Our next final rule responding to pending issues from the petitions for reconsideration will address making changes to S9.1.1 of Standard No. 225 to reflect the changes made in today's document.

Standard No. 225, because the CRF rearward extensions are 280 mm apart and are 25 mm wide (see Figure 2 of Standard No. 225). Further, under S15.1.2.2, the vehicle must allow attachment of the CRF. Thus, the CRF's successful attachment to the anchorages would confirm compliance with the intention that the anchorages are long enough to attach a child restraint system and spaced an appropriate distance apart.

c. Can the lower bars be bolted into the vehicle?

S15.1.2.1(f) requires that the lower bars must be "an integral and permanent part of the vehicle or vehicle seat." The Alliance asked whether bars that were bolted into the vehicle would be considered permanent and integral, "just as bolted-in vehicle seats are permanent and integral?" Our answer is that anchorages that are bolted into the vehicle are considered permanent and integral, provided that they cannot be removed without the use of a tool, such as a screwdriver or wrench. This is consistent with the approach taken in S5.9 of Standard No. 213 with respect to the "permanent" attachment of the components to a child restraint that enable the child restraint to fasten to a LATCH system (see 64 FR 47584). S5.9(a) states, in part, that: "The components must be attached such that they can only be removed by use of a tool, such as a screwdriver." Specifying that the bars are permanently attached to the vehicle or vehicle seat such that they can only be removed by use of a tool, and specifying the type of tool, makes the requirement more objective while limiting how easily the bars can be removed. Limiting easy removal of the bars will increase the likelihood that the bars are in place when needed.

d. Is Horizontal Excursion of Point X on the Static Force Application Device (SFAD) Measured Relative to an Undeformed Part of the Vehicle Body?

S15.2.2 specifies that horizontal excursion of point X on the Static Force Application Device (SFAD) shall be not more than 125 mm, after preloading the device. The Alliance asked whether the horizontal excursion is measured relative to an undeformed part of the vehicle body. Our answer is yes.

The Alliance believes that movement of the vehicle body relative to the chassis frame during the Standard No. 225 static test is not relevant to child safety. Rather, the only relevant movement of the SFAD is movement relative to the body, particularly the front seats, etc., ahead of the SFAD. As such, for displacement limits, an undeformed reference frame should be used for measuring displacement in body-on-frame vehicles. The Alliance could not identify a reference point that would be appropriate for all body-on-frame vehicles, but instead has recommended that NHTSA incorporate language similar to that used in Standard No. 204, "Steering Control Rearward Displacement (49 CFR § 571.204)," which states that displacement should be measured "in relation to an undisturbed point on the vehicle."

We agree that it would be more appropriate to measure displacement relative to an undisturbed point on the vehicle body for the reasons provided by the Alliance. We have amended S15.2.2 and S9.4.1 to specify that horizontal excursion of point X is measured relative to an undisturbed point on the vehicle body.

e. Can the Marking Requirements of S15.4 Be Satisfied by Installable Guidance Fixtures?

S15.4 specifies that "at least one anchorage bar (when deployed for use), one guidance fixture, or one seat marking feature shall be readily visible to the person installing the CRF * * *" The guidance fixture may be permanent or nonpermanent ("installable," such as a snap-on accessory). The Alliance asked to add the parenthetical "(when installed)" after "guidance fixture". The petitioner suggested that the parenthetical should be added because NHTSA expressed an intent in the August 1999 final rule to incorporate the provisions of the draft ISO standard, and the ISO standard has been amended to include the parenthetical.

We will not add the parenthetical. The parenthetical suggests that manufacturers could satisfy marking requirements if they provided the guidance fixtures without actually installing them. We have concerns that consumers will fail to realize the existence of the installable guidance fixtures if the fixtures are not already attached to the bars at the point of sale. If the guidance fixtures are attached to the bars, the vehicle owner will either leave them attached or must handle them him- or herself in removing them. That attention to the fixtures will make it more likely that owners will realize that the fixtures exist and will remember to use them when they are needed. To clarify S15.4, we are adding a sentence that makes it clear that that section's marking and conspicuity requirements are met by either a guidance fixture that is installed in a vehicle when the vehicle is offered for sale to the consumer, or by one anchorage bar (when deployed for use) or one seat marking feature.

The Alliance suggested that the parenthetical should be added because NHTSA expressed an intent in the August 1999 final rule to incorporate the provisions of the draft ISO standard. NHTSA used the June 22, 1998 draft version of the ISO standard in developing the March 1999 final rule. The June 1998 version did not have the parenthetical "(when installed)" after "guidance fixture." ISO added the parenthetical in a subsequent version of the draft ISO standard. In any event, we do not believe that this aspect of the current draft ISO standard is crucial to making sure that LATCH systems can be installed as quickly as possible, or that installing snap-on guidance fixtures is so arduous that it would delay introduction of the systems in vehicles.

IV. Other Issues Relating to Installation and Testing of Anchorage Systems

The following amendments relate to the test procedures used in the interim to test tether anchorages and LATCH systems to the Canadian and draft ISO requirements, respectively. These changes are made in response to issues raised in petitions for reconsideration of the rules.

a. Adjusting the Seat Back When Using SFAD 2

The Alliance and Keiper asked in petitions for reconsideration of the March 1999 and August 1999 final rules whether a vehicle's seat back can be adjusted if the Static Force Application Device 2 (SFAD 2) cannot be attached to the lower anchorages with the seat back in its most upright position. In response, we have added a provision in today's rule that allows for adjustment of the seat back.

The March 1999 final rule provides for the adjustment of the vehicle's seat back when testing a tether anchor or a LATCH system at the seating position. The March rule had specified that, for the purpose of testing the lower bars or the tether anchorage of a LATCH system, the seat back is placed in its most upright position. Toyota stated:

> When the seat back is placed in its most upright position, in some vehicle seats the SFAD 2 cannot attach to the lower anchorages. In the real world, if a CRS [child restraint system] can not attach to the anchorages, we believe the vehicle owner will adjust the seat back such that the CRS can be attached. Therefore, Toyota requests that the agency amend S7(a) and S10(a) to allow for adjustment of the seat back for cases where the SFAD 2 can not be attached to the lower anchorages with the seat back in its most upright position.

To address Toyota's concern, in our August 1999 rule we amended S7(a) to add the following statements to the test procedure for testing tether anchorages:

When SFAD 2 is used in testing and cannot be attached to the lower anchorages with the seat back in this position, adjust the seat back as recommended by the manufacturer in its instructions for attaching child restraints. If no instructions are provided, adjust the seat back to the position that enables SFAD 2 to attach to the lower anchorages that is the closest to the most upright position.

Because the August 1999 rule did not address most testing issues concerning the lower anchors, we did not add the statement to S10(a). In their petitions for reconsideration of the August 1999 rule, the Alliance and Keiper, a vehicle seat manufacturer, asked us to add the statement to S10(a). We agree with the petitioners that the statement should be included in S10(a), and have added the provision to S10(a) for the same reasons we amended S7(a).

b. Locating a Tether Anchorage Using the 3-Dimensional Manikin

The Alliance included in its October 1999 petition for reconsideration a request for us to reconsider, for the second time, S6.2, "Location of the tether anchorage," to provide that the location of a tether anchorage is found using the design H-point for a seat position, rather than the actual H-point of the seat. The latter point is determined using a three-dimensional H-point machine (3-Dimensional seating manikin).

In the August 1999 rule, NHTSA denied the Alliance's request to use the design H-point to locate the tether anchor. The petitioner believed that—

Because of variability in position of the 3-Dimensional Seating Manikin when installed by different individuals and laboratories, the actual H-Point as determined with the Manikin will also vary in location with respect to the 'design H-Point' for that seat position. These variations also occur, in part, because of the poor fit of the Manikin in certain seating positions, and differences in trim materials (*e.g.*, cloth vs. leather). Because of this inherent variability, the NHTSA procedure does not objectively measure the proper position for a tether anchorage.

The petitioner emphasized that Canada uses the design H-point to locate the tether and argued that we should do the same.

We did so for several reasons. We believed compliance tests would be easier to conduct if we used the manikin. This was because using the manikin would allow us to forego consulting with manufacturers to determine the location of the design H-point. We also stated that using the manikin results in an H-point measurement that is more representative of the real world than the design H-point. Further, we disagreed with the petitioner's belief that there were variability problems using the manikin. We stated that we have not encountered problems using the manikin to determine the H-point of a seating position for positioning the test dummies in Standard No. 208 and 214 crash tests. We also stated that the manikin produces dummy positioning equivalent to that obtained by manufacturers using the device in their own test laboratories, and produces repeatable results when used repeatedly in the same vehicle. We stated that the position of the H-point obtained using the manikin is very close to the H-point obtained using the 2-dimensional template. We thus believed that, to the extent needed, manufacturers can compensate for and design around the small differences. However, we allowed manufacturers optional use of the design H-point during the period in which they are permitted by Standard No. 225 to meet the Canadian requirements for tether anchorages.

In its October 1999 petition for reconsideration, the Alliance reiterated that a round robin test program that its predecessor, the Motor Vehicle Manufacturer's Association (MVMA), undertook found that use of the 3-dimensional H-point machine did not achieve duplicate results when an identical vehicle was tested at different testing facilities. "Differences were as much as 2 inches in some cases." Further, the petitioner believed that the H-point machine could be used to determine the seating position of a crash test dummy, where some variability may be inconsequential, whereas using the machine for the determination of anchorage zones is a different matter. The petitioner stated:

A two inch (in all directions) uncertainty in H–Point location is not practicable when designing an anchorage location in a vehicle. Given the relatively close tolerance already specified for the anchorage zones, manufacturers cannot 'compensate for and design around the small differences' as the agency apparently believes.

We continue to believe that the H-point machine does not introduce excessive variability. However, on reconsideration, we have concluded that using the seating reference point (SgRP), as defined in 49 CFR 571.3, instead of the 3-dimensional machine, will accomplish the purposes of the standard and will remove potential controversy. "Seating reference point (SgRP)" is defined in 49 CFR 571.3 as:

the unique design H-point, as defined in SAE J1100 (June 1984), which:

(a) Establishes the rearmost normal design driving or riding position of each designated seating position, which includes consideration of all modes of adjustment, horizontal, vertical, and tilt, in a vehicle;

(b) Has X, Y, and Z coordinates, as defined in SAE J1100 (June 1984), established relative to the designed vehicle structure;

(c) Simulates the position of the pivot center of the human torso and thigh; and

(d) Is the reference point employed to position the two-dimensional drafting template with the 95th percentile leg described in SAE J826 (May 1987), or, if the drafting template with the 95th percentile leg cannot be positioned in the seating position, is located with the seat in its most rearward adjustment position.

Using the SgRP will be equivalent to using the "design H-point" referenced in the part of

Standard No. 225 that incorporates Transport Canada's requirements for tether anchorages. S6.2.1 of the standard will be revised to specify that the zone within which the tether anchorage must be located is defined with reference to the seating reference point. We note that the figures in the standard that depict the zones refer to the "H point." We will specify in the standard that for purposes of the figures, "H Point" is defined to mean seating reference point.

c. Reducing the Height of the Child Restraint Fixture

Standard No. 225 requires vehicles and LATCH systems to allow the child restraint fixture (CRF) specified in the standard to be placed inside the vehicle and attached to the lower anchorages. Several manufacturers petitioned for reconsideration of the March 1999 final rule asking us to reduce the size of the CRF described in the standard because it was larger than many child restraint systems. We agreed in the August 1999 response to petitions for reconsideration and amended S9.3 to specify that, to facilitate installation of the CRF in a vehicle seat, the side and top frames of the CRF may be removed in order to place it in the vehicle. We added Figure 1A to the standard to illustrate the CRF with the side and top frames removed.

In its October 1999 petition for reconsideration of the August 1999 response, the Alliance petitioned to reduce height of the back of the CRF. The Alliance believed that the 720 mm height of the CRF is inappropriate for certain types of vehicles that have roof lines that drop sharply downward near the back (*e.g.*, sporty 2+2 passenger cars). In such vehicles, a 5th percentile female and most child restraints can fit into the rear seat, but the CRF, with a height of 720 mm, will not. The

petitioner suggested that NHTSA should reduce the height of the CRF to 550 mm.

NHTSA acknowledged in the August 1999 final rule responding to petitions for reconsideration that the CRF is larger than many child restraint systems, and that even if the CRF does not fit in a vehicle's rear seat, there will be child restraint models that will be small enough to fit. NHTSA is not opposed to reducing the height of the CRF to facilitate its installation in certain vehicles where the full-height CRF (720 mm) cannot fit. However, instead of adopting the 550 mm height suggested by the Alliance, NHTSA believes that 560 mm is more appropriate, as discussed below.

S5.2.1.1(a) of Standard No. 213 (49 CFR § 571.213) prescribes the minimum seat back height for child restraint systems according to the recommended weight ranges for those restraint systems. Under Standard No. 213, child restraints certified for use by children weighing more than 20 pounds (9 kilograms (kg)) but less than 40 pounds (18 kg) (typically forward-facing restraints or convertible restraints (which are adjustable so that they can be used rear-facing by an infant or a very young child, and forward-facing by a toddler)) must have a minimum seat back height of (510 mm) and restraints that are for use by children weighing more than 40 pounds (18 kg) must have a minimum seat back height of 22 inches (560 mm). We are revising S9.3 of Standard No. 225 to specify that, if necessary, the height of the CRF may be reduced to 560 mm. We believe that, with the height of the CRF reduced to 560 mm and disassembled as provided for in the August 1999 rule, the device will be able to fit in the space provided by all vehicle seats.

d. When Fitting the CRF Is Impracticable

S15.1.2.2 of Standard No. 225 (incorporating, for the interim, the draft ISO requirements for the lower anchorages of LATCH systems) specifies that the CRF is used to locate the lower bars. The CRF is placed against or near the vehicle seat back. With the CRF attached to the anchorages and resting on the seat cushion, S15.1.2.2 requires that the bottom surface of the CRF have attitude angles within certain limits (with angles measured relative to the vehicle horizontal, longitudinal and transverse reference planes). (Pitch must be 15° ± 10°, roll 0° ± 5°, and yaw 0° ± 10°.)[11]

In its petition for reconsideration of the March 1999 final rule, Porsche asked that NHTSA amend Standard No. 225 to exclude rear-engine, 4-seat passenger cars from the requirement that requires vehicles with not more than two rear designated seating positions to be equipped with a LATCH system at each rear seating position. The Porsche 911 is designed as a rear-engine, 4-seat vehicle, with the rear seats actually being two padded shells integrated into the body panel and separated by the middle tunnel used by the transmission. The backs of the seats are individually foldable to provide additional cargo space in case the compartment is not used for the transportation of passengers (only the seat padding folds, and not the actual seat structure as in typical foldable seats).

The contour of the 911's seat shell, along with the 120-mm and 70-mm spacing requirements, do not allow the CRF to be positioned in a stable or compliant manner. Given the shape of the seat/body shell, the spacing requirements in the regulation, and the interference of components behind the body shell, the lower anchorage points must be located so high in the shell that the positive pitch angle criteria (15 +/ −10 degrees) cannot be met, with the consequence that an installed child seat rests in an unstable, wobbly position with a negative pitch angle on the child seat bottom.

NHTSA has met with Porsche to view a model year 2000 Porsche 911 with prototype lower anchorages installed to visually examine the difficulties encountered as described above. (Summaries of the meetings have been placed in the docket.) Porsche has addressed numerous design alternatives presented by both NHTSA and Transport Canada in the meetings, and explained reasons underlying its conclusions that each alternative would not provide the necessary relief (*i.e.*, use of soft attachments, incorporation of foldable anchorages, and use of extra seatback padding).

We believe that incorporation of lower anchorages into the rear seating position of the Porsche 911 is impracticable, based on the following points:

—The proximity of the Porsche 911 body shell to the rear bucket seats, in conjunction with the spacing requirements for the lower LATCH anchorages in Standard No. 225, makes it impossible to locate the lower anchorages so that the CRF can meet the pitch, roll, and yaw requirements of the standard;

—Because the Porsche 911 is a rear engine vehicle, the anchorages cannot be moved and still meet the prescribed spacing requirements due to interference with transmission and suspension components located directly behind the rear seats; and

—There is not enough space behind the rear seating positions to accommodate foldable anchorages.

We conclude that LATCH systems should not be required in rear seating positions where it is impossible, due to interference with transmission and/or suspension components located directly behind the rear seats, to locate the lower anchorages so as to make it possible to meet the attitude angles of S15.1.2.2.[12] We believe that this decision will affect relatively few vehicles overall. We are not aware of any other model that cannot meet both spacing and pitch, roll, and yaw requirements.

We are not requiring Porsche in this situation to install a LATCH system in the front seat, unless it installs an on-off switch for the seat.[13] (Porsche has a system that turns off the air bag(s) for the front passenger seating position when used with Porsche's child restraint that is specially fitted with a latch plate device that fits into a bracket on the vehicle. The system does not turn off the air bag when the device is not used, as would happen when child restraints other than Porsche's are used in the vehicle.) However, we will require manufacturers of vehicles that do not have a LATCH system in a rear designated seating positions under the exclusion, and no air bag on-off switch, to provide a tether anchorage for the front passenger seating position. The tether anchorage is required to increase the likelihood that when a forward-facing child restraint is installed in the front passenger seating position, in a frontal crash the back of the child restraint will be retained as far as possible from injury-causing surfaces. We will require the tether anchorage in the vehicles beginning September 1, 2001, to provide adequate leadtime. If a

[11] A rulemaking document that we will be publishing later this year will be incorporating these pitch, roll and yaw requirements into the requirements of S9.

[12] We have concluded that the proposed wording from Porsche regarding "four seat rear engine vehicles" is overly broad and should not be adopted. In the future, it may be practicable for some four seat rear engine vehicles to have a LATCH system in a rear designated seating position.

[13] Vehicles are prohibited from having a LATCH system in a front passenger seating position in the absence of an on-off switch. The purpose of the prohibition is to reduce the likelihood that a child restraint system would be used in the front seat with an air bag. A LATCH system invites consumers to place a child restraint in the front seat and implies that the position is appropriate for children.

vehicle is equipped with an air bag on-off switch, there must be a LATCH system in a designated passenger seating position in the front seat (see S5(c)(1)(ii) and (2)(ii) of Standard No. 225).

e. Subjecting Tether Anchorages and Lower Anchorages to a Single Pull Test

The March 1999 final rule specified (S6.3.3) that the tether anchorage for a seating position need not meet requirements after the lower anchorages of the LATCH system of that position have met the standard's strength requirements. (We test a tether anchorage at a seating position that has the lower anchorages of a LATCH system by attaching the child restraint surrogate device (SFAD 2) to the lower anchorages and to the tether anchorage. Thus, in the tether anchorage test, both the lower anchorages and the tether anchorage are simultaneously stressed.) The Alliance asked that we also exclude tether anchorages from requirements if the lower bars at adjacent seating positions have been tested.

The petitioner is referring to the case where there are two LATCH systems on the outboard seating positions of a 3-passenger seat, and the inboard anchorages of these systems are approximately 280 mm apart, so that it would be possible to install a child restraint in the center position. The petitioner is concerned that if one of the outboard LATCH systems is tested, NHTSA could test the center position tether using the two inboard anchorages, one of which was already tested—and weakened—in the previous test. We agree that an anchorage should not be subjected to more than one pull test. Anchorages may be weakened and/or distorted in a previous test and may not perform as they would in an actual crash.

The March 1999 final rule specified (S9.4.2) that in the case of vehicle seat assemblies equipped with more than one LATCH system, we may choose to test each LATCH system simultaneously or sequentially. "Sequential testing may, at the agency's option, include testing one system to the requirement of S9.4.1(a) [forward pull] and another system to S9.4.1(b) [lateral pull]. * * *" The Alliance petitioned us to delete the provision allowing for sequential testing. The Alliance believes that the test of the first system could affect the results of a subsequent pull test to an adjacent LATCH system, and vice versa. The petitioner states that manufacturers cannot predict which test sequences would likely be most severe, so the sequential test requirement necessitates multiple development and compliance tests to investigate the interaction of various potential test sequences.

We have decided to delete the sequential test provision. We do not need the provision to test the second LATCH system in a subsequent test.

The March 1999 final rule also specified (S9.4.2) that the lower anchorage bars of a particular LATCH system need not meet further requirements after having met the forward-pull strength requirement or either lateral-pull requirement. The Alliance petitioned us to further specify that lower anchorages will not be subjected to further forces if they have been already subjected to a test assessing the strength of a tether anchorage. Petitioner believes that the tether anchorage test could weaken and/or distort the lower anchorage bars, so it would be inappropriate to subject the lower bars to further testing. It was an oversight not to have included the provision in S9.4.1. Thus, we have amended the section as suggested.

f. Simultaneously Testing LATCH Systems

In its petition for reconsideration of the March 1999 and August 1999 final rules, the Alliance asked us to consider amending the provisions in Standard No. 225 pertaining to the simultaneous testing of LATCH anchorages.

There are a number of references in Standard No. 225 to simultaneous testing. S9.4.2 specifies, inter alia, that where vehicle seat assemblies are equipped with more than one LATCH system, the LATCH systems may be tested simultaneously. There is a comparable requirement in S15.3.3 under the option that permits manufacturers to meet the draft ISO requirements for an interim period. If anchorages for more than one LATCH system are installed in a vehicle seat assembly and not directly into the vehicle structure, the LATCH systems shall be tested simultaneously. A "simultaneously tested" provision is also found in S6.3.3 for testing tether anchorages to the 15,000 N strength requirement, and in S6.3.4.3 for testing tether anchorages for an interim period to the Canadian strength requirements.

The Alliance addressed the issue of simultaneous testing of multiple anchorages in a seating row in its April 1999 petition for reconsideration. The Alliance believed that the provision was too broad because it required simultaneous testing of anchorage systems even when the width of a vehicle seat made it unlikely that all anchorage systems would be simultaneously used. The Alliance stated:

> In North America, because most child restraints are expected to be attached by webbing rather than by rigid attachments, there is added flexibility to install child restraints side-by-side. Therefore, the Alliance suggests that simultaneous testing be specified if the lower anchors for adjacent anchor systems are 120 mm or more apart, measured laterally between the lateral centers of the anchor bars.

Based on the above, the Alliance petitioned the agency to amend S9.4.2 to "clarify that simultaneous testing applies [when testing LATCH systems] only when anchor forces from multiple child restraint anchorage systems are applied to a single vehicle seat assembly, apply only if there is 120 mm or more lateral spacing between adjacent anchors for adjacent anchorage systems, and do not apply when forces are transferred directly to the vehicle structure."

In a letter to the agency on April 3, 2000, DaimlerChrysler also suggested that S9.4.2 should be interpreted not to require simultaneous testing of three LATCH systems on a vehicle seat if the seat row is not wide enough to allow three child restraints to be installed at the same time. DaimlerChrysler said that it has measured the widths of conventional child restraints and has developed a method by which the agency could determine whether more than two child restraints could simultaneously fit on a vehicle seat. Based on measurements of a range of available child restraints, DaimlerChrysler contended that a center-to-center distance between adjacent seating positions of at least 400 mm is necessary to install child restraints in adjacent seating positions properly. The width of the SFAD 1 and SFAD 2 devices (280 mm and 320 mm, respectively) are significantly narrower than the representative child restraints identified by DaimlerChrysler, and thus, DaimlerChrysler believes, the SFAD devices should not be used to determine whether adjacent seating positions should be subjected to simultaneous testing by NHTSA.

Based on its analysis, DaimlerChrysler recommended that adjacent seating positions should only be subject to simultaneous testing if two child restraints, 400 mm wide, can be properly installed side-by-side. To determine this, DaimlerChrysler recommended adoption of the following procedure:

(a) Determine the geometric center of the seating position, as the midpoint between the geometric centers of the lower anchorages (bars) of the seating position.

(b) Construct a vertical longitudinal plane intersecting the midpoint of each seating position.

(c) Measure the distance between the midpoints of adjacent seating positions.

(d) Do not test adjacent positions simultaneously if the distance between the midpoints of adjacent seating positions is less than 400 mm.

The approaches recommended in the April 1999 Alliance petition for reconsideration and in the April 2000 DaimlerChrysler request for interpretation—while different—yield the same minimum spacing between anchorages required for testing multiple child restraints in a seating row simultaneously. NHTSA concurs that where there are seat configurations where three adjacent seating positions are equipped with lower anchorages, but where it will be physically impossible to have three child restraints properly installed in these seating positions simultaneously, there is no need to test all three LATCH systems (or tether anchorages) simultaneously. We are adopting DaimlerChrysler's approach, and not the Alliance's, because it is more clearly understandable than the Alliance's approach for measuring the lateral spacing between lower anchorages for adjacent anchorage systems.

g. Requirement To Identify Vehicles Certified to the Vehicle Requirements During the Phase-In

DaimlerChrysler petitioned for reconsideration of the requirement in the March 1999 final rule that during the tether anchor and LATCH system phase-in periods, manufacturers must, upon request from NHTSA, provide information identifying the vehicles that have been certified as complying with Standard No. 225's requirements (S13.1 and S14.1 of Standard No. 225; § 596.5 of Part 596). The manufacturer also objected to the rule's provision that the manufacturer's designation of a vehicle as a certified vehicle is irrevocable (the "irrevocability" provision).

We explained in the rule that, where a safety standard provides manufacturers a phase-in period for a requirement to take effect, the agency needs to know whether a vehicle has been certified as meeting the standard when it selects a vehicle to test. A phased-in requirement typically includes a reporting requirement for manufacturers to identify to NHTSA which vehicles have been certified to the standard, but the report is made after the end of a production year. To enable NHTSA to identify which vehicles have been certified as part of the phase-in fleet during the production year, upon request, manufacturers must identify the vehicles during the production year that have been certified as complying with Standard No. 225. In addition, the standard precludes a manufacturer—when confronted with an apparent noncompliance'from attempting to avoid a recall or civil penalty by asserting that it had satisfied the percentage phase-in requirements with other vehicle models. We believed then, and continue to do so now, that a manufacturer should be responsible for assuring that its certification of its vehicles is accurate and that consequences must attach if it fails to do so. In addition, we noted that such a response by a manufacturer would create obvious difficulties for the agency in managing its resources for carrying out its enforcement responsibilities.

DaimlerChrysler stated that the reporting requirement and the irrevocability provision serve no safety function, are impracticable and overly burdensome, and should be deleted. With respect to the irrevocability clause, the petitioner stated that:

> When manufacturers plan to meet phase-in requirements, they consider which vehicle lines should comply with the regulation first. In doing so, to insure compliance, manufacturers plan to meet the phase-in requirement by including a percentage margin. During the production year, unforeseeable circumstances arise, such as supplier issues and production line issues, which make parts unavailable. Additionally, there are times when manufacturers comply with a phase-in by implementing running changes. These plans can be delayed, such that the vehicle may not phase-in until later than originally planned. If, in either of these instances, the manufacturer had made a prior declaration of vehicle compliance to the agency, they could be subject to non-compliance penalties *even though their annual percentage of complying vehicles still meets or exceeds the minimum required.* [Emphasis in text.]

DaimlerChrysler's contention misconstrues the language of the standard. Manufacturers were not required to identify in advance those vehicle *models* that would comply with the requirements during the phase-in; they were only required to identify particular vehicles that were so certified. Thus, any changes due to "unforeseen circumstances" or running changes implemented during the model year would not cause any certification difficulties. A manufacturer would simply advise the agency which particular vehicles (*e.g.*, those manufactured before a specific date) were certified as complying with the requirements of the standard. Accordingly, the provisions in S13.1, S14.1 and in 49 CFR § 596.5 are retained.

V. Request to Reconsider Owner's Manual Requirement

The March 1999 final rule included a requirement that vehicle owner's manuals must have step-by-step instructions, including diagrams, for properly attaching a child restraint to the lower anchors and tether anchor of a LATCH system. The Alliance asked in its April 1999 petition for reconsideration that we delete the requirement. The Alliance stated that the requirement calls for too much detail, and that vehicle manufacturers will not know all the different types of child restraint attachments that may be on the market.

Our August rule granted this request in part and denied it in part. We agreed that vehicle manufacturers may find it difficult to anticipate how different types of child restraints will be designed to attach to the lower anchor bars of a vehicle's LATCH system, and thus we deleted the requirement for detailed instructions about that issue. However, we decided to retain the requirement that vehicle owner's manuals provide detailed instructions on attaching a child restraint to a tether anchor. This was because Standard No. 213 specifies the configuration and geometry of the tether hook. Thus, we determined, vehicle manufacturers can develop their written instructions with the tether hook design in mind.

The Alliance's October 1999 petition for reconsideration asked for reexamination of this decision based on leadtime. The Alliance asked that the effective date for the requirement on detailed instructions on the tether be deferred one year from September 1, 1999, "which coincides with the date when the tether anchorage requirement becomes effective for 100% of passenger cars, and the applicable MPVs, trucks and buses."

The request is denied. The leadtime for the requirement was adequate, because manufacturers generally order owner's manuals three to four months (in June or July) before the start of the new model year of production. (See March 9, 1999 final rule amending the consumer information regulations to require a new rollover warning label.) The information is important to increase the likelihood that parents will attach a top tether on the child restraint system. A tethered child restraint offers improved protection against head impact in a crash.

VI. Issues Relating to Small Manufacturers and Manufacturers With Temporary Exemptions

a. Alternative Phase-In Schedule for Small Manufacturers

In its April 1999 petition for reconsideration of the March 1999 final rule, the Coalition of Small Volume Automobile Manufacturers (COSVAM) stated that the March 1999 rule should provide an alternative phase-in for small manufacturers. COSVAM requested that a company with only one carline should be permitted to comply with the requirements for lower anchors beginning September 1, 2002, rather than September 1, 2000. COSVAM indicated that its members produce fewer than 5,000 vehicles per year worldwide.

We are granting the request to provide small manufacturers more flexibility to install LATCH systems. We are providing that vehicles that are manufactured by a manufacturer that produces fewer than 5,000 vehicles worldwide annually are not required to meet the requirements for lower anchors until September 1, 2002.

b. Manufacturers With Temporary Exemption From Air Bag Requirement

S4 of Standard No. 225 generally requires vehicles without any rear designated seating positions to be equipped with a tether anchorage at each front passenger seating position. In those cases in which such a vehicle is equipped with an air bag on-off switch in accordance with S4.5.4 of Standard No. 208 (*i.e.*, the vehicle either has no rear seating positions, or rear seating positions that are too small to accommodate a rear-facing child restraint), the vehicle must be equipped with a LATCH system in a front designated passenger seating position. If the vehicle does not have an on-off switch, the manufacturer is prohibited from equipping the front passenger seating position with a LATCH system.

In a petition for reconsideration, Global Vehicle Services Corporation (Global) asks about the application of Standard No. 225 to vehicle manufacturers that have received a Part 555 temporary exemption from the air bag requirements of Standard No. 208. As a result of such a temporary exemption, exempted vehicles might not be equipped with a front passenger seat air bag.

There are currently four vehicle manufacturers that have been granted exemptions until March 31, 2001, from the air bag requirements of Standard No. 208. Three of these manufacture two-seat convertibles, while the fourth manufactures a sport utility vehicle.

For the purposes of whether a LATCH should be installed in the front seat of the vehicles, we have considered several factors. First is whether there is a rear seating position in which to place a LATCH system. If the vehicle has a rear designated seating position, a LATCH should be placed there, regardless of whether there is an air bag for the front passenger seating position. This is because children are safer seated in a rear seat than in the front seat, regardless of whether an air bag is installed. Second, if there is no rear seat in which to place a child, the question of whether a LATCH system should be at the front passenger designated seating position is answered by whether that position is equipped with an air bag. If an air bag is present that cannot be turned off, that seating position is unsuitable for a LATCH system.

We consider a vehicle with no rear seat whose front seating position does not have any air bag (because of a temporary exemption) analogous to a vehicle with no rear seat whose front seating position is equipped with an air bag and an air bag on-off switch. In both vehicles, the front passenger seating position should be equipped with a LATCH system to fully realize the benefits associated with this improved method of securing child restraints. Thus, we have concluded that vehicles with no rear designated seating positions and no passenger seat air bag due to a temporary exemption must have a LATCH system installed at a front passenger seating position. However, convertibles need have only the lower anchorages of a LATCH system, because they would remain excluded from the tether requirements of Standard No. 225 (see S5(a)). We will require the LATCH system in such vehicles beginning September 1, 2002. An earlier effective date would not provide adequate leadtime to meet the requirement.

A vehicle with a rear seat that meets the conditions in S4.5.4.1(b) of Standard No. 208 whose front seating position does not have any air bag (because of a temporary exemption) is analogous to a vehicle with a small rear seat whose front seating position is equipped with an air bag and an air bag on-off switch. In both vehicles, a LATCH system in a front passenger seating position is needed to fully realize the benefits associated with this improved method of securing child restraints. Thus, for both vehicles, we are requiring a LATCH system in a front passenger seating position in place of one of the LATCH systems required to be installed in the rear seat. In the case of convertibles, the front designated passenger seating position need have only the two lower anchorages meeting the requirements of S9 of the standard.

VII. Reasons for the Effective Date of This Rule

Section 30111(d) of the motor vehicle safety statute (Title 49 U.S.C., Chapter 301) provides that a safety standard may not become effective before the 180th day after the standard is prescribed or later than one year after it is prescribed, unless we find, for good cause shown, that a different effective date is in the public interest and publish the reasons for the finding. The effective date for this final rule is 30 days after publication. Today's rule generally does not impose new requirements on manufacturers but extends alternative strength requirements for an interim period. We are delaying the more stringent requirements to allow manufacturers more certainty in designing future vehicles. To the extent that this rule places new requirements on some manufacturers (*e.g.*, manufacturers of vehicles that do not have air bags pursuant to a temporary exemption under Part 555), this rule provides two years leadtime for the manufacturers to comply. This rule also clarifies some requirements and test procedures that were specified in the March 1999 final rule and that become mandatory beginning September 1, 2000. Because of these considerations, it is in the public interest for the effective date for today's rule to be less than 180 days after issuance of this rule.

VIII. Rulemaking Analyses and Notices

a. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." We have considered the impacts of this rulemaking action and have determined that this action is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. We have further determined that the effects of this rulemaking are sufficiently minimal that preparation of a full preliminary regulatory evaluation is not warranted. We believe that manufacturers will be minimally affected by this rulemaking because generally it does not change the manufacturers' responsibilities to install tether anchorages and LATCH systems on the compliance dates of the March 5, 1999 final rule. The rule instead extends the period during which manufacturers

may meet, at the manufacturer's option, alterative strength requirements. This rule also clarifies some requirements and test procedures, but overall does not impose new test burdens. Because the amendment is permissive in nature, there are no costs associated with it.

b. Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. This rule affects motor vehicle manufacturers, almost all of which are not small business. Even if there are motor vehicle manufacturers that qualify as small entities, this rule will not have a significant economic impact on them because these amendments are generally permissive in nature, and have no costs associated with them. Accordingly, the agency has not prepared a regulatory flexibility analysis.

c. Executive Order 13132 (Federalism)

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Accordingly, NHTSA has determined that this final rule does not contain provisions that have federalism implications or that preempt State law.

d. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This rule does not impose any unfunded mandates as defined by that Act.

e. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA)
(Public Law 104–113),

all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.

In developing Standard No. 225, we searched for standards developed or adopted by voluntary consensus standards bodies and found that the only standard for a child restraint anchorage system was the draft ISO standard.

This final rule extends the period during which manufacturers may meet the specifications in the draft ISO standard. The International Organization for Standardization (ISO) is a worldwide voluntary federation of ISO member bodies.

f. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

g. Executive Order 12778 (Civil Justice Reform)

This rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

h. Paperwork Reduction Act

This rule does not contain any collection of information requirements requiring review under the Paperwork Reduction Act of 1995 (Public Law 104–13). We noted in the March 1999 final rule that the phase-in production reporting requirements described in that rule are considered to be information collection requirements as defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. NHTSA will be submitting a clearance request to OMB for review and clearance in this summer.[14]

[14] Pursuant to the Paperwork Reduction Act and OMB's regulations at 5 CFR 1320.5(b)(2), NHTSA informs the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. The agency's current OMB control numbers are displayed in NHTSA's regulations at 49 CFR Part 509, *OMB Control Numbers for Information Collection Requirements.*

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA amends 49 CFR Chapter V as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

2. Section 571.225 is amended by:

a. Revising S4.5 introductory text;

b. Adding S5(c)(1)(iii), S5(c)(2)(iii) and S5(e);

c. Revising S6.2, S6.2.1, S6.2.2.1 introductory text, S6.3, S6.3.3, S6.3.4.1 introductory text, S6.3.4.3, S9, and S9.3(c);

d. Adding S9.4.1.2,

e. Revising S9.4.2 and S10(a);

f. Revising S14.3 in its entirety;

g. Revising S15 and S15.1.2.1(f);

h. Removing and reserving S15.1.2.1(d) and S15.1.2.1(e);

i. Revising S15.2.2, S15.3.3, and S15.4; and

j. Adding Figure 20 after Figure 19.

The revised and added text and figure read as follows:

§ 571.225 Standard No. 225; Child restraint anchorage systems.

* * * * *

S4.5 As an alternative to complying with the requirements of S4.2 through S4.4 that specify the number of tether anchorages that are required in a vehicle and the designated seating positions for which tether anchorages must be provided, a vehicle manufactured from September 1, 1999 to August 31, 2004 may, at the manufacturer's option (with said option irrevocably selected prior to, or at the time of, certification of the vehicle), meet the requirements of this S4.5. This alternative ceases to be available on and after September 1, 2004. A tether anchorage conforming to the requirements of S6 must be installed—

* * * * *

S5. *General exceptions.*

* * * * *

(c)(1) * * *

(iii) For vehicles manufactured on or after September 1, 2002, each vehicle

that does not have a rear designated seating position, and does not have an air bag installed at front passenger designated seating positions pursuant to a temporary exemption granted by NHTSA under 49 CFR Part 555, must have a child restraint anchorage system installed at a front passenger designated seating position. In the case of convertibles, the front designated passenger seating position need have only the two lower anchorages meeting the requirements of S9 of this standard.

* * * * *

(c)(2) * * *

(iii) For vehicles manufactured on or after September 1, 2002, each vehicle that has a rear designated seating position and meets the conditions in S4.5.4.1(b) of Standard No. 208 (§ 571.208), and does not have an air bag installed at front passenger designated seating positions pursuant to a temporary exemption granted by NHTSA under 49 CFR Part 555, must have a child restraint anchorage system installed at a front passenger designated seating position in place of one of the child restraint anchorage systems that is required for the rear seat. In the case of convertibles, the front designated passenger seating position need have only the two lower anchorages meeting the requirements of S9 of this standard.

* * * * *

(e) A vehicle with a rear designated seating position for which interference with transmission and/or suspension components prevents the location of the lower bars of a child restraint anchorage system anywhere within the zone described by S9.2 or S15.1.2.2(b) such that the attitude angles of S15.1.2.2(a) could be met, is excluded from the requirement to provide a child restraint anchorage system at that position. However, except as provided elsewhere in S5 of this standard, for vehicles manufactured on or after September 1, 2001, such a vehicle must have a tether anchorage at a front passenger designated seating position.

* * * * *

S6.2 *Location of the tether anchorage.* A vehicle manufactured on or after September 1, 1999 and before September 1, 2004 may, at the manufacturer's option (with said option irrevocably selected prior to, or at the time of, certification of the vehicle), meet the requirements of S6.2.1 or S6.2.2. Vehicles manufactured on or after September 1, 2004 must meet the requirements of S6.2.1 of this standard.

S6.2.1 Subject to S6.2.1.1 and S6.2.1.2, the part of each tether anchorage that attaches to a tether hook must be located within the shaded zone shown in Figures 3 to 7 of this standard of the designated seating position for which it is installed. The zone is defined with reference to the seating reference point (see § 571.3). (For purposes of the figures, "H Point" is defined to mean seating reference point.)

* * * * *

S6.2.2.1 In passenger cars and multipurpose passenger vehicles manufactured before September 1, 2004, the portion of each user-ready tether anchorage to which a tether strap hook attaches may be located within the shaded zone shown in Figures 8 to 11 of the designated seating position for which it is installed, with reference to the shoulder reference point of a template described in section 3.1 of SAE Standard J826 (June 1992) (incorporation by reference; see § 571.5), if:

* * * * *

S6.3 *Strength requirements for tether anchorages.* Subject to S6.3.2, a vehicle manufactured on or after September 1, 1999, and before September 1, 2004 may, at the manufacturer's option (with said option irrevocably selected prior to, or at the time of, certification of the vehicle), meet the requirements of S6.3.1 or S6.3.4. Subject to S6.3.2, vehicles manufactured on or after September 1, 2004 must meet the requirements of S6.3.1 of this standard.

* * * * *

S6.3.3 *Provisions for simultaneous and sequential testing.*

(a) In the case of vehicle seat assemblies equipped with more than one tether anchorage system, the force referred to in S6.3.1 and S6.3.2 may, at the agency's option, be applied simultaneously to each of those tether anchorages. However, that force may not be applied simultaneously to tether anchorages for any two adjacent seating positions whose midpoints are less than 400 mm apart, as measured in accordance with S6.3.3(a)(1) and (2) and Figure 20.

(1) The midpoint of the seating position lies in the vertical longitudinal plane that is equidistant from vertical longitudinal planes through the geometric center of each of the two lower anchorages at the seating position.

(2) Measure the distance between the vertical longitudinal planes passing through the midpoints of the adjacent seating positions, as measured along a line perpendicular to the planes.

(b) A tether anchorage of a particular child restraint anchorage system will not be tested with the lower anchorages of that anchorage system if one or both of those lower anchorages have been previously tested under this standard.

* * * * *

S6.3.4.1 In a passenger car manufactured before September 1, 2004, every user-ready tether anchorage in a row of designated seating positions must, when tested, subject to subsection S6.3.4.2, withstand the application of a force of 5,300 N, which force must be—

* * * * *

S6.3.4.3 *Provisions for simultaneous and sequential testing.*

(a) In the case of vehicle seat assemblies equipped with more than one tether anchorage system, the force referred to in S6.3.4, 6.3.4.1 or S6.3.4.2 may, at the agency's option, be applied simultaneously to each of those tether anchorages. However, that force may not be applied simultaneously to tether anchorages for any two adjacent seating positions whose midpoints are less than 400 mm apart, as measured in accordance with S6.3.4.3(a)(1) and (2) and Figure 20.

(1) The midpoint of the seating position lies in the vertical longitudinal plane that is equidistant from vertical longitudinal planes through the geometric center of each of the two lower anchorages at the seating position.

(2) Measure the distance between the vertical longitudinal planes passing through the midpoints of the adjacent seating positions, as measured along a line perpendicular to the planes.

(b) A tether anchorage of a particular child restraint anchorage system will not be tested with the lower anchorages of that anchorage system if one or both of those lower anchorages have been previously tested under this standard.

* * * * *

S9 *Requirements for the lower anchorages of the child restraint anchorage system.* As an alternative to complying with the requirements of S9, a vehicle manufactured on or after September 1, 1999 and before September 1, 2004 may, at the manufacturer's option (with said option irrevocably selected prior to, or at the time of, certification of the vehicle), meet the requirements in S15 of this standard. Vehicles manufactured on or after September 1, 2004 must meet the requirements of S9 of this standard.

* * * * *

S9.3 * * *

(c) To facilitate installation of the CRF in a vehicle seat, the side, back and top frames of the CRF may be removed for installation in the vehicle, as indicated in Figure 1A of this standard. If necessary, the height of the CRF may be 560 mm.

* * * * *

S9.4.1.2 The amount of displacement is measured relative to an undisturbed point on the vehicle body.

* * * * *

S9.4.2 *Provisions for simultaneous and sequential testing.*

(a) In the case of vehicle seat assemblies equipped with more than one child restraint anchorage system, the lower anchorages may, at the agency's option, be tested simultaneously. However, forces may not be applied simultaneously for any two adjacent seating positions whose midpoints are less than 400 mm apart, as measured in accordance with S9.4.2(a)(1) and (2) and Figure 20.

(1) The midpoint of the seating position lies in the vertical longitudinal plane that is equidistant from vertical longitudinal planes through the geometric center of each of the two lower anchorages at the seating position.

(2) Measure the distance between the vertical longitudinal planes passing through the midpoints of the adjacent seating positions, as measured along a line perpendicular to the planes.

(b) The lower anchorages of a particular child restraint anchorage system will not be tested if one or both of the anchorages have been previously tested under this standard.

* * * * *

S10. *Test conditions for testing the lower anchorages.* * * *

(a) Adjust vehicle seats to their full rearward and full downward position and place the seat backs in their most upright position. When SFAD 2 is used in testing and cannot be attached to the lower anchorages with the seat back in this position, adjust the seat back as recommended by the manufacturer in its instructions for attaching child restraints. If no instructions are provided, adjust the seat back to the position closest to the upright position that enables SFAD 2 to attach to the lower anchorages.

* * * * *

S14. *Lower anchorage phase-in requirements for vehicles manufactured on or after September 1, 2000 and before September 1, 2002.*

* * * * *

S14.3 *Alternative phase-in schedules.*

(a) *Final-stage manufacturers and alterers.* A final-stage manufacturer or alterer may, at its option, comply with the requirements set forth in S14.3(a)(1) and (2) instead of the requirements set forth in S14.1.1 through S14.1.2.

(1) Vehicles manufactured on or after September 1, 2000 and before September 1, 2002 are not required to comply with the requirements specified in this standard.

(2) Vehicles manufactured on or after September 1, 2002 must comply with the requirements specified in this standard.

(b) *Small volume manufacturers.* Vehicles manufactured on or after September 1, 2000 and before September 1, 2002 that are manufactured by a manufacturer that produces fewer than 5,000 vehicles worldwide annually are not required to provide the lower anchorages specified in this standard.

* * * * *

S15 *Alternative to complying with the requirements of S9.* As an alternative to complying with the requirements of S9, a vehicle manufactured on or after September 1, 1999 and before September 1, 2004 may, at the manufacturer's option (with said option irrevocably selected prior to, or at the time of, certification of the vehicle), meet the requirements in S15 of this standard. Vehicles manufactured on or after September 1, 2004 must meet the requirements of S9 of this standard.

* * * * *

S15.1.2 *Anchorage dimensions and location.*

S15.1.2.1 The lower anchorages must consist of two bars that—

* * * * *

(d) [Reserved]

(e) [Reserved]

(f) Are permanently attached to the vehicle or vehicle seat such that they can only be removed by use of a tool, such as a screwdriver or wrench.

S15.2.2 Horizontal excursion of point X during application of the 8 kN and 5 kN forces must be not more than 125 mm, after preloading the device. The amount of displacement is measured relative to an undisturbed point on the vehicle body.

* * * * *

S15.3.3 *Provisions for simultaneous and sequential testing.*

(a) If anchorages for more than one child restraint anchorage system are installed in the vehicle seat assembly and not directly into the vehicle structure, the forces described in S15.3 may, at the agency's option, be applied simultaneously to SFADs engaged with the anchorages. However, that force may not be applied simultaneously to SFADs engaged at any two adjacent seating positions whose midpoints are less than 400 mm apart, as measured in accordance with S15.3.3(a)(1) and (2) and Figure 20.

(1) The midpoint of the seating position lies in the vertical longitudinal plane that is equidistant from vertical longitudinal planes through the geometric center of each of the two lower anchorages at the seating position.

(2) Measure the distance between the vertical longitudinal planes passing through the midpoints of the adjacent seating positions, as measured along a line perpendicular to the planes.

(b) The lower anchorages of a particular child restraint anchorage system will not be tested if one or both of the anchorages have been previously tested under this standard.

* * * * *

S15.4 *Marking and conspicuity of the lower anchorages.* At least one anchorage bar (when deployed for use), one guidance fixture, or one seat marking feature shall be readily visible to the person installing the CRF. If guidance fixtures are used to meet this requirement, the fixture(s) (although removable) must be installed. Storable anchorages shall be provided with a tell-tale or label that is visible when the anchorage is stored.

* * * * *

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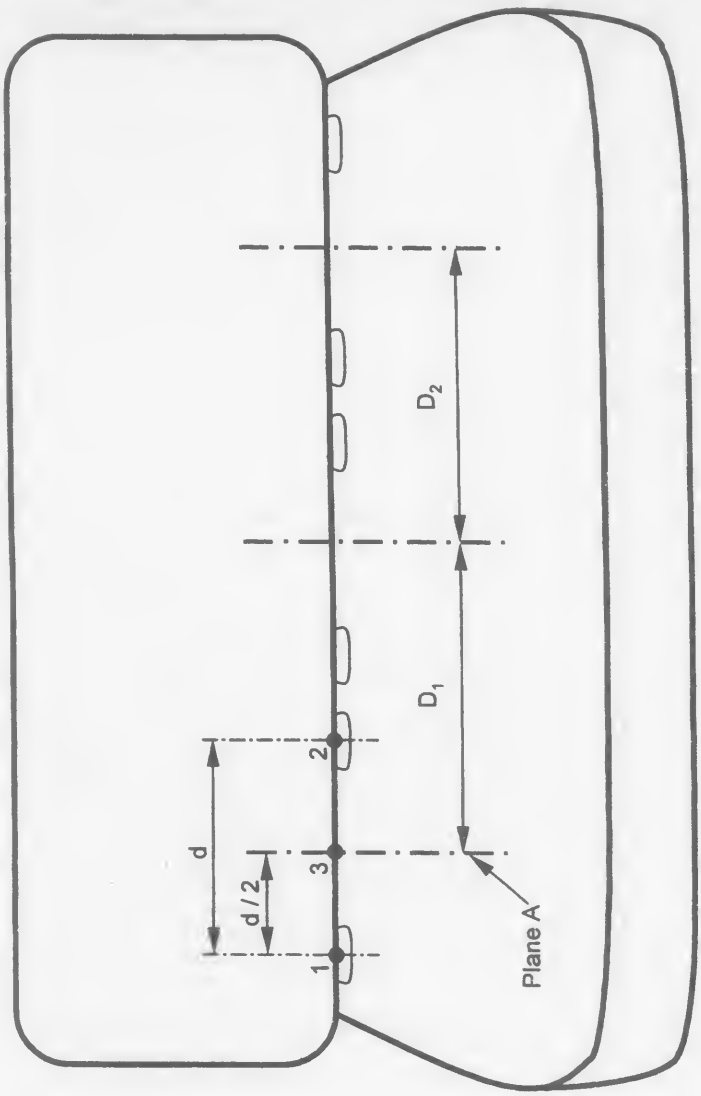

d = center to center distance between lower anchorages for a given seating position (nominally 280 mm).

D = distance between vertical longitudinal planes located midway between the anchorages for a given seating position.

Figure 20 -- Measurement of Distance Between Adjacent Seating Positions for Use in Simultaneous Testing

Issued on: July 25, 2000.

Rosalyn G. Millman,

Deputy Administrator.

[FR Doc. 00–19123 Filed 7–25–00; 5:00 pm]

BILLING CODE 4910–59–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE91

Endangered and Threatened Wildlife and Plants; Final Rule To List the Short-Tailed Albatross as Endangered in the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: Under the authority of the Endangered Species Act (Act) of 1973, as amended, we, the U.S. Fish and Wildlife Service (Service), extend endangered status for the short-tailed albatross (*Phoebastria albatrus*) to include the species' range within the United States. As a result of an administrative error in the original listing, the short-tailed albatross is currently listed as endangered throughout its range except in the United States. Short-tailed albatrosses

range throughout the North Pacific Ocean and north into the Bering Sea during the nonbreeding season; breeding colonies are limited to two Japanese islands, Torishima and Minami-kojima. Originally numbering in the millions, the current worldwide population of breeding age birds is approximately 600 individuals and the worldwide total population is approximately 1,200 individuals. There are no breeding populations of short-tailed albatrosses in the United States, but several individuals have been regularly observed during the breeding season on Midway Atoll in the northwestern Hawaiian Islands. Current threats to the species include destruction of breeding habitat by volcanic eruption or mud or land slides caused by monsoon rains, and demographic or genetic vulnerability due to low population size and limited breeding distribution. Longline fisheries, plastics ingestion, contaminants, and airplane strikes may also be factors affecting the species' conservation. This rule implements the Federal protection and recovery provisions provided by the Act for individuals when they occur in the United States.

DATES: This rule is effective August 30, 2000.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Anchorage Field Office, U.S. Fish and Wildlife Service, 605 West 4th Avenue, Room G–62, Anchorage, AK 99501 (telephone 907/271–2888).

FOR FURTHER INFORMATION CONTACT: Greg Balogh, Endangered Species Biologist, at the above address or telephone 907/271–2778.

SUPPLEMENTARY INFORMATION:

Background

Taxonomy

George Steller made the first record of the short-tailed albatross in the 1740s. The type specimen for the species was collected offshore of Kamchatka, Russia, and was described in 1769 by P.S. Pallas in *Spicilegia Zoologica* (American Ornithologists' Union (AOU) 1997). In the order of tube-nosed marine birds, Procellariiformes, the short-tailed albatross is classified within the family Diomedeidae. Until recently, it had been assigned to the genus *Diomedea*. Following the results of genetic studies by Nunn *et al.* (1996), the family Diomedeidae was arranged in four genera. The genus *Phoebastria*, North Pacific albatrosses, now includes the short-tailed albatross, the Laysan albatross (*P. immutabilis*), the black-footed albatross (*P. nigripes*), and the waved albatross (*P. irrorata*)(AOU 1998).

Description

The short-tailed albatross is a large pelagic bird with long narrow wings adapted for soaring just above the water surface. The bill, which is disproportionately large compared to the bills of other northern hemisphere albatrosses, is pink and hooked with a bluish tip, with external tubular nostrils, and a thin but conspicuous black line extending around the base. Adult short-tailed albatrosses are the only North Pacific albatross with an entirely white back. The white head develops a yellow-gold crown and nape over several years. Fledged juveniles are dark brown-black, but soon develop the pale bills and legs that distinguish them from black-footed and Laysan albatrosses (Tuck 1978, Roberson 1980).

Historical Distribution

The short-tailed albatross once ranged throughout most of the North Pacific Ocean and Bering Sea, with known nesting colonies on the following islands: Torishima in the Seven Islands of Izu Group in Japan; Mukojima, Nishinoshima, Yomeshima, and Kitanoshima in the Bonin Islands of Japan; Kita-daitojima, Minami-daitojima, and Okino-daitojima of the Daito group of Japan; Senkaku Retto of southern Ryukyu Islands of Japan, including Minami-kojima, Kobisho, and Uotsurijima; Iwo Jima in the western Volcanic Islands (Kazan-Retto) of Japan; Agincourt Island, Taiwan; and Pescadore Islands, of Taiwan, including Byosho Island (Hasegawa 1979, King 1981). Other undocumented nesting colonies may have existed. For example, recent observations, together with records from the 1930s, suggest that the short-tailed albatross may have once nested on Midway Atoll. However, no confirmed historical breeding accounts are available for this area. Throughout this rule when we refer to Midway Atoll, we mean the complex of islets that occur within Midway Atoll that includes Sand Islet, Eastern Islet, and Spit Islet. Midway Atoll is located east of Kure Atoll, at the northwestern end of the Hawaiian Archipelago. A subset of atolls, islands, and reefs located north and west of the main Hawaiian Islands (Hawaii Island to Kauai Island) is known as the northwestern Hawaiian Islands (Nihoa Island to Kure Atoll).

Early naturalists, such as Turner and Chamisso, believed that short-tailed albatrosses bred in the Aleutian Islands because high numbers of birds were seen nearshore during the summer and fall months (Yesner 1976). Alaska Aleut lore referred to local breeding birds, and the explorer O. Von Kotzebue reported that Natives harvested short-tailed albatross eggs. However, while adult bones were found in Aleut middens (refuse heaps), fledgling remains were not recorded in more than 400 samples (Yesner 1976). Yesner (1976) believed that short-tailed albatrosses did not breed in the Aleutians but were harvested offshore during the summer, nonbreeding season. Given the midwinter constraints on breeding at high latitudes and the known southerly location of winter breeding, it is highly unlikely that these birds ever bred in Alaska (Sherburne 1993).

Additional historical information on the species' range away from known breeding areas is scant. Evidence from archeological studies in middens suggests that hunters in kayaks had access to an abundant nearshore supply of short-tailed albatrosses from California north to St. Lawrence Island as early as 4,000 years ago (Howard and Dodson 1933, Yesner and Aigner 1976, Murie 1959). In the 1880s and 1890s, short-tailed albatross abundance and distribution during the nonbreeding season was generalized by statements such as "more or less numerous" in the vicinity of the Aleutian Islands (Yesner 1976). They were reported as highly abundant around Cape Newenham, in western Alaska (DeGange 1981), and Veniaminof regarded them as abundant near the Pribilof Islands (Gabrielson and Lincoln 1959). In 1904, they were considered "tolerably common on both coasts of Vancouver Island, but more abundant on the west coast" (Kermode in Campbell *et al.*, 1990).

Historical Population Status

At the beginning of the 20th century, the species declined in population numbers to near extinction, primarily as a result of hunting at the breeding colonies in Japan. Albatross were killed for their feathers and various other body parts. The down feathers were used for quilts and pillows, and wing and tail feathers were used for writing quills; their bodies were processed into fertilizer and rendered into fat, and their eggs were collected for food (Austin 1949).

Pre-exploitation worldwide population estimates of short-tailed albatrosses are not known; the total number of birds harvested may provide the best estimate, since the harvest drove the species nearly to extinction. Between approximately 1885 and 1903, an estimated five million short-tailed

albatrosses were harvested from the breeding colony on Torishima (Yamashina in Austin 1949), and harvest continued until the early 1930s, except for a few years following the 1903 volcanic eruption. One of the residents on the island (a schoolteacher) reported 3,000 albatrosses killed in December 1932 and January 1933. By 1949, there were no short-tailed albatrosses breeding at any of the historically known breeding sites, including Torishima, and the species was thought to be extinct (Austin 1949).

The species persisted, however, and in 1950, the chief of the weather station at Torishima, Mr. M. Yamamoto, reported nesting of the short-tailed albatross (Tickell 1973, 1975). By 1954 there were 25 birds and at least 6 pairs (Ono 1955). These were presumably birds that had been wandering the North Pacific during the final several years of slaughter. Since then, as a result of habitat management projects, stringent protection, and the absence of any significant volcanic eruption events, the population has gradually increased. The average growth of the Torishima, Tsubamesaki colony, between 1950 and 1977 was 2.5 adults per year; between 1978 and 1991 the average population increase was 11 adults per year. An average annual population growth of at least 7.8 percent per year (Hasegawa 1982, Cochrane and Starfield in prep.) has resulted in a continuing increase in the breeding population to an estimated 388 breeding birds on Torishima in 1997–1998 (H. Hasegawa, Toho University, Chiba, Japan, pers. comm. 1999). Torishima is under Japanese Government ownership and management and is managed for the conservation of wildlife. At this time, there is no evidence that the breeding population on Torishima is limited by the number of nest sites; therefore, ongoing management efforts focus on maintaining high rates of breeding success.

Two primary activities have been undertaken to enhance breeding success on Torishima. First, erosion control efforts at the Tsubamesaki colony have improved nesting success. Second, an attempt to establish a second breeding colony on Torishima involved an experimental program for luring breeding birds to the opposite side of the island from the Tsubamesaki colony. Preliminary results of the experiment are promising; the first chick was produced in 1997. The expectation is that absent a volcanic eruption or some other catastrophic event, the population on Torishima will continue to grow, but that it will be many years before the breeding sites are limited (Hasegawa 1997).

In 1971, 12 adult short-tailed albatrosses were discovered on Minami-kojima in the Senkaku Islands, one of the former breeding colony sites (Hasegawa 1984). Aerial surveys in 1979 and 1980 resulted in observations of between 16 and 35 adults. In April 1988, the first confirmed chicks on Minami-kojima were observed, and in March 1991, 10 chicks were observed. In 1991, the estimate for the population on Minami-kojima was 75 birds and 15 breeding pairs (Hasegawa 1991). In 1999, the estimate for the population is 150 birds and 30 breeding pairs (H. Hasegawa pers. comm. 1999). There is no information available on historical numbers at this breeding site.

Short-tailed albatrosses have been observed on Midway Atoll since the 1930s (Berger 1972, Hadden 1941, Fisher in Tickell 1973, Robbins in Hasegawa and DeGange 1982), but there have never been more than two individuals reported on the Atoll during the same year, and no successful nesting has been confirmed on the Atoll. The islets of Midway Atoll are vegetated, flat coral sand. Three species of albatross (black-footed, Laysan, and short-tailed) occur on the islets. Black-footed and Laysan albatrosses are common, nesting everywhere on the islands except where ironwood trees dominate the habitat. About 160 people live on these islands, and a maximum of 100 visitors are allowed at any one time.

Midway Atoll is a National Wildlife Refuge managed by the Service for the conservation of seabirds and other fish and wildlife and their habitats. The Refuge consists of roughly 31 square kilometers (12 square-miles) of marine waters and 607 hectares (1,500 acres) of land consisting of three islets (Sand Islet, Eastern Islet, and Spit Islet). The Refuge is between 28°05′ and 28°25′ N latitude and 177°10′ and 177°30′ W longitude, 4,505 kilometers (km) (2,800 miles (mi)) west of San Francisco and 3,539 km (2,200 mi) east of Japan. Approximately two million black-footed and Laysan albatrosses nest at Midway.

The first short-tailed albatross recorded on the Midway Atoll spent two winters between 1938 and 1940, but was somehow injured and died (Richardson 1994). Successful nesting by one pair in 1961 and 1962 was reported, but the validity of the report has been disputed (Tickell 1996). The report was made by Dr. Harvey Fisher in a private letter written in 1983 to Dr. Hiroshi Hasegawa of Toho University in Japan (Richardson 1994). However, no photographs, observation records, or log entries have been found to verify this observation. In the years following the reported observation, the reported nest location on Sand Islet in the Midway Atoll was paved, and tens of thousands of albatrosses were exterminated from Sand Islet to construct an aircraft runway and to provide safe conditions for aircraft landings and departures. It is possible that, if any short-tailed albatrosses were nesting on the island, the individuals were either displaced or killed during this process (E. Flint, Service, Honolulu pers. comm. 1999).

An adult short-tailed albatross was banded at Eastern Islet in Midway Atoll on March 18, 1966 (Sanger 1972). Beginning in November 1972 and continuing through at least February 10, 1983, an individual banded as a chick on Torishima in March 1964 (band number 558–30754) returned to the Midway Atoll during most or all breeding seasons, and was regularly observed on the west side of Sand Islet (Richardson 1994). An unbanded immature bird was observed on Sand Islet in February 1981, but was not seen again.

The first confirmed record of a short-tailed albatross nest and egg on the Midway Atoll occurred in 1993. The female was banded (Yellow 015) as a chick in Japan in 1982 and had been returning to the same location on Sand Islet during the breeding season each year since 1988. The nest was in a grassy space beside the southwest edge of the active runway on Sand Islet very close to several black-footed albatross nests. The female incubated the egg for at least 31 days, but eventually abandoned the nest, and the egg was collected by our biologists and determined to be inviable. Yellow 015 subsequently laid and incubated an egg in 1995 and 1997, but both eggs were inviable (N. Hoffman, Service, Midway Atoll National Wildlife Refuge pers. comm. 1999).

An adult short-tailed albatross, banded (White 000) as a chick at Torishima in 1979, was first recorded at Midway Atoll in November 1985. It returned to the same site each year in December and left each spring, usually in April, until early in the fall of 1994. Its pattern of behavior in the breeding season was to sit in the colony except for occasional trips of 2 to 3 days length out to sea. In March 1994, Dr. Lee Eberhardt observed and videotaped breeding displays between White 000 and Yellow 015 (Richardson 1994). White 000 returned to Midway in the fall of 1994, but failed to return after a routine foraging trip soon thereafter, and has not been sighted again.

A third adult short-tailed albatross, banded as Yellow 051 in 1989 on

Torishima Island in Japan, was first observed in January 1996 on Eastern Islet within the Midway Atoll. Yellow 051 was subsequently observed on Eastern Islet in December 1996 and in February 1997. A fourth short-tailed albatross, banded as Blue 057 in 1988 on Torishima Island in Japan, was first observed in February 1999 on Eastern Islet. Blue 057 was observed a second time in April 1999 on Sand Islet.

Observations of individuals have also been made during the breeding season on Laysan Island, Green Island at Kure Atoll, and French Frigate Shoals, but there is no indication that these occurrences represent established breeding populations (Sekora 1977, Fefer 1989).

The dramatic declines during the turn of the century and recent increases in numbers of short-tailed albatrosses were reflected in observations from the nonbreeding season. Between the 1950s and 1970, there were few records of the species away from the breeding grounds (Palmer 1962, Tramontano 1970). There were 12 reported marine sightings in the 1970s and 55 sightings in the 1980s; more than 250 sightings have been reported in the 1990s to date (Sanger 1972, Hasegawa and DeGange 1982, Service unpublished data). However, this observed increase in opportunistic sightings should be interpreted cautiously, because of the potential temporal, spatial, and numerical biases introduced by the opportunistic nature of the shipboard observations. Observation effort, total number of vessels present, and location of vessels may have affected the number of observations independent of an increase in total numbers of birds present. Moreover, the reporting rate of observations has likely increased with implementation of outreach efforts by Federal agencies and fishing interest groups in the last few years.

At-sea sightings since the 1940s indicate that the short-tailed albatross, while very few in number today, is distributed widely throughout its historical foraging range of the temperate and subarctic North Pacific Ocean (Sanger 1972; Service unpublished data) and is often found close to the U.S. coast. From December through April, distribution is concentrated near the breeding colonies in the Izu and Bonin Islands (McDermond and Morgan 1993), although foraging trips may extend hundreds of miles or more from the colony sites, if short-tailed albatross behavior is similar to black-footed and Laysan albatrosses. Recent satellite tracking of black-footed and Laysan albatrosses revealed that individuals of those species travel hundreds of miles from the breeding colonies during the breeding season (David Anderson, Wake Forest University, pers. comm. 1999).

In summer (the nonbreeding season), individuals appear to disperse widely throughout the historical range of the temperate and subarctic North Pacific Ocean (Sanger 1972), with reported observations concentrated in the northern Gulf of Alaska, Aleutian Islands, and Bering Sea (McDermond and Morgan 1993, Sherburne 1993, Service unpublished data). Individuals have been recorded along the west coast of North America as far south as the Baja Peninsula, Mexico (Palmer 1962).

Current Population

A worldwide population total may be coarsely estimated by combining information from a variety of sources. Estimates of total numbers of breeding age adults and immature birds may be obtained using a variety of different data and methods. We rounded the total estimates to the nearest hundred birds, reflecting the lack of precision in some of the data.

Breeding age population estimates come primarily from egg counts and breeding bird observations. Assuming 2 adults are present for each of the 212 eggs counted, 424 breeding adults would have been present on Torishima in 1998–1999 (H. Hasegawa pers. comm. 1999). Hasegawa (pers. comm. 1999) estimates there are currently 60 breeding adults on Minami-kojima. Based on these estimates, the total number of observed breeding birds is thought to be approximately 480. It has been noted that an average of approximately 25 percent of breeding adults may not return to breed each year (H. Hasegawa pers. comm. 1997). Therefore, a reasonable estimate is that approximately 120 additional breeding age birds may not be observed on the breeding grounds in a given year. Based on these estimates, we believe that there is a total of approximately 600 breeding age birds.

Estimates of the number of immature (nonbreeding) birds are more difficult to make because these individuals are rarely seen between fledging and breeding at approximately 6 years of age. We used two different methods to estimate the number of immature birds in the population: (1) Observational data of chicks fledged, and (2) modeling information. Both methods yielded similar results. H. Hasegawa (pers. comm. 1999) reports that 586 chicks were fledged from the Tsubamesaki colony on Torishima between 1993 and 1998. The only information on number of chicks from Minami-kojima is that ten chicks were counted by H. Hasegawa (pers. comm. 1997) in 1991. Over the past 6 years, therefore, assuming a stable population, an estimated minimum of 60 chicks may have fledged from Minami-kojima. Based on an assumed average juvenile (fledging to age of first breeding) survival rate of 94 percent (Cochrane and Starfield in prep.) and an average age of first breeding at 6 years (H. Hasegawa pers. comm. 1997), this technique yields an estimate of about 600 immature individuals in the population (rounded to tens). Alternatively, modeling information indicates that immature birds comprise approximately 47 percent of the total population in recent years, given current understanding of population dynamics. Breeding age birds are estimated at 600; therefore, based on the population modeling, we estimate that the immature birds also number approximately 600. The total population of short-tailed albatross is likely around 1,200 birds. No numerical estimates of uncertainty are available for this estimate.

The short-tailed albatross population on Torishima Island is growing at a fairly rapid rate, especially given that it is a long-lived and slow-to-reproduce species. Habitat management within the species main nesting colony has increased its nest success rate (H. Hasegawa, pers. comm. 1997) and probably its population growth rate as well. The recent annual population growth rate (Cochrane and Starfield in prep) in the Torishima short-tailed albatross colony (7.8 percent) approaches the maximum potential rate of increase (8 percent) that Fisher (1976) estimated for the Laysan albatross in the 1960s.

Demographic Information

Short-tailed albatrosses are long-lived and slow to mature; the average age at first breeding is 6 years old (H. Hasegawa pers. comm. 1997). As many as 25 percent of breeding age adults may not return to the colony in a given year (H. Hasegawa pers. comm. 1997). Females lay a single egg each year, which is not replaced if destroyed (Austin 1949). Survival rates for all post-fledging ages combined are high (96 percent; H. Hasegawa pers. comm. 1997). Actual juvenile survival rates are unknown, but are probably lower than adult survival rates. Cochrane and Starfield (in prep) assume a subadult survival rate of 94 percent. Breeding success (the percent of eggs laid that result in a fledged chick) varies between approximately 60 and 70 percent (H. Hasegawa pers. comm. 1997). Low

breeding success occurs in years when catastrophic volcanic or weather events occur during the breeding season.

Breeding Biology

At Torishima, birds arrive at the breeding colony in October and begin nest building. Egg-laying begins in late October and continues through late November. The female lays a single egg, incubation involves both parents and lasts for 64–65 days, eggs hatch in late December and January, and by late May or early June, the chicks are almost full grown and the adults begin abandoning their nests (H. Hasegawa pers. comm. 1997; Hasegawa and DeGange 1982). The chicks fledge soon after the adults leave the colony: by mid-July, the breeding colony is totally deserted (Austin 1949). Nonbreeders and failed breeders disperse from the breeding colony in late winter through spring (Hasegawa and DeGange 1982). There is no detailed information on breeding activities on Minami-kojima, but it is likely to be similar to that on Torishima.

Short-tailed albatrosses are monogamous and highly philopatric to nesting areas (returning to the same breeding site year after year). Chicks hatched at Torishima return there to breed. However, young birds may occasionally disperse from their natal colonies to breed, as evidenced by the appearance of adult birds on Midway Atoll that were banded as chicks on Torishima (H. Hasegawa pers. comm. 1997, Richardson 1994).

Breeding Habitat

Available evidence from historical accounts, and from current breeding sites, indicates that short-tailed albatross nesting occurs on flat or sloped sites, with sparse or full vegetation, on isolated windswept offshore islands, with restricted human access (Aronoff 1960, Sherburne 1993, DeGange 1981). Current nesting habitat on Torishima is steep sites on soils containing loose volcanic ash. The island is dominated by a grass, *Miscanthus sinensis* var. *condensatus*, but a composite, *Chrysanthemum pacificum*, and a nettle, *Boehmeria biloba*, are also present (Hasegawa 1977). The grass is likely to stabilize the soil, provide protection from weather, and minimize mutual interference between nesting pairs while allowing for safe, open takeoffs and landings (Hasegawa 1978). The nest is a grass or moss-lined concave scoop about 0.75 meters (m) (2 feet (ft.)) in diameter (Tickell 1975). The only terrestrial area within U.S. jurisdiction that is currently used by the short-tailed albatross for attempted nesting is the Midway Atoll.

Marine Habitat

Numerous records indicate that the short-tailed albatross frequents nearshore and coastal waters, which may explain why another common name for the species is the "coastal albatross." However, the source of these records derives from boats that were near shore to begin with. The lack of more pelagic observations may say more about the distribution of boats than of albatrosses. Nevertheless, our short-tailed albatross at-sea sightings' database contains many observations of short-tailed albatrosses within 10 km (6 mi) of shore, and several observations of birds within 5 km (3 mi) of the shore (Terry Antrobus, Service, Anchorage, pers. comm. 2000). Their presence may coincide with areas of high biological productivity, such as along the west coast of North America, the Bering Sea, and offshore from the Aleutians (Hasegawa and DeGange 1982). The North Pacific marine environment of the short-tailed albatross is characterized by coastal regions of upwelling and high productivity and expansive, deep water beyond the continental shelf.

Specific geographic and seasonal distribution patterns within the marine range are not well understood. The short-tailed albatross is a frequent visitor to the productive waters in shelf break areas of the Northern Gulf of Alaska, Aleutians Islands, and Bering Sea. Historically, short-tailed albatrosses were found in middens in coastal areas, suggesting that they were available to hunters in kayaks close to shore. References from the early and mid-1900s suggest that short-tailed albatrosses were more coastal in distribution than black-footed or Laysan albatrosses. Very little information exists on the distribution of the short-tailed albatross in open ocean areas; few systematic scientific studies have been conducted in these areas. Observations over the last 10–15 years from vessels and fishery observers are concentrated in the shelf break areas. Distributional data suggests that this species utilizes coastal shelf break areas of the Aleutian Islands, Bering Sea, and northern Gulf of Alaska on a regular basis for foraging. However, it is not known how important these areas are to the species, what percentage of the population visits these areas, what amount of time the species spends in these coastal areas, or if it uses open ocean areas to the same degree. Additionally, the short-tailed albatross is known to forage in the waters surrounding Hawaii including Midway Atoll in the northwest Hawaiian Island chain. In summary, the marine range of the short-tailed albatross within U.S. territorial waters includes Alaska's vast coastal shelf break areas and the marine waters of Hawaii for foraging, but we do not know how much or to what extent it utilizes open ocean areas of the Gulf of Alaska, North Pacific Ocean, and Bering Sea. There is no information on specific habitat or area use patterns within the vast shelf break areas used by the species.

Diet

The diet of short-tailed albatrosses includes squid, fish, eggs of flying fish, shrimp, and other crustaceans (Hattori in Austin 1949, H. Hasegawa pers. comm. 1997). There is currently no information on variation of diet by season, habitat, or environmental condition.

Previous Federal Action

Currently, the short-tailed albatross is listed as endangered under the Act, throughout its range, except in the United States (50 CFR 17.11). The species was originally listed as endangered in accordance with the Endangered Species Conservation Act of 1969 (ESCA). Pursuant to the ESCA, two separate lists of endangered wildlife were maintained, one for foreign species and one for species native to the United States. The short-tailed albatross appeared only on the List of Endangered Foreign Wildlife (35 FR 8495; June 2, 1970). When the Act became effective on December 28, 1973, it superseded the ESCA. The native and foreign lists were combined to create one list of endangered and threatened species (39 FR 1171; January 4, 1974). When the lists were combined, prior notice of the action for the short-tailed albatross was not given to the governors of the affected States (Alaska, California, Hawaii, Oregon, and Washington), as required by the Act, because available data were interpreted as not supporting resident status for the short-tailed albatross. Thus, native individuals of this species were never formally proposed for listing pursuant to the criteria and procedures of the Act.

On July 25, 1979, we published a notice (44 FR 43705) stating that, through an oversight in the listing of the short-tailed albatross and six other endangered species, individuals occurring in the United States were not protected by the Act. The notice stated that our intent was that all populations and individuals of the seven species should be listed as endangered wherever they occurred. Therefore, the notice stated that we intended to take action to propose endangered status for

individuals occurring in the United States.

On July 25, 1980, we published a proposed rule (45 FR 49844; July 25, 1980) to list, in the United States, the short-tailed albatross and four of the other species referred to above. No final action was taken on the July 25, 1980, proposal. In 1996, we designated the short-tailed albatross as a candidate for listing in the United States (62 FR 49398; September 19, 1997). On November 2, 1998, we issued an updated proposed rule to list the short-tailed albatross as endangered in the United States (63 FR 58692; November 2, 1998).

The processing of this final rule conforms with our current Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Our first priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being. Second priority is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants (such as this final rule). Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority.

Summary of Comments and Recommendations

In the November 2, 1998, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate Federal and State agencies, State governments, scientific organizations, and other interested parties were contacted and asked to comment. During the open public comment period, we solicited information from five independent scientists in compliance with our peer review policy (59 FR 34270; July 1, 1994). Three of the peer reviewers responded with comments. All three supported the listing of the short-tailed albatross as endangered throughout its range. We also solicited comments from the governments of Canada, the People's Republic of China, Vietnam, the Republic of Korea, the Phillippines, Norway, the Russian Federation, Japan, and Mexico. Comments were received from the Government of Mexico supporting the action; comments from the People's Republic of China were neutral, neither supporting nor objecting to the proposal. The comments from both Mexico and China were received after the close of the public comment period.

We also published notices of the proposed rule in the Seattle Times and Anchorage Daily News on December 13, 1998, and in the Juneau Empire on December 15, 1998. In addition to the three comments received from peer reviewers, two additional comments were received during the comment period. All five of the comments supported the proposed listing. We received two comments after the comment period closed (in addition to those submitted by the People's Republic of China and Mexico); one was in support of the proposed listing, and one was neutral. No comments questioned the action proposed, the information upon which we based our conclusions, or any other matters relevant to the section 4 listing. Editorial and technical comments were made by some reviewers and were incorporated into the final rule, as appropriate. No public hearings were requested.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we have determined that endangered status for the short-tailed albatross should be extended to include the species range within the United States. Under the procedures found at section 4(a)(1) of the Act, and the regulations implementing the listing provisions of the Act (50 CFR part 424), a species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the short-tailed albatross (*Phoebastria albatrus*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Short-tailed albatrosses face a significant threat to the primary breeding colony on Torishima due to the potential of habitat destruction from volcanic eruptions on the island. The threat is not predictable in time or in magnitude. Eruptions could be catastrophic or minor, and could occur at any time of year. A catastrophic eruption during the breeding season could result in chick or adult mortalities as well as destruction of nesting habitat. Additionally, breeding habitat and nesting birds are threatened by frequent mud slides and erosion caused by the monsoon rains that occur on the island. Significant loss of currently occupied breeding habitat or breeding adults at Torishima would delay the recovery of the species or jeopardize its continued existence.

Torishima is an active volcano approximately 394 m (1,300 ft) high and 2.6 km (1.6 mi) wide (H. Hasegawa pers. comm. 1997) located at 30.48° N and 140.32° E (Simkin and Siebert 1994). The earliest record of a volcanic eruption at Torishima is a report of a submarine eruption in 1871 (Simkin and Siebert 1994), but there is no information on the magnitude or effects of this eruption. Since the first recorded human occupation on the island in 1887, four eruptions have been recorded: (1) On August 7, 1902, an explosive eruption in the central and flank vents resulted in lava flow and a submarine eruption and caused 125 human mortalities; (2) on August 17, 1939, an explosive eruption in the central vent resulted in lava flow and caused two human mortalities; (3) on November 13, 1965, a submarine eruption occurred; and (4) on October 2, 1975, a submarine eruption occurred 9 km (5.4 mi) south of Torishima (Simkin and Siebert 1994). The literature also refers to an additional eruption in 1940, which resulted in lava flow that filled the island's only place suitable for vessels to anchor (Austin 1949).

Austin (1949) visited the waters around Torishima in 1949 and made the following observations: "The only part of Torishima not affected by the recent volcanic activity is the steep northwest slopes where the low buildings occupied by the weather station staff are huddled. Elsewhere, except on the forbidding vertical cliffs, the entire surface of the island is now covered with stark, lifeless, black-gray lava. Where the flow thins out on the northwest slopes, a few dead, white sticks are mute remnants of the brush growth that formerly covered the island. Also on these slopes some sparse grassy vegetation is visible, but there is no sign of those thick reeds, or "makusa" that formerly sheltered the albatross colonies. The main crater is still smoking and fumes issue from cracks and fissures all over the summit of the island."

In 1965, meteorological staff stationed on the island were evacuated on an emergency basis due to a high level of seismic activity; although no eruption followed, the island has since been considered too dangerous for permanent human occupation (Tickell 1973). In late 1997, Hiroshi Hasegawa observed more steam from the volcano crater, a more pronounced bulge in the center of the crater, and more sulphur crusts around the crater than were previously

present (R. Steiner, Alaska Sea Grant Program, pers. comm. 1998).

The eruptions in 1902 and 1939 destroyed much of the original breeding colony sites. The remaining site used by albatrosses is a sparsely vegetated steep slope of loose volcanic soil. The monsoon rains that occur on the island result in frequent mud slides and erosion of these soils, which can result in habitat loss and chick mortality. A typhoon in 1995 occurred just before the breeding season and destroyed most of the vegetation at the Tsubamezaki colony. Without the protection provided by vegetation, eggs and chicks are at greater risk of mortality from monsoon rains, sand storms, and wind (H. Hasegawa pers. comm. 1997). Breeding success at Tsubamezaki is lower in years when significant typhoons result in mud slides (H. Hasegawa pers. comm. 1997).

In 1981, a project was supported by the Environment Agency of Japan and the Tokyo Metropolitan Government to improve nesting habitat by transplanting grass and stabilizing the loose volcanic soils (Hasegawa 1991). Breeding success at the Tsubamezaki colony has increased following habitat enhancement (H. Hasegawa pers. comm. 1997). Current population enhancement efforts in Japan are concentrated on attracting breeding birds to an alternate, well-vegetated colony site on Torishima that is less likely to be impacted by lava flow, mud slides, or erosion than the Tsubamezaki colony site (H. Hasegawa pers. comm. 1997). Japan's "Short-tailed Albatross Conservation and Management Master Plan" (Environment Agency 1996) sets forth a long-term goal of examining the possibility of establishing additional breeding grounds away from Torishima once there are at least 1,000 birds on Torishima. Until other safe breeding sites are established, however, short-tailed albatross survival will continue to be at risk due to the possibility of significant habitat loss and mortality from unpredictable natural catastrophic volcanic eruptions and frequent mud slides and erosion that result from monsoon rains on the island.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* As described above under Historical Population Status, direct harvest of short-tailed albatrosses caused a catastrophic decline in population numbers (refer to the Historical Population Status section); today, direct harvest of short-tailed albatrosses is rare. Hasegawa (pers. comm. 1997) reports that some local Japanese fishermen in Izu and Ryukyuu Islands hunt seabirds and may take some short-tailed albatrosses, but the likelihood that short-tailed albatrosses are taken, or the level of such take, is not known. No other known direct take of short-tailed albatrosses occurs for commercial, recreational, scientific, or educational purposes.

C. *Disease or predation.* No known diseases affect short-tailed albatrosses on Torishima or Minami-kojima today. However, the world population is vulnerable to the effects of disease because of the small population size and extremely limited number of breeding sites. H. Hasegawa (pers. comm. 1997) reports that he has observed a wing-disabled bird every few years on Torishima, but the cause of the disability is not known. An avian pox has been observed in chicks of albatross species on Midway Atoll, but whether this pox infects short-tailed albatrosses or may have an effect on the survivorship of any albatross species is unknown (T. Work, D.V.M., USGS, Hawaii).

Several parasites have been documented on short-tailed albatrosses on Torishima in the past including: a bloodsucking tick that attacks its host's feet, a feather louse, and a carnivorous beetle (Austin 1949). However, current evidence suggests that no parasites affect short-tailed albatrosses on Torishima today, and no evidence indicates that parasites caused mortality or had population level impacts in the past (H. Hasegawa pers. comm. 1997).

Sharks (subclass elasmobranchii) may take fledgling short-tailed albatrosses as they desert the colony and take to the surrounding waters (Harrison 1979). Shark predation is well documented among other albatross species, but has not been documented for the short-tailed albatross. The crow, *Corvus* sp., is the only historically known avian predator of chicks on Torishima. Hattori (in Austin 1949) reported that one-third of the chicks on Torishima were killed by crows, but crows are not present on the island today (H. Hasegawa pers. comm. 1997). Black or ship rats were introduced to Torishima at some point during human occupation, but their effect on short-tailed albatrosses in unknown. Cats were also present, most likely introduced during the feather hunting period. They have caused damage to other seabirds on the island (Ono 1955), but there is no evidence to indicate an adverse effect to short-tailed albatrosses. Cats were present on Torishima in 1973 (Tickell 1975), but Hasegawa (1982) did not subsequently find any evidence of cats on the island.

D. *The inadequacy of existing regulatory mechanisms.* The short-tailed albatross is currently listed under the Act as endangered outside of the United States. Listing the species within the United States as endangered would provide more comprehensive and extensive protection for the species through sections 7, 9, and 10 of the Act, and through recovery planning.

The short-tailed albatross is listed as endangered on the State of Alaska's list of endangered species (State of Alaska, Alaska Statutes, Article 4. Sec. 16.20.19). This classification was supported by a letter to Commissioner Noerenberg from J.C. Bartonek (1972, *in litt.*) in which he recommended endangered status because the short-tailed albatross occurs or "was likely" to occur in State waters within the 3-mile limit of State jurisdiction (Sherburne 1993). Under the Alaska Endangered Species Act, endangered species may not be harvested, captured, or propagated, except under a special permit from the Alaska Department of Fish and Game. In addition, the law requires the commissioners of the departments of Fish and Game and Natural Resources to protect the natural habitat of endangered species on lands under their jurisdiction (Schoen 1996). The short-tailed albatross does not appear on the State list of Hawaii's list of threatened and endangered species.

The Japanese Government designated the short-tailed albatross as a protected species in 1958, as a Special National Monument in 1962 (Hasegawa and DeGange 1982) and as a Special Bird for Protection in 1972 (King 1981). Torishima was declared a National Monument in 1965 (King 1981). These designations have resulted in tight restrictions on human activities and disturbance on Torishima (H. Hasegawa pers. comm. 1997). In 1992, the species was classified as "endangered" under the newly implemented "Species Preservation Act" in Japan, which makes Federal funds available for conservation programs and requires that a 10-year plan be in place that sets forth conservation goals for the species. The current Japanese "Short-tailed Albatross Conservation and Management Master Plan" outlines general goals for continuing management and monitoring of the species, and future conservation needs (Environment Agency 1996). The principal management practices used on Torishima are legal protection, habitat enhancement, and population monitoring. Torishima and Minami-kojima are the only two confirmed breeding sites for short-tailed albatrosses, and both are under Japanese ownership and management. Of concern is that Minami-kojima has also been claimed by the Nationalist Republic of China and the People's Republic of

China. The situation may present logistical and diplomatic problems in attempts to implement protection for the colony on the island (Tickell 1975).

We were informed by the Endangered Species of Wild Fauna and Flora Import and Export Administrative Office that short-tailed albatross is listed as a national first-class wildlife species for protection in the Law of the People's Republic of China on the Protection of Wildlife that was promulgated in 1998 (Meng Xianlin, *in litt.* 1999). The hunting, capture, or killing of the short-tailed albatross is prohibited, and its habitats are legally protected.

On July 1, 1975, the short-tailed albatross was included in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES is a treaty established to prevent international trade that may be detrimental to the survival of plants and animals. Generally, both import and export permits are required from the importing and exporting countries before an Appendix I species may be shipped, and Appendix I species may not be imported for primarily commercial purposes. CITES export permits may not be issued if the export will be detrimental to the survival of the species or if the specimens were not legally acquired. However, CITES does not itself regulate take or domestic trade. The Migratory Bird Treaty Act of 1918, as amended (MBTA: 16 U.S.C. 703 *et seq.*), currently protects short-tailed albatrosses from taking in areas under its jurisdiction.

E. *Other natural or manmade factors affecting its continued existence.* Other factors potentially represent threats to the species conservation and recovery.

One of these factors is small population size; another is the fact that only two breeding populations exist. The worldwide breeding-age population of short-tailed albatrosses numbers approximately 600 individuals. A significant proportion of these individuals nest in the Tsubamezaki colony on Torishima. The remaining small number of breeding birds nest on Minami-kojima. Because the population size is small, and breeding is limited to only two colonies, a catastrophic volcanic or weather event on Torishima or Minami-kojima has the potential not only to significantly reduce the numbers of birds in the world, but also to reduce the worldwide breeding population to a level where the risk of extinction is high. Both the small population size and severely limited number of breeding colonies increases the vulnerability of the species to extinction caused by random stochastic events. The natural or artificial establishment of additional breeding colonies in protected habitats would help to secure the recovery of the species; however, such an effort is problematic. First, the population must be large enough to allow them to be available to colonize new sites through natural dispersal or allow humans to take birds from the wild to initiate such an effort. Secondly, we do not sufficiently understand the ecological requirements of breeding colony sites to allow us to undertake such an effort with confidence of success. Thus far, the only other known site where the birds have attempted to nest is on the Midway Atoll, where all those attempts have been unsuccessful. Until the population increases significantly in number and additional breeding colonies are established, the short-tailed albatross will remain vulnerable to extinction. Genetic diversity of the worldwide population may also be cause for concern since the species experienced a severe genetic bottleneck during the middle of this century.

The risk of extinction caused by a catastrophic event at either of the two breeding colonies is buffered by adult and immature nonbreeding birds that are at sea during the breeding season. An average of 25 percent of breeding age adults do not return to breed each year (H. Hasegawa pers. comm. 1997), and immature birds do not return to the colony to breed until at least 6 years after fledging (H. Hasegawa pers. comm. 1997). Modeling information suggests that about half of the current total worldwide population may be immature birds. If suitable habitat were still available on Torishima or Minami-kojima, these birds could recolonize in years following a catastrophic event.

Another potential threat to the species' conservation and recovery is damage or injury related to oil contamination, which could cause physiological problems from petroleum toxicity and by interfering with the bird's ability to thermoregulate. Oil spills can occur in many parts of the short-tailed albatrosses' marine range. Oil development has been considered in the past in the vicinity of the Senkaku Islands (Hasegawa 1981, *in litt.*). Future industrial development would introduce the risk of local marine contamination, or pollution due to blowouts, spills, and leaks related to oil extraction, transfer, and transportation. Historically short-tailed albatrosses rafted together in the waters around Torishima (Austin 1949), and small groups of individuals have occasionally been observed at sea (Service unpublished data). An oil spill in an area where a large number of individuals were rafting, such as near breeding colonies, could affect the population significantly. The species' habit of feeding at the surface of the sea makes them vulnerable to oil contamination. Dr. Hiroshi Hasegawa (pers. comm. 1997) has observed some birds on Torishima with oil spots on their plumage.

Consumption of plastics may also be a factor affecting the species' conservation and recovery. Albatrosses often consume plastics at sea, presumably mistaking the plastics for food items, or consuming marine life such as the eggs of flying fish that are attached to floating objects. Dr. Hiroshi Hasegawa (pers. comm. 1997) reports that short-tailed albatrosses on Torishima commonly regurgitate large amounts of plastics debris. Plastics ingestion can result in injury or mortality to albatrosses if sharp plastic pieces cause internal injuries, or through reduction in ingested food volumes and dehydration (Sievert and Sileo in McDermond and Morgan 1993). Young birds may be particularly vulnerable to potential effects of plastic ingestion prior to developing the ability to regurgitate (Fefer 1989, *in litt.*). Auman (1994) found that Laysan albatross chicks found dead in the colony had significantly greater plastics loads than chicks within the population as a whole. This comparison was based on examinations of chicks injured by vehicles, which is presumably unrelated to plastics ingestion, and therefore representative of the population. Hasegawa has observed a large increase in the occurrence of plastics in birds on Torishima over the last 10 years (R. Steiner pers. comm. 1998), but the effect on survival and population growth is not known.

Another potential threat to short-tailed albatross conservation and recovery is mortality incidental to longline fishing in the North Pacific and Bering Sea. Short-tailed albatross mortalities occur in longline fisheries as a result of baited longline hooks that are accessible to foraging albatrosses, primarily during line setting. Five short-tailed albatrosses are known to have been taken by longline fisheries in Alaska from 1983–1996. In consultation with the National Marine Fisheries Service, we determined that the Alaskan groundfish and halibut fisheries are likely to adversely affect short-tailed albatrosses, but are not likely to result in an appreciable reduction in the likelihood of survival and recovery of the species (Service 1989 and amendments, Service 1998, Service 1999). Consultation under section 7 of the Act is now being conducted for the Hawaiian longline fishery; the amount

and likelihood of take in this fishery is difficult to determine because of the low rate of observer coverage (5 percent of fishing time is observed). No takes of short-tailed albatrosses in the Hawaiian longline fishery have been reported; however, black-footed albatrosses and Laysan albatrosses have been taken (E. Flint pers. comm. 2000). The National Marine Fisheries Service is currently investigating whether collisions with sonar cables (third wires) associated with commercial trawl vessels may be adversely affecting short-tailed albatrosses (K. Rivera, NMFS, pers. comm. 2000).

In general, seabirds are vulnerable to becoming entangled in derelict fishing gear. Laysan and black-footed albatrosses are occasionally entangled in derelict fishing gear on land and at sea in the Hawaiian Islands National Wildlife Refuge (E. Flint pers. comm. 2000). The magnitude of impacts caused by derelict gear from international longline fisheries is unknown. Hasegawa (pers. comm. 1997) reports that three to four birds per year on Torishima come ashore entangled in derelict fishing gear, some of which die as a result. He also stated that some take by Japanese fishermen (handliners) may occur near the nesting colonies, although no such take has been reported. There is no additional information on the potential effects of fisheries near Torishima on the species. Lost or abandoned fishing gear is a threat to the species throughout its range, and is not restricted to the short-tailed albatross colony around Torishima Island, Japan.

At the current population level and growth rate, the level of mortality resulting from longline fisheries is not thought to represent a threat to the species' continued survival, although it likely is slowing the recovery. In addition, in the event of a major population decline resulting from a natural environmental catastrophe or an oil spill, the effects of longline fisheries on short-tailed albatrosses could be significant.

We have documented seabird collisions with airplanes on Midway Atoll National Wildlife Refuge since operation of the airfield was transferred from the Department of Defense to the Department of the Interior in July 1997. Since acquiring the airfield, we have implemented several precautionary mechanisms to reduce and document seabird collisions. Transient aircraft (primarily U.S. Military or U.S. Coast Guard C–130 airplanes) are required to obtain prior permission before landing at the Midway Atoll National Wildlife Refuge. Aircraft are advised to land within the parameters provided by ground controllers to reduce air collisions with seabirds. Prior to any aircraft landing or takeoff, the runway and taxiways are "swept" to haze any birds resting on the airfield. Bird activity advisories are provided to the pilots, and recommendations are suggested to modify approaches and landings at the airfield to avoid collisions. During nesting seasons, runway sweeps become more involved with several crews hazing birds from the runway.

A female short-tailed albatross (band: yellow 015) has resided about 150 ft (50 m) from the end of the Midway Atoll National Wildlife Refuge runway since 1989. It is known to reside on the islet during the nesting season, from November to April. Although the bird is located close to the runway, aircraft are unlikely to collide with it because most landings and takeoffs, during November to April, occur at night when birds are less likely to be in flight. There have been no reports of Yellow 015 having a close encounter with aircraft, according to ground crews that monitor this bird during take-offs and landings (B. Dieli, Service, Midway Atoll National Wildlife Refuge pers. comm. 1999).

Summary

The worldwide population of short-tailed albatrosses continues to be in danger of extinction throughout its range due to natural environmental threats, small population size, and the small number of breeding colonies. Longline fishing, plastics pollution, oil contamination, and airplane strikes are not viewed as threats to the species survival, but we do consider them threats to the species conservation and recovery (*i.e.*, these factors, by themselves, will probably not cause the extinction of the species, but have the potential to slow down recovery of the species). We believe that these factors may hamper recovery not by adversly modifying or distroying habitat, but by affecting the survival of individual birds.

Most of the world's breeding population nests on Torishima Island in the Tsubamezaki colony. These individuals and the breeding habitat are at risk of measurable or significant population level impacts from a volcanic eruption on the island. The habitat at Tsubamezaki is further threatened by continued erosion and mud slides from monsoon rains despite the reduction of risk through habitat management. The only other known breeding location is on Minami-kojima, which is threatened by political unrest and internationally disputed ownership.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule. Based on this evaluation, we extend the listing of the short-tailed albatross as endangered to include its U.S. range. We are also correcting the information in the Historic Range column of the short-tailed albatross entry in the list of endangered and threatened species (50 CFR 17.11(h)). The information in this column currently indicates the species' historic range includes the North Pacific Ocean and Bering Sea, and lands and waters of Japan, China, Russia, and the United States. We will correct this entry to include Taiwan, Canada, and Mexico. This column is nonregulatory in nature and is provided for the information of the reader.

Critical Habitat

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that we designate critical habitat, to the maximum extent prudent and determinable, at the time a species is listed as endangered or threatened. Designation is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Critical habitat is defined in section 3(5)(a) of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

In the November 2, 1998, proposed rule, we determined that designation of critical habitat was not prudent for the short-tailed albatross, based on our analysis and determination that such designation would not be beneficial to the species. With regard to breeding areas and potential breeding areas within the United States or under

United States jurisdiction, we concluded that there would be no additional benefit or protection conferred through the designation of critical habitat on the Midway Atoll National Wildlife Refuge over that conferred through the jeopardy standard of section 7 of the Act. With regard to foraging areas in the waters of the United States or under United States jurisdiction, we concluded there would be no additional benefit because there is currently no information to support a conclusion that any specific marine habitat areas within United States jurisdiction are uniquely important. More importantly, adverse effects that have occurred in the marine environment have been a result of activities, such as longline fishing, that threaten individual albatrosses rather than albatross habitat. These effects will be addressed through the jeopardy standard of section 7 of the Act and through the section 9 prohibitions of the Act. With regard to foraging areas in United States waters, the proposed rule also concluded there would be no additional benefit or protection conferred through the destruction or adverse modification standard for critical habitat under section 7 of the Act. We did not receive any comments during the public comment period on this proposed determination.

We believe that proposed determination was correct. Given the lack of habitat-related threats within U.S. territory for this species, the informational and educational benefits normally associated with critical habitat designation would not occur. Furthermore, there are no areas that we could identify as meeting the definition of critical habitat.

In accordance with the Act, a critical habitat designation can include areas outside the species current range if we determine that they are essential to the conservation of the species. We have not found any areas outside the current range of the species to be essential for the conservation of the species. Our best data suggests that the short-tailed albatross still occupies all of its marine-based historical range.

For areas within the geographical range currently occupied by the species, critical habitat is considered to be those areas that have the physical and biological features essential to the conservation of the species and require special management consideration or protection. Areas within the geographic range currently occupied by the species that might be considered to have the features essential for the conservation of the species and that might require special management or protection include both breeding and marine habitat.

Critical habitat cannot be designated within foreign countries or in other areas outside of United States jurisdiction (50 CFR 424.12(h)). Thus, we would only consider for designation any habitats on United States land, in United States territorial waters, within the United States Exclusive Economic Zone from 0–321 km (0–200 mi) from shore, or in other areas within the jurisdiction of the United States. This albatross comes ashore primarily for breeding. The only areas where the short-tailed albatross successfully breeds is on the Torishima and Minami-kojima Islands of Japan. The only area within U.S. jurisdiction where albatross have attempted breeding is Midway Atoll. However, there is no current breeding population on Midway, and no evidence that a breeding population existed there in the past. We currently do not consider Midway Atoll to provide important breeding habitat for the species. Given the short-tailed albatross' apparent failure to successfully colonize Midway Atoll, we find that it does not contain features essential to the conservation of the species at this time. Based on this information we determined that Midway Atoll does not constitute critical habitat for this species at this time. However, should these circumstances change, such as with successful breeding, we will reevaluate the contribution of this area to the conservation and recovery of the species.

With the exception of Midway Atoll, the short-tailed albatross habitat within United States jurisdiction is almost entirely marine (rare sightings of transient birds are made on other Hawaiian Islands). The species uses marine habitat for foraging. Marine habitats occupied by short-tailed albatrosses within United States jurisdiction are vast. Areas with essential physical and biological features are likely to occur throughout the temperate and subarctic North Pacific Ocean, along the west coast of North America as far south as the Baja Peninsula, Mexico. Individuals are widely distributed throughout this vast marine range. Because of the species' highly mobile, pelagic nature, any individual short-tailed albatross has the potential to occur at any location throughout its marine range. In addition to the species being highly mobile, its prey species (*e.g.*, squid, fish, and eggs of flying fish) are also highly mobile, exhibiting seasonal and inter-annual variations in distribution. Available albatross observation data suggests that the short-tailed albatross concentrates its feeding efforts along the shelf-break areas in the Bering Sea and along the Aleutian Islands. However, the vast majority of these observations are made from commercial fishing vessels plying these waters; few vessels from which we have requested observation data operate very far from these shelf break areas. Some of these vessels have reported that short-tailed albatross are much more common during some years than others, suggesting that most of the birds are feeding elsewhere. Furthermore, we have recorded several short-tailed albatross observations made by individuals aboard research vessels far from the shelf-break areas frequented by commercial fishing vessels, suggesting that the birds do forage away from the shelf-break areas as well.

We note that this species has historically been referred to as the coastal albatross. However, there is no objective data to suggest that this species used coastal areas more heavily than offshore areas. That it was historically sighted from shore was likely an artifact of its once-large population size; given 5 million short-tailed albatrosses wandering across the North Pacific, many were bound to have been observed from shore.

The recent rate of annual growth in the Torishima short-tailed albatross colony (7.8 percent) approaches the maximum potential rate of increase (8 percent) that Fisher (1976) estimated for Laysan albatross in the 1960s, before fisheries bycatch and contaminants affected that population. The fact that the short-tailed albatross' population is growing at a rate that is probably near its maximum biological capacity for growth, allows us to infer that nothing about the bird's marine habitat is limiting population growth. Because the North Pacific Ocean and Bearing Sea once supported millions of short-tailed albatross, we believe that this species is not anywhere near its habitat carrying capacity, and it will be some time before any feature of its marine habitat becomes a critical limiting factor to population growth. Thus, we conclude that there is no need for special management or protection of any marine habitat feature with regards to the short-tailed albatross. Indeed, if we were able to increase the amount of forage fish throughout the species entire range, this action may not result in an appreciable increase in the population growth rate of short-tailed albatross, given that the species population is already growing at a rate that may be approaching its maximum biological capacity. To increase the availability of prey species within U.S. waters only would be even

less likely to result in an increase in population growth rate, yet this is the only portion of its global range for which we can designate critical habitat and enact special management or protections.

Because this species' precarious situation derives entirely from historical harvest of the birds themselves, and not from any action that caused habitat degradation, and because marine habitat does not appear to be a factor limiting current population growth rate, we do not believe that there are areas within the United States that contain features that are essential to the conservation of the species that require special management or protection. Special management or protection is defined by regulation as "any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species." Because this species population growth is not limited by its marine habitat, nor do we believe that it will become limited by its marine habitat in the foreseeable future, we find that there are no methods or procedures that would be useful in protecting the physical and biological features of the marine environment. Therefore, we conclude that there are no areas within this environment that need special management or protection.

In summary, we do not find any habitats within the jurisdiction of the United States that meet the definition of critical habitat, *i.e.*, habitats within United States that contain the features essential for the conservation of the species and require special management and protection. Because there is no habitat that meets the definition of critical habitat, we find that it is not prudent to designate critical habitat for the short-tailed albatross.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat.

Federal agency actions that may require consultation as described in the preceding paragraph include National Marine Fisheries Service's Fishery Management Plans, management practices at the Midway Atoll National Wildlife Refuge, permits or authorization for oil tankering within the range of short-tailed albatrosses, and oil spill contingency plans.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of prohibitions and exceptions that apply to all endangered species of wildlife. All prohibitions of section 9(a)(1) of the Act, implemented by 50 CFR 17.21, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States, to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt to engage in any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits for endangered wildlife are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget Clearance number 1018–0094.

Our policy (59 FR 34272; July 1, 1994) is to identify to the maximum extent practicable, at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. The known non-Federal activities that may result in incidental take of short-tailed albatrosses are State-managed hook-and-line longline fisheries. Activities that are not expected to result in any take of short-tailed albatrosses include: (1) Fishing activities in Alaska and Hawaii other than hook-and-line longline fishing; (2) lawfully conducted vessel operations such as transport, tankering, and barging; and (3) harbor operations or improvements. Questions regarding whether other specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Anchorage Field Office (See **ADDRESSES** section).

Hawaii State Law

Federal listing will automatically invoke listing under the State's endangered species law. Hawaii's endangered species law states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the Federal Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *" (HRS, sect. 195D–4(a)). Therefore, Federal listing will accord the species listed status under Hawaii State law. State law prohibits export, take, possession, processing, selling, delivering, carrying, transporting, or shipping of any listed species. The State law encourages conservation of such species by State agencies and triggers other State regulations to protect the species (HRS, sect. 195AD–4 and 5).

National Environmental Policy Act

We have determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.32.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Anchorage Field Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Janey Fadley, U.S. Fish and Wildlife Service, Juneau Fish and Wildlife Service Office, 3000 Vintage Park Blvd, Suite 201, Juneau, Alaska 99801, telephone (907) 586–7242.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.11(h), the table entry for "Albatross, short-tailed", under BIRDS, is revised to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
BIRDS							
*	*	*	*	*	*	*	
Albatross, short-tailed.	*Phoebastria* (=*Diomedea*) *albatrus.*	North Pacific Ocean and Bering Sea-Canada, China, Japan, Mexico, Russia, Taiwan, U.S.A. (AK, CA, HI, OR, WA).	Entire	E	3,700	NA	NA
*	*	*	*	*	*	*	

Dated: July 25, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–19223 Filed 7–28–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 072100C]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

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

ACTION: Adjustment of General category daily retention limit on previously designated restricted fishing days.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) General category restricted-fishing day (RFD) schedule should be adjusted; i.e., certain RFDs should be waived, to allow for maximum utilization of the General category June-August subquota. Therefore, NMFS increases the daily retention limit from zero to one large medium or giant BFT on the following, previously designated RFDs for 2000: July 30 and 31, and August 6, 7, 13, 14, 20, 21, 27, and 28.

DATES: Effective July 26, 2000.

FOR FURTHER INFORMATION CONTACT: Pat Scida or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. General category effort controls (including time-period subquotas and RFDs) are specified annually under §§ 635.23(a) and 635.27(a). The 2000 General category effort controls were implemented July 7, 2000 (65 FR 42883, July 12, 2000).

Adjustment of Daily Retention Limit for Selected Dates

Under § 635.23 (a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. Based on a review of dealer reports, daily landing trends, and the availability of BFT on the fishing grounds, NMFS has determined that adjustment to the RFD schedule is necessary to allow for full use of the subquota while ensuring an August fishery. Therefore, NMFS adjusts the daily retention limit for July 30 and 31, and August 6, 7, 13, 14, 20, 21, 27, and 28, 2000, previously identified as RFDs

to one large medium or giant BFT per vessel. NMFS has selected these days in order to give adequate advanced notice to fishery participants and NMFS enforcement.

The intent of this adjustment is to allow for maximum utilization of the June-August subquota (specified under § 635.27(a)) by General category participants in order to help achieve optimum yield in the General category fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the HMS FMP.

While catch rates have been low so far this season, NMFS recognizes that they may increase. In addition, due to the temporal and geographical nature of the fishery, certain gear types and areas are more productive at various times during the fishery. In order to ensure that the June-August subquota is not filled prematurely and to ensure equitable fishing opportunities in all areas and for all gear types, NMFS has not waived all of the RFDs in August. The remaining previously scheduled RFDs (which have not been waived) correspond to market closures in Japan and may promote better ex-vessel prices.

Classification

This action is taken under § 635.23(a)(4) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: July 26, 2000.

Richard W. Surdi,

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

[FR Doc. 00–19287 Filed 7–26–00; 4:06 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000119014–0137–02; I.D. 072400E]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Connecticut

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

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of Connecticut has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Connecticut for the remainder of calendar year 2000, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the State of Connecticut that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Connecticut.

DATES: Effective 0001 hours, July 31, 2000, through 2400 hours, December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2000 calendar year was set equal to 11,109,214 lb (5,039,055 kg)(65 FR 33486, May 24, 2000). The percent allocated to vessels landing summer flounder in Connecticut is 2.25708 percent, or 250,788 lb (113,756 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish a notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of Connecticut has attained its quota for 2000.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, July 31, 2000, further landings of summer flounder in Connecticut by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2000 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, July 31, 2000, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in Connecticut for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: July 25, 2000.

Bruce Morehead,

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

[FR Doc. 00–19277 Filed 7–28–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 072500A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pelagic Shelf Rockfish in the Central 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 directed fishing for pelagic shelf rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2000 total allowable catch (TAC) of pelagic shelf rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 26, 2000, through 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780, fax 907–481–1781 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 the Groundfish Fishery 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 2000 TAC of pelagic shelf rockfish for the Central Regulatory Area was established as 4,080 metric tons (mt) in the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2000 TAC for pelagic shelf rockfish in the Central Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,580 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pelagic shelf rockfish in the Central Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 2000 TAC of pelagic shelf rockfish for the Central Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

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

Dated: July 26, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–19252 Filed 7–26–00; 4:10 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 072500B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pelagic Shelf Rockfish In the West Yakutat District of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pelagic shelf rockfish in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2000 total allowable catch (TAC) of pelagic shelf rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 26, 2000, through 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780, fax 907–481–1781 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 the Groundfish Fishery 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 2000 TAC of pelagic shelf rockfish for the West Yakutat District was established as 580 metric tons (mt) in the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2000 TAC for pelagic shelf rockfish in the West Yakutat District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 530 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pelagic shelf rockfish in the West Yakutat District of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 2000 TAC of pelagic shelf rockfish for the West Yakutat District of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

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

Dated: July 26, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–19251 Filed 7–26–00; 4:10 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 072500C]

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish In the Central 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 directed fishing for northern rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2000 total allowable catch (TAC) of northern rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 26, 2000, through 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780, fax 907–481–1781 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 the Groundfish Fishery 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 2000 TAC of northern rockfish for the Central Regulatory Area was established as 4,490 metric tons (mt) in the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2000 TAC for northern rockfish in the Central Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,990 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Central Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 2000 TAC of northern rockfish for the Central Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

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

Dated: July 26, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–19250 Filed 7–26–00; 4:10 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 072500D]

Fisheries of the Exclusive Economic Zone Off Alaska; Other Rockfish in the West Yakutat District of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for other rockfish in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2000 total allowable catch (TAC) of other rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 26, 2000, through 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780, fax 907–481–1781 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 the Groundfish Fishery 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 2000 TAC of other rockfish for the West Yakutat District was established as 250 metric tons (mt) in the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2000 TAC for other rockfish in the West Yakutat District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 200 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for other rockfish in the West Yakutat District of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 2000 TAC of other rockfish for the West Yakutat District of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

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

Dated: July 26, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–19249 Filed 7–26–00; 4:10 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 147
Monday, July 31, 2000

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 920 and 944

[Docket No. FV00–920–2 PR]

Kiwifruit Grown in California and Imported Kiwifruit; Proposed Relaxation of the Minimum Maturity Requirement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would relax the current minimum maturity requirements for fresh shipments of kiwifruit grown in California and for kiwifruit imported into the United States. The Kiwifruit Administrative Committee (Committee) which locally administers the marketing order for California kiwifruit unanimously recommended the change for California kiwifruit. The change in the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937. This action would allow handlers and importers to ship kiwifruit which meets the minimum maturity requirement of 6.2 percent soluble solids. This change is expected to reduce handler inspection costs, increase grower returns, and enable handlers and importers to compete more effectively in the marketplace.

DATES: Comments must be received by August 30, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This proposed rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including kiwifruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

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

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

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

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Under the terms of the order, fresh market shipments of California kiwifruit are required to be inspected and are subject to grade, size, maturity, pack and container requirements. Current requirements include specifications that such shipments be at least Size 45, grade at least KAC No. 1 quality, and contain a minimum of 6.5 percent soluble solids.

The order authorizes under § 920.52(a)(1) the establishment of minimum maturity requirements. Section 920.302(a)(3) of the rules and regulations outlines the minimum maturity requirements for fresh shipments of California kiwifruit and specifies that kiwifruit shall have a minimum of 6.5 percent soluble solids at the time of inspection.

Maturity is generally determined on the basis of total solids or soluble solids content. Kiwifruit can ripen on or off the vine and typically contains between 5 and 8 percent starch at harvest. This starch hydrolyzes into sugars during ripening. Kiwifruit continues to ripen while stored in refrigerated facilities and may reach 16.2 percent soluble solids when completely ripe.

In the 1980's, the minimum maturity requirements were established at 6.5 percent soluble solids for both the domestic and import regulations. This

minimum soluble solids level was established because research showed that the majority of fruit harvested at 6.5 percent soluble solids ripened to a 13.5–14 percent soluble solids level or higher, and stored well. Also, consumer taste tests showed that fruit containing at least 13.5 percent soluble solids were more acceptable than fruit containing lower levels of soluble solids. These regulations benefited growers, handlers, consumers, and importers as improvements were seen in the quality of fruit shipped to the market place, domestic and export sales, and grower returns.

Since that time a number of factors have changed: (1) Research conducted during the 1990's has shown that fruit harvested at 6.2 percent soluble solids and handled properly has the potential to ripen to 12.6 percent soluble solids or higher, (2) recent consumer taste tests have shown that fruit containing at least 12.6 percent soluble solids has a high level of acceptability, and (3) the majority of the kiwifruit producing countries are now utilizing 6.2 percent soluble solids as their guideline for minimum maturity.

The six countries exporting kiwifruit to the United States are New Zealand, Chile, Greece, France, Italy, and Canada. New Zealand has a mandatory maturity standard of 6.2 percent soluble solids. Chile, Greece, France, Italy, and Canada utilize a voluntary 6.2 percent soluble solids guideline for minimum maturity.

The Committee, at its May 2, 2000, meeting, unanimously recommended relaxing the minimum maturity requirements to 6.2 percent soluble solids because of the above-mentioned factors and because this relaxation is expected to reduce handler inspection costs, increase grower returns, and enable handlers and importers to compete more effectively in the marketplace.

Section 8e of the Act provides that when certain domestically produced commodities, including kiwifruit, are regulated under a Federal order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule would relax the minimum maturity requirement under the domestic handling regulations, a corresponding change to the import regulations must also be considered.

Minimum grade, size, quality, and maturity requirements for kiwifruit imported into the United States are currently in effect under § 944.550 (7 CFR 944.550). The minimum maturity requirement is covered in paragraph (a) of § 944.550. Paragraph (a) of § 944.550 states that the importation into the United States of any kiwifruit is prohibited unless such kiwifruit meets all the requirements of a U.S. No. 1 grade as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340) (Standards), except that the kiwifruit shall be "not badly misshapen", and an additional tolerance of 7 percent is provided for "badly misshapen" fruit. The Standards define "Mature" to mean that the fruit has reached the stage of development which will ensure the proper completion of the ripening process. The Standards further specify that the minimum average soluble solids, unless otherwise specified, shall be not less than 6.5 percent.

The relaxation in the minimum maturity requirement for importers of kiwifruit would also have a beneficial impact. This rule would relax the minimum maturity requirement for imported kiwifruit from 6.5 percent soluble solids to 6.2 percent soluble solids. The majority of the kiwifruit producing countries now are utilizing a 6.2 percent soluble solids level as their guideline for minimum maturity. Thus, importers would be able to utilize one minimum maturity standard for shipments of kiwifruit.

The metric equivalent of the minimum sizes currently specified is also added to paragraph (a) of § 944.550.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 56 handlers of California kiwifruit who are subject to regulation under the order and about 400 kiwifruit producers in the regulated area. There are approximately 50 importers of kiwifruit. Small agricultural service firms, which include kiwifruit handlers and importers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. Fifty-six handlers and fifty importers have annual receipts of less than $5,000,000, excluding receipts from other sources. Three hundred ninety producers have annual sales less than $500,000, excluding receipts from any other sources. Therefore, a majority of the kiwifruit handlers, importers, and producers may be classified as small entities.

This rule would relax the minimum maturity requirements specified in § 920.302(a)(3) of the order's regulations and in § 944.550 (7 CFR 944.550) for imported kiwifruit. These sections, respectively, allow handlers and importers to ship kiwifruit which meets the minimum maturity requirement of 6.5 percent soluble solids. Relaxation of the minimum maturity requirements to 6.2 percent soluble solids is expected to reduce handler inspection costs, increase grower returns, and enable handlers and importers to compete more effectively in the marketplace. Authority for this action is provided in § 920.52 (a)(1) of the order, section 8e of the Act.

Regarding the impact of this action on affected entities, relaxing the minimum maturity requirement to 6.2 percent soluble solids is expected to benefit handlers and importers. Handlers and importers would be able to utilize one minimum maturity standard for the majority of shipments of kiwifruit. The majority of the kiwifruit producing countries now utilize 6.2 percent soluble solids as their guideline for minimum maturity. Importers have not experienced problems meeting the minimum maturity requirement of 6.5 percent soluble solids. Therefore, it is expected that importers would not have any difficulty meeting the relaxed minimum maturity requirement of 6.2 percent soluble solids.

Imports account for 67 percent of domestic shipments and enter the United States between the months of March through August. Recent yearly data indicate that imports during the months of September through March are negligible. To date, New Zealand, Chile, and Italy have been the principal sources of imported fruit during the 1999–2000 (August 1–July 31) season, and accounted for 98 percent of the total import shipments, with the remaining imports being supplied by France, Greece, and Canada. Chile has been the largest exporter of kiwifruit to the United States since 1993. Chile shipped approximately 8 million tray equivalents (about 7 pounds of fruit per

tray) into the US market during the 1999–2000 season, representing over 56 percent of total market share. New Zealand shipped approximately 3 million tray equivalents; Italy shipped approximately 1 million tray equivalents; and Greece, France, and Canada had combined shipments of approximately 200,500 tray equivalents. The amount of imported kiwifruit is expected to increase during the 2000–2001 season. Italy is expected to have a bumper crop and the US tariff restrictions on imports from New Zealand were lifted in August 1999.

The Committee believes that lowering the minimum maturity requirements to 6.2 percent soluble solids would benefit large and small entities equally. Handlers and importers would be able to maximize shipments of early-season kiwifruit. The shipment of early-season kiwifruit is expected to result in increased grower returns, as such fruit normally commands a higher price than fruit harvested later in the season.

The amount of fruit harvested for the early market is dependent upon market conditions, the storability of fruit, and the overall size and quality of the crop. Since such information is not yet available, the Committee was not able to estimate the amount of fruit that would be shipped during the early season, nor estimate the amount of increased grower returns.

Additionally, recent consumer taste tests have shown that fruit containing at least 12.6 percent soluble solids has a high level of acceptability. Research conducted during the 1990's also has shown that fruit with 6.2 percent soluble solids and that is handled properly has the potential to ripen to 12.6 percent soluble solids. Relaxing the minimum maturity requirement should make more kiwifruit available to consumers early in the season.

In the past, some early season fruit failed to meet minimum maturity requirements at the time of inspection. Handlers had the option of re-conditioning the fruit or placing it into cold storage to ripen. After the soluble solids content was high enough to meet the minimum maturity requirements, the fruit was reinspected and the handler was billed for the original inspection and the reinspection. Relaxing the minimum maturity requirement to a 6.2 percent soluble solids level is expected to provide incentives for proper harvesting and handling of early fruit and to result in lower inspection costs. Thus, both large and small handlers should be able to benefit in the marketplace.

The Committee expressed concern that lowering the minimum maturity requirements to 6.2 percent soluble solids might result in a larger quantity of undersized fruit. However, the Committee expects growers to voluntarily test for minimum maturity and size before harvesting a field to limit harvesting unacceptable fruit.

Other alternatives have been suggested regarding the minimum maturity requirements, but would not adequately address the problem. The first alternative was to leave the regulation unchanged. However, this alternative would not address the changes in marketing conditions and in consumer acceptance of fruit with a lower level of soluble solids.

Another alternative considered was to regulate the current minimum maturity at the time of harvest. The Committee also considered utilizing the New Zealand "Kiwi Start" program which also tests for minimum maturity in the field at the time of harvest. These alternatives were not considered viable. The regulation of growers is not authorized under the Act.

Consideration was given to removing the 6.5 percent soluble solids minimum maturity requirement from the order and adding it to the California State Code of Regulations. This option was not acceptable to the Committee because of concerns regarding layers of regulation implementation, time, expenses, imports, and enforcement.

Another alternative discussed was to eliminate the minimum maturity requirement from the order. It was determined that there is still a need to have a maturity testing system in place to prevent the immature fruit from entering the market. Thus, this alternative was not adopted.

Utilizing a different testing method was also considered. Utilization of a dry weight test (total solids test) versus the currently used refractometer to measure maturity was discussed. This suggestion was not adopted because the test would be hard to implement, burdensome, and costly to the industry.

Finally, another alternative presented in the meeting was to increase the minimum maturity requirement. This alternative was not acceptable because it fails to recognize the recent findings that consumers find fruit with lower soluble solids acceptable.

This rule would not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit handlers and importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

Further, the Committees' meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the May 2, 2000, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule is a relaxation and would need to be in place as soon as possible to allow handlers time to make operational decisions for the 2000–2001 season. The 2000–2001 season begins September 10, 2000. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects

7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth above, 7 CFR parts 920 and 944 are proposed to be amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR parts 920 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 920.302, paragraph (a)(3) is revised to read as follows:

§ 920.302 Grade, size, pack, and container regulations.

(a) * * *

(1) * * *

(2) * * *

(3) *Maturity Requirements.* Such kiwifruit shall have a minimum of 6.2 percent soluble solids at the time of inspection.

* * * * *

PART 944—FRUITS; IMPORT REGULATIONS

3. In § 944.550, paragraph (a) is revised to read as follows:

§ 944.550 Kiwifruit import regulation.

(a) Pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended, the importation into the United States of any kiwifruit is prohibited unless such kiwifruit meets all the requirements of the U.S. No. 1 grade as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340), except that the kiwifruit shall be "not badly misshapen," and an additional tolerance of 7 percent is provided for kiwifruit that is "badly misshapen," and except that such kiwifruit shall have a minimum of 6.2 percent soluble solids. Such fruit shall be at least Size 45, which means there shall be a maximum of 55 pieces of fruit and the average weight of all samples in a specific lot must weigh at least 8 pounds (3.632 kilograms), provided that no individual sample may be less than 7 pounds 12 ounces (3.472 kilograms).

* * * * *

Dated: July 27, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–19342 Filed 7–27–00; 1:45 pm]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–64]

Atlantic City Electric Company, Austin Energy, Central Maine Power Company, Delmarva Power & Light Company, South Mississippi Electric Power Association, and Washington Electric Cooperative, Inc.; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC or "Commission") is denying a petition for rulemaking submitted by the Atlantic City Electric Company, Austin Energy, Central Maine Power Company, Delmarva Power & Light Company, South Mississippi Electric Power Association, and Washington Electric Cooperative, Inc. (PRM–50–64). The petitioners requested that the enforcement provisions of NRC regulations be amended to clarify NRC policy regarding the potential liability of joint owners if other joint owners become financially incapable of bearing their share of the burden for safe operation or decommissioning of a nuclear power plant.[1] The Commission is denying the petition because the NRC's intent is not to impose responsibilities for operating or decommissioning costs pursuant to NRC regulatory requirements on co-owners in a manner inconsistent with contractual ownership agreements, except, and only as a last resort, when highly unusual circumstances relating to the protection of the public's health and safety require it. Also, the petition would not improve the NRC's regulatory process and maintain the same level of protection of the public health and safety provided under current Commission regulations, legal precedent, and policies.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter of denial to the petitioner are available for public inspection or copying in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, D.C. These documents are also available at the NRC's rulemaking website at http://ruleforum.llnl.gov.

FOR FURTHER INFORMATION CONTACT: Brian J. Richter, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1978, *e-mail-bjr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The Petition

On January 5, 1999 (64 FR 432), the NRC published a notice of receipt of a petition for rulemaking (PRM) filed by the Atlantic City Electric Company, Austin Energy, Central Maine Power Company, Delmarva Power & Light Company, South Mississippi Electric Power Association, and Washington Electric Cooperative, Inc. The petitioners requested that the NRC amend the enforcement provisions of NRC regulations to clarify NRC policy regarding the potential liability of joint owners if other joint owners become financially incapable of bearing their share of the burden for safe operation or decommissioning of a nuclear power plant.

The petitioners are concerned that the NRC's "Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry" (Policy Statement) published on August 19, 1997 (62 FR 44071), has resulted in confusion among joint owners of nuclear power plants regarding the potential liability of the owner of a relatively small share of a nuclear power plant. In the Policy Statement, the Commission indicated that it "reserves the right, in highly unusual situations where adequate protection of the public health and safety would be compromised, if such action were not taken, to *consider* imposing joint and several liability on co-owners of more than *de minimis* shares when one or more co-owners have defaulted." (This is as opposed to dividing costs by using a pro rata share approach.) The petitioners believe that a joint owner could incur the burden of all, or an excessive portion, of a plant's costs if other joint owners or the operators defaulted or became financially incapable of bearing their share of the burden. The petitioners believe that the NRC has changed its policy so that it would now ignore existing pro rata cost sharing arrangements that it had previously sanctioned. The petitioners stated that the NRC has published no information regarding what would constitute a *de minimis* share and that the particular circumstances under which the NRC might find the imposition of joint and several liability necessary to protect the public health and safety are not defined.

The petitioners have concluded that these factors have caused much confusion and uncertainty about the potential liability of a joint owner, and can adversely affect the ability to raise capital in an uncertain market that is undergoing consolidation and restructuring.

The petitioners requested that the issue of potential liability among joint owners be resolved by amending the regulations concerning enforcement in 10 CFR part 50. The petitioners proposed that the NRC's regulations be amended to provide that if the NRC

[1] In the "Final Policy Statement on the Restructuring and Deregulation of the Electric Utility Industry," published on August 19, 1997 (62 FR 44071), the NRC referred to "joint and several liability." As discussed subsequently in this notice, the NRC believes that "joint and several regulatory responsibility" more accurately reflects the concept intended in the final policy statement.

imposes additional requirements to protect public health and safety, the NRC would look first to the entity licensed to operate a nuclear power plant to assume whatever costs are incurred in meeting those requirements. The petitioners also requested that the regulations be amended to provide that if the NRC imposes these additional requirements on co-owners (licensees) who are not licensed to operate the plant, the NRC would not impose upon any of those licensees a proportional responsibility greater than that reflected in contracts establishing the allocation of responsibility among the co-owners.

Public Comments on the Petition

The NRC received 76 comments covering 20 topic areas from 16 commenters, all of whom were licensees or groups representing licensees. Of the 16 commenters, 11 were electric utilities (including five cooperatives) and five comments were from industry groups. Of the industry groups, two represented electric cooperatives and three represented investor-owned electric utilities. Almost all of the commenters agreed with the petitioners that NRC should not impose joint and several liability on its licensees. The cooperative utilities also agreed with other issues and in general favored the petition. The investor-owned utilities disagreed with other issues and consequently were against the petition.

The topic areas raised by the commenters follow (with the number of commenters making that statement appearing in parentheses). The NRC's responses are contained in the paragraphs after each comment.

Comment 1. The Policy Statement is at odds with the pro rata share contractual agreements (reviewed and approved by the NRC). The Commission should clarify that it will not impose operating or decommissioning costs on co-owners greater than their contractual obligations. (10)

Response: The Commission has decided against taking the requested action because it could adversely affect public health and safety in those highly unusual circumstances when public health and safety are at risk and all other remedies have been exhausted. Because all co-owners are co-licensees, each licensee is ultimately responsible for complying with the Commission's regulations and the terms of the license. Although, in virtually all situations, the Commission expects that obligations under a license will be handled on a pro rata basis among co-owners, it cannot rule out highly unusual situations in which it would seek a co-owner to pay more than its pro rata share when essential to protecting public health and safety, *e.g.*, where one of the other co-owners is no longer capable of paying its pro rata share of costs. The rule change contemplated by the petition could prohibit the Commission from remedying such a situation. It would suggest that no matter how much a co-owner's financial outlook changes for the worse from the time of initial licensing, the Commission may not take all necessary action to ensure safe operation or decommissioning. Such a scheme would be inconsistent with the Commission's longstanding authority to take regulatory action in situations involving changed circumstances from initial licensing. *See* Atomic Energy Act §§ 186, 187, 42 U.S.C. 2236, 2237; 10 CFR 50.100; *Cf., All Chemical Isotope Enrichment, Inc.*, LBP–90–26, 32 NRC 30 (1990) (Licensing Board sustained staff revocation of construction permits of a licensee that had failed to disclose its true financial condition during the original licensing proceeding).

Comment 2. Non-operating co-owners should not be liable for more than their contractually agreed upon share of additional, Commission-imposed requirements. (1)

Response: See response to Comment 1.

Comment 3. The Policy Statement has created uncertainty for minority owners because the Commission could impose operating or decommissioning costs on co-owners greater than their contractual obligations. This policy could affect the ability of co-owners to raise funds in financial markets. (6)

Response: The Commission believes that, given the limitations of this policy to highly unusual circumstances and its inapplicability to those co-licensees with *de minimis* shares, minority licensees will not experience significant uncertainty. The Commission notes that comments on the petition from investor-owned utilities or their representatives did not express concern about the impact of raising funds in capital markets, even though investor-owned utilities must go to essentially the same capital markets as the minority owners.

Comment 4. NRC imposition of joint and several liability on co-licensees in a manner inconsistent with co-licensees' contractual agreements would constitute unlawful retroactive rulemaking (4) and is an unconstitutional impairment of contracts and a "taking" of property without compensation. The Atomic Energy Act of 1954, as amended, does not contain explicit authorization for the Commission to impose retroactive rules on the subject of joint and several liability, and therefore, the Commission does not possess authority to retroactively impose joint and several liability, citing *Bowen* v. *Georgetown University Hospital*, 488 US 205 (1988). (1)

Response: Commission action ensuring that operating or decommissioning funds are available from co-applicants/co-licensees regardless of the contractual arrangements among co-owners for pro rata sharing of costs does not constitute a retroactive action. Contrary to the commenter's assumption, the Commission never "approved" the private contractual arrangements for the sharing of costs among co-owners/co-licensees. The Commission's consideration of co-applicants'/co-licensees' cost-sharing arrangements initially was solely for the purpose of determining, under 10 CFR 50.33, if the co-applicants/co-licensees had the financial qualifications necessary to construct and operate the nuclear power plant. After the Commission assured itself that the co-applicants'/co-licensees' financial qualifications provided for reasonable assurance that co-applicants/co-licensees together would be able to pay for all necessary costs of construction and operation, the Commission's inquiry was satisfied and the appropriate finding could be made.[2] The Commission has reviewed co-owners'/co-licensees' provisions for decommissioning financial assurance, pursuant to 10 CFR 50.75 in a similar manner.

Staff guidance on financial qualifications discloses no intent to approve the specific cost-sharing arrangements made between licensees, as opposed to reviewing the arrangements to ensure that the licensees together possess the necessary financial qualifications. Although power reactor licenses frequently recite the ownership percentages of the co-licensees, those percentages do not invariably reflect the allocation of decommissioning funding obligations. By reciting ownership percentages, the staff did not intend to make any finding about proportional allocation of decommissioning funding obligations. Therefore, the co-owners had no reasonable expectation that their regulatory obligations were limited by those arrangements. In the absence of any regulatory "approval" by the NRC of the private contractual arrangement by co-licensees with respect to pro rata cost sharing, there is no legal basis for a claim of retroactivity.

[2] However, since 1984, the NRC has not required Operating License Stage review of the financial qualifications of "electric utilities," as defined in the Commission's regulations (10 CFR 50.2).

Furthermore, Commission action recognizing joint and several regulatory responsibility on co-licensees [3], *e.g.*, to ensure that operating or decommissioning funds are available from co-applicants/co-licensees regardless of the contractual arrangements among co-owners for pro rata sharing of costs, does not alter and therefore leaves undisturbed the contractual rights of a co-owner to recover costs from another co-owner under their contractual agreements in a private cause of action or in a bankruptcy proceeding. The enforcement of those arrangements appropriately lies with the parties to those pro rata—share contracts and the courts, not the NRC, which is neither a party to the contracts nor a tribunal with authority to enforce them. Because Commission action to impose joint and several responsibility has no legal effect upon the private contractual arrangements for cost sharing among co-licensees, it per se follows that this Commission action does not constitute an unconstitutional impairment of the contractual cost sharing agreements among co-licensees, nor does it constitute an unlawful "taking."

In sum, the Commission never approved the private contractual arrangements among co-licensees/co-owners for sharing of costs. Therefore, Commission imposition of joint and several regulatory responsibility that may be inconsistent with these private contractual arrangements would not constitute retroactive rulemaking.

Comment 5. If the Commission imposed an additional financial burden on the remaining owners of a nuclear power plant (NPP), and if the rate authorities would not allow additional costs into the rate base, the result would drive the co-owners into financial distress, creating further risks. This action would not only affect minority owners of NPPs, but also investors and State regulatory authorities. (6)

Response: If a licensee experiences financial difficulties, the minority owners of NPPs as well as investors and State regulatory authorities would likely be affected whether or not the Commission imposed additional responsibilities on the minority owners above their pro rata share. Also, the Commission would consider imposing any additional burden only under highly unusual circumstances in which no other regulatory action would protect the public health and safety, such as through bankruptcy courts or financial markets. (Financial markets would come into play, for example, if a financially troubled licensee were to seek refinancing of its ownership share or if it were to sell its share to another party.)

Comment 6. The NRC should clarify its intent with respect to potential financial obligations of nuclear power plant licensees. (3)

Response: The Commission believes that it has already clearly stated its intent with respect to potential financial obligations of nuclear power plant licensees in the Policy Statement. To the extent that the petitioners are seeking clarification, the Commission trusts that the petitioners will find that clarification in this denial notice, including the Commission's response to these comments. The Commission notes that the term, "joint and several liability," may have connotations for contract law that the Commission did not intend to convey and that the term "joint and several regulatory responsibility" more accurately reflects the intent of the Commission's policy statement. Commission guidance on financial obligations is also provided in the "Standard Review Plan on Power Reactor Financial Qualifications and Decommissioning Funding Assurance" NUREG–1577, Rev. 1 (March 1999).

Comment 7. The NRC should define or clarify "*de minimis* share" and "joint and several liability" in "highly unusual circumstances." (5)

Response: As referenced in the Policy Statement, "*de minimis* share" means a level of plant ownership below which, even in highly unusual circumstances where recourse to all other potential remedies (*e.g.*, rate regulators, bankruptcy proceedings) has failed, the Commission would not attempt to impose joint and several regulatory responsibility on minority co-owners of a plant. The Commission did not specify a numerical value in the Policy Statement for "*de minimis* share." The Commission recognizes that a licensee with a relatively small percentage of plant ownership is unlikely in most circumstances to have sufficient resources available to assume responsibility for significantly more than its pro rata share if a co-owner defaults. For example, relatively small portions of nuclear units may be owned by small rural electric cooperatives or small municipal electric systems. In addition, ownership arrangements and percentages vary substantially from plant to plant. Given this variation, the Commission believes that it is appropriate to evaluate the imposition of joint and several responsibility on a case-by-case basis, when this consideration becomes necessary in highly unusual circumstances after all other remedies have failed. A unit-by-unit listing of plant ownership percentages is contained in NUREG/CR–6500, Rev. 1, "Owners of Nuclear Power Plants" (March 2000).

The Commission does not intend to impose inordinate financial stress on its licensees by seeking their payment of additional safety-related costs above their normal pro rata share as a result of default by a co-owner. The Commission recognizes that, particularly for smaller municipal and cooperative entities, requiring them to pay for more than their pro rata share (an already substantial sum, particularly for a smaller entity) could be counterproductive by potentially causing additional defaults by those entities. In practice, it is unlikely that the Commission would be able to obtain additional funds from a seriously financially stressed smaller licensee to cover a defaulting licensee's safety expenses. As indicated, the Commission would only consider imposing a joint and several regulatory responsibility in highly unusual and, presumably, quite rare circumstances after all other feasible remedies have been exhausted.

In any event, the Commission does not find it advisable to establish what would constitute a *de minimis* share of plant ownership applicable to all circumstances. If the Commission were to establish a numerical *de minimis* threshold of general applicability, it would likely do so by a process that provides an opportunity for public comment on the proposed numerical threshold. However, the Commission does not believe that establishing a numerical *de minimis* threshold is appropriate; the Commission needs to retain flexibility to respond to particular circumstances.

As noted above, the Commission intends to use the term "joint and several regulatory responsibility" in place of "joint and several liability." With regard to Commission regulations regarding NPPs, the obligations for which the co-owners/co-licensees could be jointly and severally responsible are those in the Commission's regulations or identified in the license. (See also the response to Comment 1.) By "highly unusual circumstances" we mean circumstances when the public health and safety may be at risk because of lack of appropriate action by licensees. The Commission would consider requiring other co-owners/co-licensees to assume additional health and safety expenditures in excess of their pro rata

[3] As discussed later in this notice, the NRC believes that the term, "joint and several regulatory responsibility" more accurately reflects the intent of the NRC's policy statement. Thus, the NRC will use the term "joint and several regulatory responsibility" in lieu of "joint and several liability."

share only after all other remedies have been exhausted (*e.g.*, rate regulators, bankruptcy courts).[4]

Comment 8. NRC's rule on Financial Assurance Requirements for Decommissioning Nuclear Power Plants (September 22, 1998; 63 FR 50465), identified problems that could result from trying to impose joint and several liability. The Policy Statement does not explain why it takes a position different from the rule. (3)

Response: The Commission does not believe that the Policy Statement takes a position different from the final rule on Financial Assurance Requirements for Decommissioning Nuclear Power Plants, but supplements it. The Commission addressed "joint liability" in some detail in the proposed rule, published in the **Federal Register** on September 10, 1997 (62 FR 47588). Both the rule and the Policy Statement stated that under virtually all circumstances, pro rata division of decommissioning is acceptable, although the rule did not explicitly address financial assurance in "highly unusual circumstances."

Comment 9. The Commission should focus its authority on the defaulting co-owner and its customers, not the other co-owners and their customers. (1)

Response: The Commission intends to focus on those licensees that are not fulfilling their obligations under the license to protect public health and safety. This would include a focus on the defaulting licensee and, as necessary to protect public health and safety in highly unusual circumstances, on the other non-*de minimis* licensees.

Comment 10. The Commission does not have the legal authority to impose joint and several liability. (10) Joint and several liability is neither necessary nor proper, and should be promptly removed by an appropriate rule. (1)

Response: The imposition of a regulatory obligation of joint and several responsibility for the costs of operation and decommissioning among co-licensees of a NPP is neither expressly authorized nor prohibited under the Atomic Energy Act of 1954, as amended (AEA) or related case law. However, the Commission has broad statutory authority under the AEA to take necessary actions to protect public health and safety. See AEA section 161 b & i, 42 U.S.C. 2201 b & i. In fact-specific circumstances joint and several regulatory responsibility has been imposed. *See Public Service Company of New Hampshire* (Seabrook Station, Units 1 and 2), CLI–88–10, 28 NRC 573 (1988); Order against Safety Light Corporation, its predecessor corporation, and several wholly-owned subsidiaries of the predecessor (54 FR 12035–38, 1989). Although joint and several regulatory responsibility has only been imposed in compelling circumstances where such action was necessary to protect public health and safety, the Commission believes it has this authority. Further, it would be inconsistent with the Commission's overriding mission to protect public health and safety for the Commission to remove its flexibility to impose joint and several regulatory responsibility in those highly unusual circumstances where this action is warranted. That position is reflected in the Policy Statement (see 62 FR 44074) and the Commission rejects the petitioners' request that this position be modified.

Comment 11. The Commission has more than sufficient safeguards to ensure adequate funding for NPP operations and decommissioning, even if one of the licensees experiences financial distress. (1)

Response: The Commission believes the statement to be generally true, but considers that there could be circumstances under which recourse to the financial resources of all joint owners that exceed a *de minimis* ownership level might be needed for the particular plant involved.

Comment 12. Private mechanisms are sufficient without reallocation by the Commission. There is no basis to believe that the Commission is better informed or better able to resolve financial arrangements than the parties and the relevant capital markets. (3)

Response: The Commission agrees with the commenters that, in general, it is not better informed nor better able to resolve financial arrangements than the parties and the relevant capital markets. However, the Commission's charge is to protect the public health and safety. When the Commission finds that a licensee's financial distress is such that it cannot fulfill its obligations under the license, and, as a result, the public's health and safety may be affected, the Commission is obligated to address this situation with whatever remedies it is authorized to use. Also, as indicated above, the Commission would only intervene as a last resort when the financial markets, rate regulators, or bankruptcy courts were unable to solve the problem.

Comment 13. If the Commission does not act early (in identifying and acting on a licensee having deteriorating financial circumstances) and fails to track the actual performance of an operator, because it could act late in any event, the Commission runs the risk of tolerating a deteriorating performer, rather than imposing the discipline of more rigorous regulatory attention. (3)

Response: The Commission believes that it has the means at its disposal to identify and respond to a poor performer. Through onsite inspections, the biennial decommissioning funding status reports required to be filed by NRC power reactor licensees under 10 CFR 50.75(f)(1), and other actions, the Commission is able to keep track of the performance of an operator. The Commission expects that these mechanisms would identify performance problems and problems with respect to the adequacy of financial assurance before extraordinary measures would need to be taken.

Comment 14. The Commission should amend its regulations to provide that, in imposing new arrangements, it will look first to the entity having the operating responsibility, and allow the existing contractual arrangements to work in how that operator passes through the additional costs. The Commission should not impose obligations beyond the pro rata or other contractual arrangements in place. (3)

Response: The commenters suggested that the Commission initiate a rulemaking that would require the NRC to look first at the plant operator for financial responsibility. The Commission does not intend to initiate this action because the plant operator may not have majority, or even any, ownership of the facility in many cases. The Commission also believes that it should retain flexibility in those highly unusual circumstances when pro rata responsibility would endanger public health and safety. With respect to the commenters' position on contractual arrangements, the NRC has addressed that point in its responses to Comments 1 and 4.

Comment 15. The Commission's assertion that the policy statement "expressed no change in prior NRC practice or policy" is "inexplicable and insupportable." Also, the commenter says that the Commission should provide for a full hearing if it considers a change in these policies in the future. (1)

Response: The NRC policy statement in question was published in the **Federal Register** as a proposed policy

[4] The Commission recognizes that if there are inadequate funds to operate the facility safely, the appropriate action would be for the Commission to order the plant to cease operation. Thus, it would be highly unusual for the Commission to require operation under these circumstances. However, should a co-licensee or co-owner default on its decommissioning funding obligation, and, in turn, create a health and safety problem and no other recourse were available, the Commission would be more likely to seek to impose a joint and several regulatory responsibility for decommissioning funding on the remaining owners/licensees.

statement with a request for public comment on the issue of the allocation of responsibility of co-owners (61 FR 49711, 49713 (1996)). The Commission responded to the comments it received on joint and several liability in publishing the final policy statement (62 FR 49071, 49074 (1997)). Moreover, because all co-owners are co-licensees under NRC legal precedent, *See Public Service Co. of Indiana, Inc.* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB–459, 7 NRC 179, 198–201 (1978), the Commission does not believe that the policy statement represents a change in previous policy. In addition, as described above (Comments 1 and 7), under virtually all circumstances short of the highly unusual, the Commission will continue to defer to co-owners' contractually determined divisions of responsibility. Also, see the response to Comment 10.

Comment 16. If the rulemaking continues, it is important that the PRM be more closely aligned and consistent with the existing financial assurance requirements. (1)

Response: The Commission does not intend to initiate a rulemaking in response to the PRM. Hence, the point raised by the commenter is moot.

Comment 17. The PRM should not be granted because commenters disagree with the petitioners' proposed solution, that would establish an artificial distinction between the operator, operating owner, and non-operating owners that would shift the financial burden to the operator or operating owner. The PRM would not improve the NRC's regulatory process, or benefit the industry, and could be subject to misinterpretation. The proposed change would unfairly and inappropriately burden the licensed operator, who could be a minority co-owner, an entity the petition is attempting to protect. Further, the petitioners do not cite any statutes, regulations, etc. that justify the proposed rule. (5)

Response: The Commission agrees that granting the PRM would establish an artificial (and unwarranted for purposes of financial assurance for operations and decommissioning) distinction between operating and non-operating owners. The petitioners' attempt to establish this artificial distinction is counter to NRC legal precedent referred to in the response to Comment 15 (*i.e.*, that all co-owners are co-licensees). Further, the petitioners' position here appears to be contrary to the petitioner's position as discussed in Comment 1 (*i.e.*, NRC should clarify that it will not impose operating or decommissioning costs on co-owners greater than their contractual obligations). The petitioners also do not provide any evidence as to how the granting of the petition would improve the NRC's regulatory process by continuing to ensure that the NRC may take any necessary steps within its statutory authority to assure protection of the public health and safety.

Comment 18. The NRC's existing financial assurance regulations are clear regarding a licensee's and operator's responsibility for ensuring safe operation and that decommissioning costs are available for a NPP. (5) The commenters fail to see what extraordinary circumstances could arise that would allow NRC to consider implementing joint and several liability, given their view that decommissioning funding levels are adequate. (2)

Response: See responses to Comments 6 and 7.

Comment 19. The petitioners misconstrue the plain language of the NRC Policy Statement. (4)

Response: The Commission agrees with the comment, because the policy statement discussion and the response to Comment 15 have indicated that under virtually all circumstances short of the rare and highly unusual, the NRC will continue to defer to co-owners' contractually determined divisions of funding responsibility. However, as one commenter noted, "The petition appears to assume that the NRC will impose joint and several liability at the first sign of financial difficulty or insolvency." This is not the Commission's intent.

Comment 20. The commenter is opposed to the petitioners' position that the Commission should require the entity (the co-owner and also the licensed operator of the plant) to be the first imposed upon by the Commission if additional requirements are needed. There is no basis for singling out the operating co-owner for this extra burden. (1)

Response: The Commission agrees with the comment, because the petitioners' position appears to be contrary to the position the petitioners presented in Comment 1 (*i.e.*, NRC should clarify that it will not impose operating or decommissioning costs on co-owners greater than their contractual obligations). Also, as noted in the response to Comment 1, "* * * NRC expects that obligations under a license will be handled on a pro rata basis among co-owners * * *" Nevertheless, the Commission considers it necessary to maintain the flexibility it has to consider the circumstances regarding assurance of operations and decommissioning funds on a case-by-case basis. The Commission does not find merit in a regulation that would require it to impose the requirements and attendant financial demands first on the co-owner licensed to operate the NPP if financial problems affect one or more of the licensees of an NPP.

Reasons for Denial

The Commission is denying the petition for the following reasons:

1. The Commission has already publicly articulated its policy not to impose operating or decommissioning costs on co-owners in a manner inconsistent with their agreed-upon pro rata shares, except when highly unusual circumstances relating to the protection of the public's health and safety require this action. Further, the Commission has publicly articulated its policy that it would not seek more than pro rata shares from co-owners with *de minimis* ownership of the NPP.

2. The PRM would require the licensed operator of a plant to be the first imposed upon by the Commission should additional requirements be needed. This unnecessarily limits the Commission's flexibility when highly unusual circumstances affecting the protection of public health and safety would require action by the Commission.

3. The petitioners' attempt to establish an artificial distinction between the operator, operating owner, and non-operating owner would be counter to Commission legal precedent within the context of Commission consideration of the imposition of joint and several regulatory responsibility.

4. Further, the petitioners contradict themselves by claiming that the Commission should not impose operating or decommissioning costs on co-owners greater than their contractual obligations. However, the petitioners also stated that the financial burden should be shifted to the operator or operating owner (with no reference to the contractual obligations).

5. Commission action ensuring that operating or decommissioning funds are available from co-applicants/co-licensees regardless of the contractual arrangements among co-owners for pro rata sharing of costs does not constitute a retroactive action. Contrary to the petitioners' assertion, the Commission never "approved" the private contractual arrangements for the sharing of costs among co-owners. The Commission's consideration of co-applicants' or co-licensees' cost-sharing arrangements initially was solely for the purpose of determining, under 10 CFR 50.33, if the co-applicants/co-licensees, as a group, had the financial qualifications necessary to construct and operate the nuclear power plant.

Subsequently, the Commission also considered cost-sharing arrangements with respect to decommissioning financial assurance, but did not "approve" the contractual arrangements in that context either. Accordingly, Commission action to recognize joint and several regulatory responsibility on co-licensees does not constitute retroactive regulatory action.

6. Commission action ensuring that operating or decommissioning funds are available from co-licensees regardless of the contractual arrangements among co-owners for pro rata sharing of costs does not alter, and therefore leaves undisturbed, the contractual rights of a co-owner to recover costs from another co-owner under their contractual agreements in a private cause of action or in a bankruptcy proceeding.

7. Lastly, the PRM does not show how the proposed rule would improve the NRC's regulatory process and maintain the same level of protection of public health and safety provided under current Commission regulations, legal precedent, and policies.

For reasons cited in this document, the Commission denies the petition.

Dated at Rockville, Maryland, this 25th day of July, 2000.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 00–19242 Filed 7–28–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–373–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 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 Boeing Model 777–200 series airplanes. This proposal would require replacement of certain components. This action is necessary to prevent corrosion of the axle of the main landing gear, which could result in cracking and failure of the axle, loss of the wheels on that axle, and reduced controllability of the airplane on the ground. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 14, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–373–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 99–NM–373–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

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.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–373–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–373–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report that corrosion was found on an axle on the main landing gear (MLG) of a Boeing Model 777–200 series airplane. The corrosion occurred in an area on which chrome plating was missing. Investigation revealed that the chrome plating on that axle was applied incorrectly. The manufacturer's records indicated that 18 axles were plated at the same time, and the manufacturer has determined that the plating on these other axles (which are installed on a total of eight airplanes) was also applied incorrectly. This condition, if not corrected, could result in corrosion of the MLG axle, which could result in cracking and failure of the axle. Failure of one axle could result in loss of the MLG wheels on that axle. Failure of more than one axle on one MLG could result in loss of multiple wheels and reduced controllability of the airplane on the ground.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–32A0024, dated August 12, 1999, which describes procedures for replacement of existing defective MLG axles with new axles. Accomplishment of the actions

specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously.

Cost Impact

There are approximately 8 airplanes of the affected design in the worldwide fleet. The FAA estimates that 4 airplanes of U.S. registry would be affected by this proposed AD. It would take between 56 and 93 work hours per airplane (depending on which, and how many, of the airplane's MLG axles are affected) to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $3,360 and $5,580 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 proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 99–NM–373–AD.

Applicability: Model 777–200 series airplanes; line numbers 7 through 11 inclusive, 26, 28, and 33; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion of the axle of the main landing gear, which could result in cracking and failure of the axle, loss of the wheels on that axle, and reduced controllability of the airplane on the ground, accomplish the following:

Replacement

(a) Within 12 months after the effective date of this AD, replace specified axles of the main landing gear with new axles, in accordance with Boeing Alert Service Bulletin 777–32A0024, dated August 12, 1999.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), 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, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 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.

Issued in Renton, Washington, on July 25, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19266 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–76–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, that currently requires inspections to detect damage or cracking of the forward and aft attachment lugs of the flap fittings at wing station (WS) 123.38; an inspection to verify that the sizes of the holes of the flap fittings are within specified limits and to ensure that the swaged bushings are not loose; and modification of the flap fittings. This action would require repetitive accomplishment of the inspections using improved inspection methods; a one-time visual and repetitive general visual and detailed visual inspections; new repetitive non-destructive test (NDT) inspections; and corrective and follow-on actions, as

necessary. This action also would provide for terminating action for all repetitive inspections and would revise the applicability of the existing AD. The actions specified by the proposed AD are intended to prevent high bearing stress on the bushings of the flap fittings, which could result in wear on the bushings, cracking of the flap fittings, and breakage of the lugs; these conditions could result in jamming of the flaps and consequent reduced controllability of the airplane.

DATES: Comments must be received by August 30, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–76–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–76–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. 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 2000–NM–76–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–76–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 14, 1997, the FAA issued AD 96–25–06 R1, amendment 39–9891 (62 FR 3209, January 22, 1997), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, to require inspections to detect damage or cracking of the forward and aft attachment lugs of the flap fittings at wing station (WS) 123.38; an inspection to verify that the sizes of the holes of the flap fittings are within specified limits and to ensure that the swaged bushings are not loose; and modification of the flap fittings. That action was prompted by a report of jamming of a flap due to incorrect tolerances of the flap-hinge installation, which caused high bearing stress on the bushings in the flap fitting. The requirements of that AD are intended to prevent high bearing stress, which could result in wear on the bushings, cracking of the flap fittings, and breakage of the lugs; these conditions could result in jamming of the flaps and consequent reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Luftfartsverket (LFV), which is the airworthiness authority for Sweden, has advised the FAA that the L-shaped flap fittings at WS 123.38, where the triangular flap fitting is installed, have failed in some cases due to fatigue. Investigation revealed that the initial failure occurred in the aft attachment lug where the swaged bushing is installed, which led to a failure in the bottom radius of the adjacent L-shaped fitting. The LFV further advises that the inspection methods specified by Saab Service Bulletin 340–57–027, Revision 01, dated June 30, 1995, and required in AD 96–25–06 R1, are inadequate to detect cracking of the forward and aft attachment lugs at WS 123.38. In that inspection, it is possible for small cracks to pass by undetected. Over time, these small cracks could cause failure of certain components of the flap fittings at WS 123.38.

The LFV also advises that, bushings with incorrect length may have been installed at the forward attachment point to the triangular fitting. Bolts and bushings with incorrect lengths also may have been installed at the aft attachment point. Consequently, high bearing stress can occur to the bushings and on the L-fittings due to short bushings and bolts.

In light of the recent events, the manufacturer has released new service information, and the FAA has determined that it is necessary to perform a new, one-time visual inspection, repetitive general and detailed visual inspections, and repetitive non-destructive test (NDT) inspections to enable early detection of discrepancies of the affected area.

Explanation of Relevant Service Information

The manufacturer has issued SAAB Service Bulletins 340–57–035, 340–57–037, and 340–57–038, each dated January 18, 2000, which describe procedures for the following:

- *Saab Service Bulletin 340–57–035:* One-time visual inspection of the flap assemblies to determine the serial numbers. If certain flap assemblies (as listed in the service bulletin) are installed, the follow-on actions include repetitive visual inspections of the affected flap assemblies (forward and aft attachment lugs) of the flap fittings at WS 123.38 to detect cracking or damage. The service bulletin also references Saab Service Bulletin 340–57–037 for performing NDT inspection of the aft attachment lugs of the flap fittings at WS 123.38 to detect cracking; and detailed visual inspections of the flap fittings to determine the size of the inboard and outboard holes (swaged bushings) and to detect loose swaged bushings. If no discrepancies (incorrectly sized hole, loose swaged bushings, or cracking) are detected, the service bulletin describes procedures for installing new fasteners (nuts, bolts, bushings, and washers) that attach to

the flap hinges. If any discrepancy (as described previously) is detected during the visual or NDT inspection, the service bulletin refers to Saab Service Bulletin 340–57–038 for replacement of all flap fittings.

• *Saab Service Bulletin 340–57–037:* One-time visual inspection of the aft attachment lugs (flap assemblies) of the flap fittings at WS 123.38 to determine the flap assembly modification status. If any flap assembly is installed that has a thinner lug, the follow-on actions include repetitive visual inspections of the aft attachment lugs of the flap fittings at WS 123.38 to detect cracking or damage. If any cracking or damage is detected, the service bulletin refers to Saab Service Bulletin 340–57–038 for replacement of all flap fittings. The service bulletin also describes procedures for repetitive NDT inspections of the aft attachment lugs of the flap fittings at WS 123.38 to detect cracking. If any cracking is detected, the service bulletin refers to Saab Service Bulletin 340–57–038 for replacement of the flap fittings.

• *Saab Service Bulletin 340–57–038:* Replacement of the flap fittings at WS 123.38, with new, improved flap fittings. Accomplishment of the replacement of all flap fittings would eliminate the need for all inspections specified by Service Bulletins 340–57–035 and 340–57–037, as described previously.

The LFV classified Saab Service Bulletins 340–57–035 and 340–57–037 as mandatory and issued Swedish airworthiness directives No. 1–152 and No. 1–153, each dated January 19, 2000, to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

These airplane models are manufactured in Sweden and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, 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 is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede all requirements of AD 96–25–06 R1. This proposed AD would require a new, one-time visual inspection; new repetitive general visual and detailed visual inspections; and a new repetitive NDT inspection; and corrective and follow-on actions, as necessary. The proposed AD also would provide for terminating action for the repetitive inspections, would revise the applicability of the existing AD to apply only to airplanes on which a certain flap assembly is installed, and would add airplanes that may be subject to the unsafe condition. The actions would be required to be accomplished in accordance with the Saab service bulletins described previously.

Cost Impact

The FAA estimates that 303 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed repetitive general visual inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed general visual inspections on U.S. operators is estimated to be $18,180, or $60 per airplane, per inspection cycle.

It would take approximately 1 work hour per airplane to accomplish the proposed one-time general visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed general visual inspection on U.S. operators is estimated to be $18,180, or $60 per airplane.

It would take approximately 1 work hour per airplane to accomplish the proposed repetitive detailed visual inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed detailed visual inspections on U.S. operators is estimated to be $18,180, or $60 per airplane, per inspection cycle.

It would take approximately 2 work hours per airplane to accomplish the proposed repetitive NDT inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed NDT inspections on U.S. operators is estimated to be $36,360, or $120 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator be required or elect to accomplish the terminating modification, it would take approximately 92 work hours per airplane (46 work hours per flap), at an average labor rate of $60 per hour. Required parts would cost $7,362 per airplane ($3,681 per flap). Based on these figures, the cost impact of the terminating modification on U.S. operators is estimated to be $12,882 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9891 (62 FR 3209, January 22, 1997), and by adding a new airworthiness directive (AD), to read as follows:

SAAB Aircraft AB: Docket 2000–NM–76–AD. Supersedes AD 96–25–06 R1, Amendment 39–9891.

Applicability: Model SAAB SF340A series airplanes, manufacturer's serial numbers –004 through –159 inclusive; and SAAB 340B series airplanes, manufacturer's serial numbers –160 through –459 inclusive; certificated in any category; on which any flap assembly having part number (P/N) 7257800–501 through 508 inclusive, or 7257800–851 through 7257800–856 inclusive, is installed.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent high bearing stress on the bushings in the flap fittings, which could result in jamming of the flaps and consequent reduced controllability of the airplane, accomplish the following:

Visual Inspection for Serial Numbers

(a) Within 800 flight hours after the effective date of this AD, perform a one-time visual inspection of the flap assemblies of the flap fittings at wing station (WS) 123.38 to determine the flap assembly serial numbers, in accordance with Saab Service Bulletin 340–57–035, dated January 18, 2000.

(1) If none of the serial numbers of the flap assemblies are listed in the service bulletin, no further action is required by this paragraph.

(2) If the serial number of any flap assembly is listed in the service bulletin, prior to further flight, accomplish the requirements of paragraph (a)(2)(i) and, at the time specified, accomplish the requirements of paragraph (a)(2)(ii) of this AD.

General Visual Inspection, Non-Destructive Test (NDT) Inspection, and Replacement of Bolts and Bushings

(i) Perform a general visual inspection of the affected flap fittings at WS 123.38 to detect cracking, in accordance with the service bulletin. If no cracking is detected, repeat the visual inspection thereafter at intervals not to exceed 800 flight hours, until the requirements of paragraph (a)(2)(ii) are accomplished. If any cracking is detected, prior to further flight, accomplish the terminating action specified by paragraph (c) of this AD.

(ii) Within 4,800 flight hours after the effective date of this AD, perform a one-time detailed visual inspection of the flap fittings to determine the size of the inboard and outboard holes (swaged bushing) and to detect loose swaged bushings; and perform an NDT inspection of the aft attachment lugs of the flap assemblies at WS 123.38 to detect cracking, in accordance with the service bulletin. Accomplishment of the NDT inspection terminates the general visual inspection required by paragraph (a)(2)(i) of this AD.

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

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

(A) If all the hole sizes are within the limits specified by the service bulletin, no loose swaged bushings are found, and no cracking of the aft attachment lugs is detected: Prior to further flight, install new fasteners that attach to the flap hinges (nuts, bolts, bushing, and washers), in accordance with the service bulletin.

(B) If any hole size is outside the limits specified by the service bulletin, or any loose swaged bushing is found, or any cracking is detected on the aft attachment lugs: Prior to further flight, accomplish the terminating action specified in paragraph (c) of this AD.

Visual Inspection for Modification Status

(b) Within 800 flight hours after the effective date of this AD, perform a one-time visual inspection of the aft attachment lugs (flap assemblies) of the flap fittings at wing station (WS) 123.38 to determine the flap assembly modification status, in accordance with Saab Service Bulletin 340–57–037, dated January 18, 2000.

(1) If the modification status is such that all flap assemblies installed have thicker lugs, as specified by Figure 1 of the service bulletin, no further action is required by this paragraph.

(2) If the modification status is such that any flap assembly installed has a thinner lug, as specified by Figure 1 of the service bulletin, prior to further flight, accomplish the requirements of paragraph (b)(2)(i) and, at the time specified, accomplish the requirements of paragraph (b)(2)(ii) of this AD.

Visual Inspection and NDT Inspection

(i) Perform a general visual inspection of the aft attachment lugs of the flap fittings at WS 123.38 to detect cracking or damage, in accordance with the service bulletin. If no cracking or damage is detected during the visual inspection, repeat the inspection thereafter at intervals not to exceed 800 flight hours, until the requirements of paragraph (b)(2)(ii) of this AD are accomplished. If any cracking or damage is detected during any general visual inspection required by this paragraph, prior to further flight, accomplish the terminating action specified by paragraph (c) of this AD.

(ii) Within 6,000 flight cycles after the effective date of this AD, perform an NDT inspection of the aft attachment lug of the flap fittings at WS 123.38 to detect cracking, in accordance with the service bulletin. Accomplishment of the NDT inspection terminates the repetitive visual inspections required by paragraph (b)(2)(i) of this AD. If no cracking is detected, repeat the NDT inspection thereafter at intervals not to exceed 6,000 flight cycles, until the actions specified by paragraph (c) are accomplished. If any cracking is detected during any NDT inspection required by this paragraph, prior to further flight, accomplish the terminating action specified by paragraph (c) of this AD.

Terminating Action

(c) Replacement of all flap fittings at WS 123.38 with new, improved flap fittings in accordance with Saab Service Bulletin 340–57–038, dated January 18, 2000, terminates all inspections required by this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, 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 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 5: The subject of this AD is addressed in Swedish airworthiness directives No. 1–152 and No. 1–153, each dated January 19, 2000.

Issued in Renton, Washington, on July 25, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19264 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–121–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 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 EMBRAER Model EMB–120 series airplanes. This proposal would require replacement of the existing wire between certain circuit breakers with an improved wire. This action is necessary to prevent overheating of the wire between certain circuit breakers, which could result in smoke emissions in the cockpit. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 30, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–121–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via the Internet must contain "Docket No. 2000–NM–121–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Carla Worthey, Program Manager, Program Management & Services Branch, ACE–118A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6062; fax (770) 703–6097.

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.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–121–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–121–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–120 series airplanes. The DAC advises that it has received a report of overheating of the wire between the two circuit breakers that protect the Total Air Temperature (TAT) probe indication and the auxiliary pitot/static tube heating. Investigation revealed that the wire installed between the circuit breakers was of an incorrect size. Such overheating, if not corrected, could result in smoke emissions in the cockpit.

Explanation of Relevant Service Information

The manufacturer has issued EMBRAER Service Bulletin 120–30–0028, dated August 25, 1997, which describes procedures for replacement of the existing wire between circuit breakers 0304 and 0358 with a wire coded W200–1063–12. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 97–11–01, dated November 25, 1997, to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 240 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $8 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $30,720, or $128 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. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira De Aeronautica S.A. (Embraer): Docket 2000–NM–121–AD.

Applicability: Model EMB–120 series airplanes, serial numbers 120003, 120004, 120006 through 120308 inclusive, 120310, 120312 through 120314 inclusive, 120316 through 120323 inclusive, and 120325 through 120330 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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the wire between certain circuit breakers, which could result in smoke emissions in the cockpit, accomplish the following:

(a) At the next scheduled maintenance inspection ("A"-check), but no later than 400 flight hours after the effective date of this AD: Replace the existing wire between circuit breakers 0304 and 0358 with a wire coded W200–1063–12, in accordance with EMBRAER Service Bulletin 120–30–0028, dated August 25, 1997.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small 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, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

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

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 97–11–01, dated November 25, 1997.

Issued in Renton, Washington, on July 25, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19263 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–134–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 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 Boeing Model 747 series airplanes. This proposal would require inspections to detect cracking of the front spar web of the wing, and corrective action, if necessary. This action is necessary to detect and correct fatigue cracking of the front spar web, which could result in fuel leaking onto an engine and a consequent fire. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 14, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–134–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–134–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must

be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

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.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–134–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–134–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that an operator found a 24-inch-long crack in the front spar web of the right wing of a Boeing Model 747 series airplane. Metallurgical analysis of the cracked web section indicated that three cracks initiated from a hole common to a rib post located on the front spar at front spar station inboard (FSSI) 656. The initiation and propagation of the cracking have been attributed to fatigue. This condition, if not corrected, could result in fuel leaking onto an engine and a consequent fire.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–57A2311, dated January 27, 2000, which describes procedures for various repetitive external inspections to detect cracking of the front spar web of the wing. The inspections include:

- A detailed visual inspection to detect cracking of the front spar web between the seal rib at FSSI 628 and the rib post at FSSI 684;
- An ultrasonic inspection to detect cracking of the web behind the front spar stiffeners and for horizontal cracks in the web under the upper and lower chords between FSSI 628 and FSSI 684; and
- A high frequency eddy current (HFEC) inspection to detect vertical cracks in the web near the vertical flanges of the upper and lower chords.

The alert service bulletin also describes procedures for an optional web inspection that can be performed in lieu of the external web inspections. The optional inspection necessitates less access than the external inspection when the fuel tanks are already being accessed for other reasons, and is intended to provide an alternative method of inspection. The optional method includes:

- Detailed visual inspections from inside the fuel tank to detect cracks of the aft side of the web, and from outside the fuel tank to detect cracks between the upper and lower chords at the wing station (WS) 642 rib post;
- Ultrasonic inspections from outside the fuel tank to detect horizontal cracks in the web between the rib post and the upper and lower chords at the WS 642 rib post, and to detect cracks in the web behind the front spar stiffener at FSSI 628; and,
- An HFEC inspection to detect vertical cracks in the web near the vertical flanges of the upper and lower chords at the WS 642 rib post.

Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

Differences Between Alert Service Bulletin and This Proposed AD

Operators should note that, although the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Cost Impact

There are approximately 478 airplanes of the affected design in the worldwide fleet. The FAA estimates that 97 airplanes of U.S. registry would be affected by this proposed AD.

The external inspections that are one option for compliance with this proposed AD would take approximately 48 work hours per airplane (not including access and close-up), at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed external inspections on U.S. operators is estimated to be $2,880 per airplane, per inspection cycle.

In lieu of accomplishment of the external inspections, this proposed AD would provide for an optional web inspection that would take approximately 50 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed optional web inspection on U.S. operators is estimated to be $3,000 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2000–NM–134–AD.

Applicability: Model 747 series airplanes, as listed in Boeing Alert Service Bulletin 747–57A2311, dated January 27, 2000; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the front spar web of the wing, which could result in fuel leaking onto an engine and a consequent fire, accomplish the following:

Repetitive Inspections

(a) At the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD, perform the Part 1 external web inspection—including detailed visual, ultrasonic, and high frequency eddy current (HFEC) inspections—to detect cracking of the front spar web of the wing, in accordance with Boeing Alert Service Bulletin 747–57A2311, dated January 27, 2000. In lieu of the Part 1 external web inspection, accomplishment of the Part 2 optional web inspection to detect cracking—which also includes detailed visual, ultrasonic, and HFEC inspections—in accordance with Boeing Alert Service Bulletin 747–57A2311, dated January 27, 2000, is acceptable for compliance with this paragraph. Repeat the inspections thereafter at intervals not to exceed 2,000 flight cycles.

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

(1) Prior to the accumulation of 13,000 total flight cycles or 30,000 total flight hours, whichever occurs first.

(2) Within 18 months after the effective date of this AD.

Repair

(b) If any cracking is detected during any inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Alternative Methods of Compliance

(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, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 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.

Issued in Renton, Washington, on July 25, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19267 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 315 and 601

[Docket No. 98D–0785]

Revised Draft Guidance for Industry on Developing Medical Imaging Drugs and Biologics; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Availability of guidance.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised draft guidance for industry entitled "Developing Medical Imaging Drugs and Biological Products." FDA has revised the draft guidance issued on October 14, 1998, in response to comments from industry and other interested persons. The revised draft guidance is intended to assist developers of drug and biological products used for medical imaging in conducting the clinical investigations of, and submitting various types of applications for, such products. The revised draft guidance also provides

information on how the agency will interpret and apply provisions in FDA's final rule on in vivo radiopharmaceuticals used for diagnosis and monitoring.

DATES: Submit written comments on the revised draft guidance by September 29, 2000. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the revised draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448, FAX 888–CBERFAX or 301–827–3844. Send two self-addressed adhesive labels to assist either office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revised draft guidance. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:
Robert K. Leedham, Jr., Center for Drug Evaluation and Research (HFD–160), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7510, or
George Q. Mills, Center for Biologics Evaluation and Research (HFM–573), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–5097.

SUPPLEMENTARY INFORMATION:

I. Description of the Guidance

In the **Federal Register** of October 14, 1998 (63 FR 55067), FDA published a notice announcing the availability of a draft guidance for industry entitled "Developing Medical Imaging Drugs and Biological Products." The draft guidance is intended to assist developers of drug and biological products used for medical imaging in planning and coordinating the clinical investigations of, and submitting various types of applications for, such products. The draft guidance also provides information on how the agency will interpret and apply provisions in the final rule, published in the **Federal Register** of May 17, 1999 (64 FR 26657), on the evaluation and approval of in vivo radiopharmaceuticals used in the diagnosis and monitoring of diseases. The final rule describes certain types of indications for which FDA will approve diagnostic radiopharmaceuticals and lists factors that the agency will consider in evaluating the safety and effectiveness of a diagnostic radiopharmaceutical drug or biological product under the Federal Food, Drug, and Cosmetic Act (the act) or the Public Health Service Act (the PHS Act), respectively.

The draft guidance applies to medical imaging agents that are used for diagnosis and monitoring and that are administered in vivo. Such agents include contrast agents used with medical imaging techniques such as radiography, computed tomography, ultrasonography, and magnetic resonance imaging, as well as radiopharmaceuticals used with imaging procedures such as single-photon emission computed tomography and positron emission tomography. The draft guidance is not intended to apply to possible therapeutic uses of these agents or to in vitro diagnostic products.

In a document published in the **Federal Register** of January 5, 1999 (64 FR 457), FDA reopened the comment period on the draft guidance until February 12, 1999. In another document published in the **Federal Register** of February 16, 1999 (64 FR 7561), FDA extended the comment period until April 14, 1999.

FDA received numerous written comments on the medical imaging draft guidance. In addition, the agency held public meetings on January 25 and March 26, 1999, to discuss various issues concerning the draft guidance.

II. Revisions to the Draft Guidance

In response to comments and on its own initiative, FDA has made several revisions to the medical imaging draft guidance. The revisions include substantive changes as well as relatively minor clarifications of terms and provisions. Following is a brief summary of the most significant revisions that FDA has made to the draft guidance.

A. Clinical Safety Assessments: Group 1 and Group 2 Agents

In accordance with several comments, FDA has redefined the category of medical imaging agents—Group 1 agents—that may be able to undergo a more focused clinical safety evaluation during development (i.e., a complete standard clinical safety evaluation may not be necessary). The revisions make it possible for more medical imaging agents to be eligible for Group 1 status than under the previous definition.

A principal change in Group 1 criteria is substitution of a no-observed-adverse-effect level (NOAEL) in place of a no-observed-effect-level (NOEL) in evaluations of the safety margin. An applicant will not be asked to demonstrate a NOEL that is at least 1,000 times greater than the maximal dose and dosage to be used in human studies, as stated in the original draft guidance. Instead, the NOAEL in expanded-acute, single-dose toxicity studies and safety pharmacology studies in suitable animal species should be at least 100 times greater than the maximal dose and dosage to be used in human studies. The NOAEL in short-term, repeated-dose toxicity studies should be at least 25 times greater than the maximal dose and dosage for humans.

The revised draft guidance also specifies when FDA will make Group 1 designations. Group 1 designations based on the safety margin will be made at the end of phase 1, after animal studies and initial human trials have been completed. Group 1 designations based on documented history of extensive clinical use without observed safety issues may occur at any time during drug development.

B. Blinded Imaging Evaluations

In response to concerns raised about blinding procedures discussed in the original draft guidance, FDA has substantially revised the recommendations on blinded imaging evaluations. The revised draft guidance states that either a fully blinded image evaluation or an image evaluation blinded to outcome by independent readers generally should serve as the principal image evaluation for demonstration of efficacy to support approval of a medical imaging agent. The revised draft guidance also notes that such image evaluations may be performed through sequential unblinding.

C. Endpoints in Trials of Medical Imaging Agents

The revised draft guidance includes a more detailed discussion of the use of primary endpoints in clinical trials designed to establish or support the efficacy of a medical imaging agent. The revised draft guidance clarifies that such primary endpoints usually should be related directly to clinically meaningful objectives. The revised draft guidance notes that image interpretations often have clinical implications that may be incorporated into the primary endpoint in clinical trials on the efficacy of a medical imaging agent. The revised

draft guidance also explains when objective imaging features, subjective image assessments, and clinical outcomes may be appropriate for use as primary imaging endpoints.

D. Other Issues on Imaging Conditions and Image Evaluations

FDA has made several other changes to the provisions in the original draft guidance on special considerations in the clinical evaluation of efficacy. These include the following: (1) Clarifying the steps in the evaluation of medical images (distinguishing between the assessment of objective image features and the interpretation of findings on an image); (2) providing a revised explanation of independent image evaluations; (3) suggesting when offsite and onsite image evaluations may be appropriate; (4) adding a discussion of the use of protocol and nonprotocol images in evaluating efficacy; and (5) clarifying the recommendations on separate or combined image evaluations.

E. Clinical Usefulness

FDA has revised the discussion of demonstrating the effectiveness of a medical imaging agent by evaluating its ability to provide useful clinical information related to its proposed indication. The revised draft guidance clarifies the ways in which a sponsor may establish the clinical usefulness of its product, depending on the specific indication. The agency also has provided several examples of how clinical usefulness should be established for different types of indications and under different circumstances.

III. Statement of Guidance Practices

This Level 1 draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on the development of medical imaging drugs and biological products. The revised draft guidance does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes, regulations, or both.

IV. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments on the revised draft guidance document by September 29, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. The revised draft guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain the revised draft guidance at http://www.fda.gov/cder/ guidance/ index.htm or http://www.fda.gov/cber/ guidelines/ index.htm.

VI. The Paperwork Reduction Act of 1995

This draft guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). A description of these provisions is provided in the following paragraphs with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comment on the following: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Draft Guidance for Industry on Developing Medical Imaging Drugs and Biological Products.

Description: FDA is issuing a revised draft guidance on the development of medical imaging drugs and biological products. The draft guidance is intended to assist developers of drug and biological products used for medical imaging in planning and coordinating the clinical investigations of, and submitting various types of applications for, such products. The draft guidance provides information on how the agency will interpret and apply provisions of the existing regulations regarding the content and format of an application for approval of a new drug (21 CFR 314.50) and the content of a biological product application (21 CFR 601.25). The draft guidance also provides information on how the agency will interpret and apply the final rule on the evaluation and approval of in vivo radiopharmaceuticals used for diagnosis and monitoring (64 FR 26657). The final rule, by adding part 315 (21 CFR part 315), clarifies requirements for the evaluation and approval of drug and biological radiopharmaceuticals under the authority of the act and the PHS Act.

Existing regulations, which appear primarily in parts 314 and 601 (21 CFR parts 314 and 601), specify the information that manufacturers must submit so that FDA may properly evaluate the safety and effectiveness of new drugs and biological products. This information is usually submitted as part of a new drug application (NDA) or a biologics license application, or as a supplement to an approved application. Part 315 contains regulations that clarify what information is relevant for diagnostic radiopharmaceuticals. This revised draft guidance supplements these regulations. Under part 315 and the revised draft guidance, information required under the act and the PHS Act to establish safety and effectiveness would still have to be reported.

Description of Respondents: Manufacturers of medical imaging drugs and biological products, including contrast drug products and diagnostic radiopharmaceuticals.

Burden Estimate: The final rule on in vivo radiopharmaceuticals used for diagnosis and monitoring set forth an estimated annual reporting burden on the industry that would result from that rulemaking (64 FR 26657 at 26667). OMB has approved this collection of information until July 31, 2002, under OMB control number 0910–0409. This revised draft guidance on the development of medical imaging drugs and biological products is in part intended to explain how FDA will interpret and apply the final rule. Thus, the estimated annual reporting burden of the draft guidance is the same as that of the final rule, with one change. In addition to the diagnostic radiopharmaceuticals that are the subject of the final rule, the revised draft guidance also addresses the development of contrast drug products, which FDA evaluates and approves under part 314, but which are not affected by the final rule.

Table 1 provides an estimate of the annual reporting burden for contrast drug products. FDA estimates that the potential number of respondents who would submit applications or supplements for contrast drug products would be one. Although FDA did not approve any NDA's for contrast drugs

(there are no biological contrast drug products) in fiscal year 1999, for purposes of estimating the annual reporting burden, the agency assumes that it will approve one contrast drug each fiscal year. The annual frequency of responses for contrast drugs is estimated to be one response per application or supplement. The hours per response, which is the estimated number of hours that an applicant would spend preparing the information to be submitted for a contrast drug in accordance with this draft guidance, is estimated to be approximately 2,000 hours.

The revised draft guidance would not impose any additional reporting burden because safety and effectiveness information is already required by existing regulations. In fact, clarification by the revised draft guidance of FDA's standards for evaluation of medical imaging drugs and biological products is expected to reduce the overall burden of information collection. FDA received no comments on the analysis of information collection burdens stated in the notice of availability of the original draft guidance published on October 14, 1998. FDA invites comments on this revised analysis of information collection burdens.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Contrast Drugs	1	1	1	2,000	2,000
Total					2,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In compliance with section 3507(d) of the PRA (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this revised draft guidance to OMB for review. Interested persons are requested to send comments on this information collection by August 30, 2000, to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

Dated: July 20, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–19176 Filed 7–28–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–116495–99]

RIN 1545–AX68

Loans From a Qualified Employer Plan to Plan Participants or Beneficiaries

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations relating to loans made from a qualified employer plan to plan participants or beneficiaries. These regulations affect administrators of, participants in, and beneficiaries of qualified employer plans that permit participants or beneficiaries to receive loans from the plan, including loans from section 403(b) contracts and other contracts issued under qualified employer plans.

DATES: Written and electronic comments and requests for a public hearing must be received by October 30, 2000.

ADDRESSES: Send submissions to: CC:MSP:RU (REG–116495–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:MSP:RU (REG–116495–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Vernon S. Carter, (202) 622–6070; concerning submissions Sonya Cruse (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 72 of the Internal Revenue Code of 1986 (Code).

Explanation of Provisions

Section 72(p)(1)(A) provides that a loan from a qualified employer plan (including a contract purchased under a qualified employer plan) by a participant or beneficiary is treated as received as a distribution from the plan for purposes of section 72 (a deemed distribution). Section 72(p)(1)(B) provides that an assignment or pledge of (or an agreement to assign or pledge) any portion of a participant's or beneficiary's interest in a qualified employer plan is treated as a loan from the plan.

Section 72(p)(2) provides that section 72(p)(1) does not apply to the extent certain conditions are satisfied. Specifically, under section 72(p)(2), a loan from a qualified employer plan to a participant or beneficiary is not treated as a distribution from the plan if the loan satisfies requirements relating to the term of the loan and the repayment schedule, and to the extent the loan satisfies certain limitations on the amount loaned.

Section 1704(n) of the Small Business Job Protection Act of 1996, Public Law 104–188 (110 Stat. 1755), added section 414(u) of the Code. Section 414(u)(4) provides that if a plan suspends the obligation to repay a loan made to an employee from the plan for any part of a period during which the employee is performing service in the uniformed services, that suspension is not to be taken into account for purposes of section 72(p).[1] The proposed regulations provide a rule clarifying that, under section 414(u)(4), if a plan provides for the suspension of a participant's obligation to repay a loan for any part of any leave of absence for a period of military service (as defined in chapter 43 of title 38, United States Code), the suspension will not cause the loan to be deemed distributed, even if the leave exceeds one year, as long as loan repayments resume upon the completion of the military service, the amount then remaining due on the loan

[1] Rev. Proc. 96–49 (1996–2 C.B. 369), includes a model amendment that may be used to reflect section 414(u)(4).

is repaid in substantially level installments thereafter, and the loan is fully repaid by the end of the period equal to the original term of the loan plus the period of the military service.

Regulations were proposed in 1995 [2] with respect to many of the issues arising under section 72(p)(2). The preamble to the 1995 proposed regulations requested comments on whether further guidance should be provided on issues that were not addressed and how the issues should be resolved, including (1) the effect of a deemed distribution on the tax treatment of subsequent distributions from a plan (such as whether a participant has basis), (2) the application of the $50,000 limitation to multiple loan arrangements, and (3) the application of section 72(p)(2) to a refinancing and to multiple loan arrangements. Following publication of the 1995 proposed regulations, various comments were received and a public hearing was held on June 28, 1996. After reviewing the written comments and comments made at the public hearing, proposed regulations generally addressing the first issue were published in the **Federal Register** (63 FR 42) on January 2, 1998 (REG–209476–82).

Final regulations for the issues addressed in the 1995 and 1998 proposed regulations are being published elsewhere in this issue of the **Federal Register**. These proposed regulations address the remaining issues on which comments were requested in the preamble to the 1995 proposed regulations, namely, situations in which a loan is refinanced or more than one loan is made.

These proposed regulations provide that if a loan is deemed distributed to a participant or beneficiary and has not been repaid, then no payment made thereafter to the participant or beneficiary will be treated as a loan for purposes of section 72(p)(2), unless certain conditions are satisfied. Specifically, there must be an arrangement among the plan, the participant or beneficiary, and the employer, enforceable under applicable law, under which repayments will be made by payroll withholding or the plan must receive adequate security for the additional loan (in addition to the participant's accrued benefit under the plan).[3]

The proposed regulations also provide that while a loan can be refinanced and additional amounts may be borrowed, the refinancing and multiple loan arrangements must satisfy the requirements in section 72(p)(2)(B) and (C) that each loan be repaid in level installments, not less often than quarterly, over five years (or longer for certain home loans). Under the proposed regulations, a refinancing is, in effect, treated as a new loan that is then applied to repay a prior loan if the new loan both replaces a prior loan and has a later repayment date. Thus, the transaction will result in a deemed distribution if the amount of the new loan plus the prior outstanding loan exceeds the amount limitations of section 72(p)(2)(A). This rule does not apply to a refinancing loan under which the amount of the prior loan is to be repaid by the original repayment date of the prior loan. These standards are illustrated in examples.[4]

In addition, a participant may borrow more than once from the plan under section 72(p)(2), but, in order to ensure that additional loans are not used to circumvent the requirements of section 72(p), a deemed distribution of a loan will occur if two loans have previously been made from the plan to the participant or beneficiary during the year.

Electronic Signatures Act

The Electronic Signatures in Global and National Commerce Act (114 Stat. 464) (the Electronic Signatures Act) was signed on June 30, 2000. Title I of the Electronic Signatures Act, which is generally effective October 1, 2000, applies to certain electronic records and signatures in commerce. Comments are requested on the impact of the Electronic Signatures Act on the final regulations under section 72(p) that appear in this issue of the **Federal Register** and on any future guidance that may be needed on the application of the Electronic Signatures Act to plan loan transactions.

Proposed Effective Date

The regulations are proposed to be effective with respect to loans made on or after the first January 1 that is at least six months after publication as final regulations. However, Q&A–19(b)(2) of the proposed regulations would not apply to loans, whenever made, under an insurance contract that is in effect before a date that is 12 months after publication as final regulations if the insurance carrier is required under the insurance contract to offer loans to contractholders that are not secured (other than being secured by the participant's or beneficiary's benefit under the contract).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will

[2] Proposed § 1.72(p)-1 was published in the **Federal Register** (60 FR 66233) on December 21, 1995.

[3] The Department of Labor (DOL) has advised the IRS that, with respect to plans covered by Title I of the Employee Retirement Income Security Act of 1974 (88 Stat. 829) (ERISA), the administration of a participant loan program involves the management of plan assets. Therefore, fiduciary conduct undertaken in the administration of such a loan program must conform to the rules that govern transactions involving plan assets. In particular, a loan program must be administered in a prudent manner, solely in the interest of the participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries. See, generally, ERISA sections 403, 404, and 406. In the view of DOL, it is questionable whether a participant loan program of a plan covered by Title I of ERISA that does not provide for timely repayment of loans (through payroll withholding or otherwise), regular and effective collection efforts following a default, and adequate security for the plan in the event of default would be in compliance with the rules applicable under Title I of ERISA to transactions involving plan assets. In the view of DOL, it is also questionable whether such a program would qualify for the relief provided under section 408(b)(1) of ERISA. See Preamble to 29 CFR 2550.408b–1, (54 FR 30520, 30521) (July 20, 1989). Further, a plan may make a second loan to a defaulting participant whose prior loan remains unpaid only if such a loan would be in accordance with the applicable standards of Title I. A fiduciary must take steps to ensure, inter alia, that such a loan is bona fide and not a mere transfer of plan assets, that the loan is adequately secured, and that the plan's assets will be preserved in the event of default. See Preamble to 29 CFR 2550.408b–1, (54 FR at 30521).

[4] The examples in the new proposed regulations are based on the same assumptions described in § 1.72(p)–1 introductory text of the final regulations.

be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the **Federal Register.**

Drafting Information

The principal author of these regulations is Vernon S. Carter, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.72(p)–1 is amended as follows:

1. Q&A–9(b) and (c), Q&A–19 and Q&A–20 are revised.

2. Q&A–22 is amended by adding new paragraph (d).

The revisions and addition read as follows:

§ 1.72(p)–1 Loans treated as distributions.

* * * * *

A–9: * * *

(b) *Military service.* In accordance with section 414(u)(4), if a plan suspends the obligation to repay a loan made to an employee from the plan for any part of a period during which the employee is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code), whether or not qualified military service, such suspension shall not be taken into account for purposes of section 72(p) or this section. Thus, if a plan suspends loan repayments for any part of a period during which the employee is performing military service described in the preceding sentence, such suspension shall not cause the loan to be deemed distributed even if the suspension exceeds one year and even if the term of the loan is extended. However, the loan will not satisfy the repayment term requirement of section 72(p)(2)(B) and the level amortization requirement of section 72(p)(2)(C) unless loan repayments resume upon the completion of such period of military service, the frequency of the periodic installments due during the period beginning when the military service ends and ending when the loan is repaid in full, and the amount of each periodic installment, is not less than the frequency and amount of the periodic installments required under the terms of the original loan, and the loan is repaid in full (including interest that accrues during the period of military service) by the end of the period equal to the original term of the loan plus the period of such military service.

(c) *Examples.* The following examples illustrate the rules of paragraph (a) and (b) of this Q&A–9 and are based upon the assumptions described in the introductory text of this section:

Example 1. (i) On July 1, 2001, a participant with a nonforfeitable account balance of $80,000 borrows $40,000 to be repaid in level monthly installments of $825 each over 5 years. The loan is not a principal residence plan loan. The participant makes 9 monthly payments and commences an unpaid leave of absence that lasts for 12 months. The participant was not performing military service during this period. Thereafter, the participant resumes active employment and resumes making repayments on the loan until the loan is repaid. The amount of each monthly installment is increased to $1,130 in order to repay the loan by June 30, 2006.

(ii) Because the loan satisfies the requirements of section 72(p)(2), the participant does not have a deemed distribution. Alternatively, section 72(p)(2) would be satisfied if the participant continued the monthly installments of $825 after resuming active employment and on June 30, 2006 repaid the full balance remaining due.

Example 2. (i) The facts are the same as in *Example 1,* except the participant was on leave of absence performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) for two years. After the military service ends on April 2, 2004, the participant resumes active employment on April 19, 2004, continues the monthly installments of $825 thereafter, and on June 30, 2008 repays the full balance remaining due ($10,527).

(ii) Because the loan satisfies the requirements of section 72(p)(2) and paragraph (b) of this Q&A–9, the participant does not have a deemed distribution. Alternatively, section 72(p)(2) would also be satisfied if the amount of each monthly installment after April 19, 2004, is increased to $983 in order to repay the loan by June 30, 2008 (without any balance remaining due then).

* * * * *

Q–19: If there is a deemed distribution under section 72(p), is the interest that accrues thereafter on the amount of the deemed distribution an indirect loan for income tax purposes and what effect does the deemed distribution have on subsequent loans?

A–19: (a) *General rule.* Except as provided in paragraph (b) of this Q&A–19, a deemed distribution of a loan is treated as a distribution for purposes of section 72. Therefore, a loan that is deemed to be distributed under section 72(p) ceases to be an outstanding loan for purposes of section 72, and the interest that accrues thereafter under the plan on the amount deemed distributed is disregarded for purposes of applying section 72 to the participant or the beneficiary. Even though interest continues to accrue on the outstanding loan (and is taken into account for purposes of determining the tax treatment of any subsequent loan in accordance with paragraph (b) of this Q&A–19), this additional interest is not treated as an additional loan (and, thus, does not result in an additional deemed distribution) for purposes of section 72(p). However, a loan that is deemed distributed under section 72(p) is not considered distributed for all purposes of the Internal Revenue Code. See Q&A–16 of this section.

(b) *Effect on subsequent loans*—(1) *Application of section 72(p)(2)(A).* A loan that is deemed distributed under section 72(p) (including interest accruing thereafter) and that has not been repaid (such as by a plan loan offset) is considered outstanding for purposes of applying section 72(p)(2)(A) to determine the maximum amount of any subsequent loan to the participant or beneficiary.

(2) *Additional security for subsequent loans.* If a loan is deemed distributed to a participant or beneficiary under section 72(p) and has not been repaid (such as by a plan loan offset), then no payment made thereafter to the participant or beneficiary shall be treated as a loan for purposes of section 72(p)(2) unless the loan otherwise satisfies section 72(p)(2) and this section and either of the following conditions is satisfied:

(i) There is an arrangement among the plan, the participant or beneficiary, and the employer, enforceable under applicable law, under which repayments will be made by payroll withholding. For this purpose, an arrangement will not fail to be enforceable merely because a party has the right to revoke the arrangement prospectively.

(ii) The plan receives adequate security from the participant or beneficiary that is in addition to the participant's or beneficiary's accrued benefit under the plan.

(3) *Condition no longer satisfied.* If, following a deemed distribution that has

not been repaid, a payment is made to a participant or beneficiary that satisfies the conditions in paragraph (b)(2) of this Q&A–19 for treatment as a plan loan and, subsequently, before repayment of the second loan, the conditions in paragraph (b)(2) of this Q&A–19 are no longer satisfied with respect to the second loan (for example, if the loan recipient revokes consent to payroll withholding), the amount then outstanding on the second loan is treated as a deemed distribution under section 72(p).

Q–20: May a participant refinance an outstanding loan or have more than one loan outstanding from a plan?

A–20: (a) *Refinancings and multiple loans*—(1) *General rule.* A participant who has an outstanding loan that satisfies section 72(p)(2) and this section may refinance that loan or borrow additional amounts, if, under the facts and circumstances, the loans collectively satisfy the amount limitations of section 72(p)(2)(A) and the prior loan and the additional loan each satisfy the requirements of section 72(p)(2)(B) and (C) and this section. For this purpose, a refinancing includes any situation in which one loan replaces another loan.

(2) *Loans that repay a prior loan and have a later repayment date.* For purposes of section 72(p)(2) and this section (including paragraph (a)(3) of this Q&A–20 and the amount limitations of section 72(p)(2)(A)), if a loan that satisfies section 72(p)(2) is replaced by a loan (a replacement loan) and the term of the replacement loan ends after the term of the loan it replaces (the replaced loan), the replacement loan and the replaced loan are both treated as outstanding on the date of the transaction. For purposes of the preceding sentence, the term of the replaced loan is determined under the terms of that loan as in effect immediately prior to the making of the replacement loan. Thus, for example, the replacement loan results in a deemed distribution if the sum of the amount of the replacement loan plus the outstanding balance of all other loans on the date of the transaction, including the replaced loan, fails to satisfy the amount limitations of section 72(p)(2)(A). This paragraph (a)(2) of this Q&A–20 does not apply to a replacement loan if the terms of the replacement loan would satisfy section 72(p)(2) and this section determined as if the replacement loan consisted of two separate loans, the replaced loan (amortized in substantially level payments over a period ending not later than the last day of the term of the replaced loan) and a new loan based on the difference between the amount of the replacement loan and the amount of the replaced loan.

(3) *Multiple loans.* For purposes of section 72(p)(2) and this section, a loan to a participant or beneficiary shall be treated as a deemed distribution if two or more loans have previously been made from the plan to the participant or beneficiary during the year. This limitation applies on the basis of a calendar year unless the plan applies this limit on the basis of the plan year or another consistent 12-month period.

(b) *Examples.* The following examples illustrate the rules in paragraph (a) of this Q&A–20 and are based on the assumptions described in the introductory text of this section:

Example 1. (i) A participant with a vested account balance that exceeds $100,000 borrows $40,000 from a plan on January 1, 2003, to be repaid in 20 quarterly installments of $2,491 each. Thus, the term of the loan ends on December 31, 2007. On January 1, 2004, when the outstanding balance on the loan is $33,322, the loan is refinanced and is replaced by a new $40,000 loan from the plan to be repaid in 20 quarterly installments. Under the terms of the refinanced loan, the loan is to be repaid in level quarterly installments (of $2,491 each) over the next 20 quarters. Thus, the term of the new loan ends on December 31, 2008.

(ii) Under section 72(p)(2)(A), the amount of the new loan, when added to the outstanding balance of all other loans from the plan, must not exceed $50,000 reduced by the excess of the highest outstanding balance of loans from the plan during the 1-year period ending on December 31, 2003 over the outstanding balance of loans from the plan on January 1, 2004, with such outstanding balance to be determined immediately prior to the new $40,000 loan. Because the term of the new loan ends later than the term of the loan it replaces, both the new loan and the loan it replaces must be taken into account for purposes of applying section 72(p)(2), including the amount limitations in section 72(p)(2)(A). The amount of the new loan is $40,000, the outstanding balance on January 1, 2004 of the loan it replaces is $33,322 and the highest outstanding balance of loans from the plan during 2003 was $40,000. Accordingly, under section 72(p)(2)(A), the sum of the new loan and the outstanding balance on January 1, 2004 of the loan it replaces must not exceed $50,000 reduced by $6,678 (the excess of the $40,000 maximum outstanding loan balance during 2003 over the $33,322 outstanding balance on January 1, 2004, determined immediately prior to the new loan) and thus, must not exceed $43,322. The sum of the new loan ($40,000) and the outstanding balance on January 1, 2004 of the loan it replaces ($33,322) is $73,322. Since $73,322 exceeds the $43,322 limit under section 72(p)(2)(A) by $30,000, there is a deemed distribution of $30,000 on January 1, 2004.

(iii) However, no deemed distribution would occur if, under the terms of the refinanced loan, the amount of the first 16 installments on the refinanced loan were equal to $2,907, which is the sum of the $2,491 originally scheduled quarterly installment payment amount under the first loan, plus $416 (which is the amount required to repay, in level quarterly installments over five years beginning on January 1, 2004, the excess of the refinanced loan over the January 1, 2004 balance of the first loan ($40,000 minus $33,322 equals $6,678)), and the amount of the 4 remaining installments were equal to $416. The refinancing would not be subject to paragraph (a)(2) of this Q&A–20 because the terms of the new loan would satisfy section 72(p)(2) and this section (including the substantially level amortization requirements of section 72(p)(2)(B) and (C)) determined as if the new loan consisted of two loans, one of which is in the amount of the first loan ($33,322) and is amortized in substantially level payments over a period ending December 31, 2007 (the last day of the term of the first loan) and the other of which is in the additional amount ($6,678) borrowed under the new loan. Similarly, the transaction also would not result in a deemed distribution (and would not be subject to paragraph (a)(2) of this Q&A–20) if the terms of the refinanced loan provided for repayments to be made in level quarterly installments (of $2,990 each) over the next 16 quarters.

Example 2. (i) The facts are the same as in *Example 1*, except that the applicable interest rate used by the plan when the loan is refinanced is significantly lower due to a reduction in market rates of interest and, under the terms of the refinanced loan, the amount of the first 16 installments on the refinanced loan is equal to $2,848 and the amount of the next 4 installments on the refinanced loan is equal to $406. The $2,848 amount is the sum of $2,442 to repay the first loan by December 31, 2007 (the term of the first loan), plus $406 (which is the amount to repay, in level quarterly installments over five years beginning on January 1, 2004, the $6,678 excess of the refinanced loan over the January 1, 2004 balance of the first loan).

(ii) The transaction does not result in a deemed distribution (and is not subject to paragraph (a)(2) of this Q&A–20) because the terms of the new loan would satisfy section 72(p)(2) and this section (including the substantially level amortization requirements of section 72(p)(2)(B) and (C)) determined as if the new loan consisted of two loans, one of which is in the amount of the first loan ($33,322) and is amortized in substantially level payments over a period ending December 31, 2007 (the last day of the term of the first loan) and the other of which is in the additional amount ($6,678) borrowed under the new loan. The transaction would also not result in a deemed distribution (and not be subject to paragraph (a)(2) of this Q&A–20) if the terms of the new loan provided for repayments to be made in level quarterly installments (of $2,931 each) over the next 16 quarters.

Example 3. (i) A participant with a vested account balance that exceeds $100,000 borrows $20,000 from a plan on January 1, 2005 to be repaid in 20 quarterly installments of $1,245 each. On March 31, 2005, when the

first installment is due, the participant receives a second loan equal to $1,245, with that March loan to be repaid in 20 quarterly installments of $78 each. On June 30, 2005, when the second installment is due on the January loan and the first installment is due on the March loan, the participant receives a third loan equal to $1,323 (which is the sum of the $1,245 installment and the $78 installment then due), with that June loan to be repaid in 20 quarterly installments of $82 each. On September 30, 2005, when the third installment is due on the January loan, the second installment is due on the March loan, and the first installment is due on the June loan, the participant receives a fourth loan equal to $1,405 (which is the sum of the $1,245 installment, the $78 installment and the $82 installment then due), with that September loan to be repaid in 20 quarterly installments of $88 each. On December 31, 2005, when the fourth installment is due on the January loan, the third installment is due on the March loan, the second installment is due on the June loan, and the first installment is due on the September loan, the participant receives a fifth loan equal to $1,493 (which is the sum of the $1,245 installment, the $78 installment, the $82 installment, and the $88 installment then due), with that December loan to be repaid in 20 quarterly installments of $93 each.

(ii) Under paragraph (a)(3) of this Q&A–20, the participant has deemed distributions on June 30, 2005 equal to $1,323 (which is the amount of the June loan), on September 30, 2005 equal to $1,405 (which is the amount of the September loan), and on December 31, 2005 equal to $1,493 (which is the amount of the December loan) because on each of these dates the participant had previously received two loans from the plan during the year.

* * * * *

A–22: * * *

(d) *Effective date for Q&A–19(b)(2) and Q&A–20.* Paragraph (b)(2) of Q&A–19 and Q&A–20 of this section apply to loans made on or after the first January 1 that is at least 6 months after publication of final regulations in the **Federal Register**, except that paragraph (b)(2) of Q&A–19 of this section does not apply to loans, whenever made, under an insurance contract that is in effect before the date that is 12 months after publication of final regulations in the **Federal Register** under which the insurance carrier is required to offer loans to contractholders that are not secured (other than being secured by the participant's or beneficiary's benefit under the contract).

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–18816 Filed 7–28–00; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6840–8]

Virginia: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: Virginia has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Virginia. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by August 30, 2000.

ADDRESSES: Send written comments to Joanne Cassidy, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–3381. You can examine copies of the materials submitted by Virginia during normal business hours at the following locations: EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5254; or Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219, Phone number: (804) 698–4213; or Virginia Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia 24019, Phone number: (540) 562–6700.

FOR FURTHER INFORMATION CONTACT: Joanne Cassidy at the above address and phone number.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: July 17, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–19115 Filed 7–28–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21 and 74

[MM Docket 97–217; FCC 00–244]

MDS and ITFS Two-Way Transmissions

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Previously, the Commission adopted a series of legal and technical rule changes to enhance the ability of Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") licensees to provide non-video services, including transmission of high speed computer data applications such as Internet access. We later expanded the streamlined application processing system to cover all major modifications of ITFS facilities, modified certain rules related to interference issues, modified certain other rules related to the obligations of ITFS licensees and clarified certain other rules. The FCC is taking two actions. The first action, a rule, which is published elsewhere in this issue of the **Federal Register**, modifies rules related to ITFS leases, modifies some technical rules and clarifies other rules. The second action, which is described in detail below, is the proposed rulemaking. The proposed rulemaking is limited to addressing the issue of possible Gaussian noise interference that can occur in certain limited circumstances.

DATES: Comments due on or before August 21, 2000. Reply comments are due on or before August 31, 2000.

FOR FURTHER INFORMATION CONTACT: Dave Roberts (202) 418–1600, Video Services Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order on Further Reconsideration and Further Notice of Proposed Rulemaking ("Further Notice of Proposed Rulemaking")*, MM Docket, 97–217, FCC 00–244, adopted July 7,

2000 and released July 20, 2000. The full text of this *Further Notice of Proposed Rulemaking* is available for inspection and copying during normal business hours in the FCC Reference Room, Room CY–A257, Portals II, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. ("ITS"), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Synopsis of Report and Order on Further Reconsideration and Further Notice of Proposed Rulemaking

I. Introduction

1. This *Further Notice of Proposed Rulemaking* is adopted by the Commission after receiving petitions for further reconsideration of its *Reconsideration Order*, 64 FR 63727 (November 22, 1999), in this docket. Previously, the *Two-Way Order*, 63 FR 65087 (November 25, 1998), was issued following a notice of proposed rulemaking, which arose from a petition for rulemaking filed by a group of 111 educators and participants in the wireless cable industry (collectively, "Petitioners"), comprised of MDS and ITFS licensees, wireless cable operators, equipment manufacturers, and industry consultants and associations. In the *Two-Way Order*, the Commission amended parts 21 and 74 of our rules to provide MDS and ITFS licensees with substantially increased operational and technical flexibility. Traditionally, the MDS service traditionally functioned as a one-way point-to-multipoint video transmission service that is often referred to as "wireless cable," whereas ITFS licensees ordinarily used their frequencies for one-way transmission of educational and instructional material to students.

2. The *Two-Way Order* (1) Permitted both MDS and ITFS licensees to provide two-way services on a regular basis; (2) permitted increased flexibility on permissible modulation types; (3) permitted increased flexibility in spectrum use and channelization, including combining multiple channels to accommodate wider bandwidths, dividing 6 MHz channels into smaller bandwidths, and channel swapping; (4) adopted a number of technical parameters to mitigate the potential for interference among service providers and to ensure interference protection to existing MDS and ITFS services; (5) simplified and streamlined the licensing process for stations used in cellularized systems; and (6) modified the ITFS programming requirements in a digital environment. Following the release of the *Two-Way Order*, we received petitions for reconsideration which focused primarily on requests that we expand our new streamlined processing system to cover all ITFS modifications; formalize an interference complaint process; modify some rules regarding ITFS leased capacity and make certain technical clarifications to our rules. In the *Reconsideration Order*, we expanded on some of our MDS/ITFS rules and clarified others. In response to that decision, we received further petitions for reconsideration, asking that we: (1) Permit certain lease provisions; (2) review the treatment of boosters stations and receive sites; and (3) further refine our technical rules. The *Further Reconsideration* section of this document is published elsewhere in this issue of the **Federal Register**. The *Further Reconsideration* section makes additional modifications and clarifications to our MDS/ITFS rules in order to facilitate further the provision of these services to the public. This *Further Notice of Proposed Rulemaking* is limited to addressing the issue of possible Gaussian noise interference that can occur in certain limited circumstances.

II. Further Notice of Proposed Rulemaking

3. The Wireless Communications Association ("WCA") raises a concern that there may be some uncertainty with respect to the proper interpretation of §§ 21.909(m) and 74.939(o), in particular the meaning of a phrase common to those sections which states that "Radiation of an unmodulated carrier and other unnecessary transmissions are forbidden." WCA asks that the Commission clarify the meaning of this language so that it requires that a response station's transmitter "must be biased off so that no RF Gaussian noise will be emitted when the station is not engaged in communications." WCA argues that this interpretation is needed in order to assure that "the noise floor of adjacent channel and adjacent market licensees is protected against unnecessary emissions from transceivers." In an *ex parte* filing, WCA proposed to set the permissible level of Gaussian noise at the following levels: (1) 10 microvolts/meter per 1 MHz bandwidth at a distance of 3 meters for response stations utilizing antennas with 6 dB or less gain over isotropic; and, (2) 10 microvolts/meter × 10exp[(antenna gain − 6 dB)/20] per 1 MHz bandwidth at a distance of 3 meters for stations utilizing antennas with more than 6 dB gain over isotropic.

4. We agree with WCA that a clarification of this issue is needed, however, because of the importance and potential impact of such a clarification, we believe that all interested parties should be given an opportunity to submit comments and replies. We request that commenting parties address, at a minimum, the following issues:

(1) Should we establish a numerical standard for the maximum permissible radiation level of a response station transmitter which is in the "off" state, *i.e.*, when it is powered up but not in the act of transmitting a signal to the response hub?

(2) If there should be a maximum off-state radiation level, what should that level be and how should it be defined? Should it be defined in terms of the transmitter power output into the antenna, or in terms of the radiated field strength? Should it be a function of antenna gain and/or antenna height?

(3) To what extent, and how, should a maximum off-state radiation level take into account the number of response station transmitters likely to be active in a 2-way system? Should the off-state radiation levels for multiple transmitters be directly additive or are there alternative ways to apportion among the response stations the total amount of permissible off-state radiation from a 2-way system?

(4) What degree of protection from off-state radiation should be afforded to neighboring systems? Should hub station receiver noise floors receive the same, more, or less protection from off-state radiation than from co-and adjacent channel interference as currently provided in the rules?

We also ask that parties include where possible an analysis of the relative costs and benefits of their proposals.

III. Initial Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *Further Notice of Proposed Rulemaking*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments as set forth in paragraph 44 of the *Further Notice of Proposed Rulemaking*. The Commission will send a copy of the *Further Notice of Proposed Rulemaking*, including this IRFA, to the Chief Counsel for Advocacy of the Small

Business Administration. See 5 U.S.C. 603(a). In addition, the *Further Notice of Proposed Rulemaking* and IRFA (or summaries thereof) will be published in the **Federal Register**. *Id.*

A. Need for, and Objectives of, the Proposed Rules

6. The goal of the rulemaking aspect of this proceeding is to clarify the meaning of the language contained in two Commission rules which states, "Radiation of an unmodulated carrier and other unnecessary transmissions are forbidden." Wireless Communications Association ("WCA") proposes that the Commission require that a response station's transmitter "must be biased off so that no RF Gaussian noise will be emitted when the station is not engaged in communications." The *Further Notice of Proposed Rulemaking* seeks comments on WCA's proposal and requests responses to a number of questions related to the proposal. The overall intent of this inquiry is to clear up ambiguities surrounding the Commission's rules and improve the effectiveness of the service.

B. Legal Basis

7. Authority for actions proposed in the *Further Notice of Proposed Rulemaking* may be found in: Sections 4(i) and (j), 301, 303(f), 303(g), 303(h), 303(r), 308(b), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 301, 303(f), 303(g), 303(h), 303(j), 308(b), 403, and 405.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

8. The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act ("SBA"). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. 15 U.S.C. 632.

9. The Commission has defined "small entity" for the auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. 47 CFR 21.961(b)(1). This definition of a small entity in the context of MDS auctions has been approved by the SBA. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas. Of 67 winning bidders, 61 qualified as small entities. One of these small entities, O'ahu Wireless Cable, Inc., was subsequently acquired by GTE Media Ventures, Inc., which did not qualify as a small entity for purposes of the MDS auction.

10. MDS is also heavily encumbered with licensees of stations authorized prior to the auction. The SBA has developed a definition of small entities for pay television services, which includes all such companies generating $11 million or less in annual receipts. 13 CFR 121.201. This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators which did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of $11 million annually. Therefore, for purposes of this IRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, and some of these providers may be affected by the proposed change to our rules.

11. There are presently 2032 ITFS licensees. All but 100 of these licenses are held by educational institutions (these 100 fall in the MDS category, above). Educational institutions may be included in the definition of a small entity. *See* 5 U.S.C. 601 (3)–(5). ITFS is a non-pay, non-commercial broadcast service that, depending on SBA categorization, has, as small entities, entities generating either $10.5 million or less, or $11.0 million or less, in annual receipts. *See* 13 CFR 121.210 (SIC 4833, 4841, and 4899). However, we do not collect, nor are we aware of other collections of, annual revenue data for ITFS licensees. Thus, we find that up to 1932 of these educational institutions are small entities that may be affected by the proposed change to our rules.

D. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

12. None.

E. Significant Alternatives Minimizing Impact on Small Entities and Consistent With Stated Objectives

13. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any party thereof, for small entities.

14. The Commission expects that the proposed rule amendments will have a minimal impact on small entities. Moreover, the *Further Notice of Proposed Rulemaking* does not propose any reporting requirements applicable to small entities. We tentatively conclude that our proposals in the *Further Notice of Proposed Rulemaking* would impose minimum burdens on small entities. We encourage comment on this tentative conclusion.

F. Federal Rules that Duplicate, Overlap, or Conflict With Proposed Rules:

15. None.

IV. Procedural Matters

A. Ordering Clauses

16. *Notice is Hereby Given* and *Comment is Sought* on the proposed clarification described in the *Further Notice of Proposed Rulemaking.*

17. The Commission's Office of Public Affairs, Reference Operations Division, *Shall Send* a copy of this *Report and Order on Further Reconsideration and Further Notice of Proposed Rulemaking,* including the Supplemental Final and Initial Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 21

Communications common carriers, Communications equipment, Reporting and recordkeeping requirements, Television.

47 CFR Part 74

Communications equipment, Education, Reporting and Recordkeeping requirements, Television.

Federal Communications Commission.

Magalie Román Salas,

Secretary.

[FR Doc. 00–19035 Filed 7–28–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA–1469, MM Docket No. 00–131, RM–9897]

Digital Television Broadcast Service; Dozier, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by. DTV Channel 11 can be allotted to Dozier, Alabama, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (31–33–16 N. and 86–23–32 W.). As requested, we propose to allot DTV Channel 11 to Dozier with a power of 1.0 and a height above average terrain (HAAT) of 487 meters.

DATES: Comments must be filed on or before September 18, 2000, and reply comments on or before October 3, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Marissa G. Repp, F. William LeBeau, Hogan & Hartson, L.L.P., 555 13th Street, NW., Washington, DC 20004–1106 (Counsel for Alabama Educational Television Commission).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–131, adopted July 25, 2000, and released July 27, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–19227 Filed 7–28–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF92; RIN 1018–AF95

Endangered and Threatened Wildlife and Plants: Notice of Public Hearing on Critical Habitat for the Spectacled Eider and Steller's Eider

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing.

SUMMARY: The Fish and Wildlife Service (Service) provides notice that a public hearing will be held on the proposed rules designating critical habitat for spectacled eider (Somateria fischeri) and Steller's eider (Polysticta stelleri). The spectacled eider and Steller's eider are found in marine waters and coastal wetlands in Alaska. All interested parties are invited to submit comments on these proposals.

DATES: The public hearing will begin at 7 p.m. Monday, August 28, 2000, in Barrow, Alaska.

ADDRESSES: The public hearing will be held at the Inupiat Heritage Center. Written data or comments on the spectacled eider should be submitted to the Field Supervisor, Ecological Services Field Office, Anchorage, U.S. Fish and Wildlife Service, 605 W. 4th Ave. Rm G–62, Anchorage, AK 99501; Fax: 907/271–2786. Written data or comments on the Steller's eider should be submitted to the Field Supervisor, Northern Alaska Ecological Services, 101 12th Ave., Rm 110, Fairbanks, AK, 99701.

FOR FURTHER INFORMATION CONTACT: For spectacled eiders contact Ann G. Rappoport, Field Supervisor, Ecological Services Field Office, Anchorage, U.S. Fish and Wildlife Service, 605 W. 4th Ave. Rm G–62, Anchorage, AK 99501; phone: 907/271–2787 or toll-free 800/272–4174; Fax: 907/271–2786. For Steller's eiders contact Ted Swem, Endangered Species Branch, at Northern Alaska Ecological Services, 101 12th Ave., Rm 110, Fairbanks, AK, 99701; phone: 907/456–0203; fax: 907/456–0208.

SUPPLEMENTARY INFORMATION:

Background

The spectacled eider is a large seaduck found in marine waters and coastal areas from the Nushagak Peninsula of southwestern Alaska north to Barrow and east nearly to the Canadian Border. The species may be threatened by habitat degradation, lead poisoning, increased predation rates, and hunting and other human disturbance. The Steller's eider is a seaduck found in coastal and marine waters from the eastern Aleutian Islands around the western and northern coasts of Alaska to the Canada border. The Alaska-breeding population of this species is thought to have decreased significantly, but the causes of the suspected decline are unknown.

On February 8, 2000, the Service published a proposed rule to designate critical habitat for the spectacled eider under the Endangered Species Act of 1973, as amended. On March 13, 2000, the Service published a proposed rule to designate critical habitat for the Alaska-breeding population of the Steller's eider under the Endangered Species Act of 1973, as amended. Section 4(b)(5)(E) of the Act requires that a public hearing be held if requested within 45 days of the proposal's publication in the **Federal Register**. Public hearing requests were received within the allotted time period from George Ahmaogak, Sr., Mayor, North Slope Borough, P.O. Box 69, Barrow, Alaska, and Mr. Jacob Adams, President, Arctic Slope Regional Corporation, P.O. Box 129, Barrow, Alaska.

The Service has scheduled this hearing for August 28, 2000, 7:00 p.m., in Barrow, Alaska. Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement to be presented to the Service at the start of the hearing. Legal notices announcing the dates, time, and location of the hearing are being published in newspapers concurrently with the **Federal Register** notice. The Service has also scheduled the following public meetings in Alaska: Nuiqsut (August 21, 2000), Wainwright (August 23, 2000), Point Lay (August 24, 2000), and Atqasuk (August 25, 2000). Meetings will begin at 7:00 p.m. Hearing and meeting dates are subject to change depending on weather, flight schedules, and other local conditions.

Written comments may be submitted until August 31, 2000, to the appropriate Service office as specified in the **ADDRESSES** section. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In certain circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The deadline for requesting public hearings on the proposed rule regarding critical habitat for the spectacled eider was March 24, 2000. The deadline for requesting public hearings for the proposed rule regarding critical habitat for Steller's eider was April 27, 2000. We have not extended these deadlines. In order to be considered valid, requests for public hearings must have been submitted in writing and received at the appropriate office by the relevant deadline.

Author

The primary author of this notice is Susan Detwiler, U.S. Fish and Wildlife Service, Division of Endangered Species, 1011 E. Tudor Rd., Anchorage, AK 99503.

Authority: The authority of this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: July 21, 2000.

David B. Allen,

Regional Director, Region 7, Fish and Wildlife Service.

[FR Doc. 00–19183 Filed 7–28–00; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 65, No. 147
Monday, July 31, 2000

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

Office of the Secretary

Commission on 21st Century Production Agriculture; Notice of Meeting

SUMMARY: The U.S. Department of Agriculture (USDA) has established the Commission on 21st Century Production Agriculture. In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is hereby given of a meeting in August of the Commission on 21st Century Production Agriculture. The purpose of the meeting on August 22, 2000 is a working session, which will address issues regarding agricultural policy initiatives to be included in the Commission report. This meeting is open to the public.

PLACE, DATE, AND TIME OF MEETING: This meeting will be held August 22, 2000 from 8:00 am–5:00 pm in Room 108–A, Whitten Building.

FOR FURTHER INFORMATION CONTACT: Mickey Paggi (202–720–3139), Director, Commission on 21st Century Production Agriculture, Room 3702 South Building, 1400 Independence Avenue, SW, Washington, DC 20250–0524.

Dated: July 25, 2000.

Keith J. Collins,

Chief Economist.

[FR Doc. 00–19191 Filed 7–28–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on August 29, 2000, at Tahoe Seasons Resort, 3901 Saddle Rd., South Lake Tahoe, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held August 29, 2000, beginning at 8 a.m. and ending at 3:30 p.m.

ADDRESSES: The meeting will be held at Tahoe Seasons Resort, 3901 Saddle Rd., South Lake Tahoe, CA.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road Suite 1, South Lake Tahoe, CA 96150, (530) 573–2773.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committees. Items to be covered on the agenda include: (1) Review of Expectations and Ground Rules; (2) New Chair Nominations; (3) FACA Regulations; (4) Lake Tahoe Federal Advisory Committee Program of Work, 2000–2001; (5) Review of the Federal Partnership Report; and (6) Public Comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: July 21, 2000.

Maribeth Gustafson,

Forest Supervisor.

[FR Doc. 00–19258 Filed 7–28–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Olympic Provincial Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Olympic PIEC Advisory Committee will meet on August 18, 2000. The meeting will be held at the Satsop Development Park conference room in Satsop, Washington (Satsop Development Park Office, 471 Lambert Road). The meeting will begin at 9:30 a.m. and end at approximately 3:30 p.m.

Agenda topics are (1) Field trip tour to the Satsop Industrial/ Telecommunications Park; (2) field discussion of the Satsop Demonstration Forest; (3) Open forum; and (4) Public comments. All Olympic Province Advisory Committee Meetings are open to the public. Interested citizens are encourage to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Ken Eldredge, Province Liaison, USDA, Olympic National Forest Headquarters, 1835 Black Lake Blvd., Olympia, WA 98512–5623, (360) 956–2323 or Dale Hom, Forest Supervisor, at (360) 956–2301.

Dated: July 17, 2000.

Dale Hom,

Forest Supervisor, Olympic National Forest.

[FR Doc. 00–19180 Filed 7–28–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

National Power Cooperative, Inc., Notice of availability of an environmental assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Availability of an Environmental Assessment.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) is issuing an environmental assessment with respect to the potential environmental impacts related to the construction of a 510 megawatt, natural gas fired combustion turbine electric generation plant in northwest Ohio. RUS may provide financing assistance to National Power Cooperative for the project.

FOR FUTHER INFORMATION CONTACT: Bob Quigel, Environmental Protection Specialist, Rural Utilities Service, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571,

telephone: (202) 720–0468. Bob's e-mail address is bquigel@rus.usda.gov. Information is also available from Keith A. Crabtree of National Power Cooperative at (614) 846–5757. Keith's e-mail address is kac@buckeyepower.com.

SUPPLEMENTARY INFORMATION: National Power Cooperative, a wholly owned subsidiary of the Ohio Rural Electric Cooperatives, proposes to construct the natural gas fired electric generation plant at one of two potential sites. One site is located in Van Wert County near Convoy, just southwest of the intersection of Mentzer Road and Shaner Road. The other site is located in Allen County, east of Cairo, north of the Lincoln Highway between Stewart Road and Slabtown Road.

The proposed project will be composed of three gas fired turbine generation units with an output of 170 megawatts each. The entire plant will require approximately 30 acres. No major natural gas pipeline or electric transmission line improvements will be needed at either site beyond the proposed site boundaries.

National Power Cooperative prepared an environmental analysis for RUS which describes the project and assesses its environmental impacts. RUS has conducted an independent evaluation of the environmental analysis and believes that it accurately assesses the impacts of the proposed project. This environmental analysis will serve as RUS' environmental assessment of the project. No significant impacts are expected as a result of the construction of the project.

The environmental assessment can be reviewed at the National Power Cooperative headquarters located at 6677 Busch Boulevard, Columbus, Ohio. This document will also be available at the Lima Public Library, 650 W. Market St., Lima, Ohio (419–228–5113) and it's Cairo Branch, 519 Wall St., Cairo, Ohio (419–641–7744) and at the Brumback Library, 215 W. Main St. in Van Wert, Ohio (419–238–2168) and it's Convoy Branch, 116 E. Tully St., Convoy, Ohio (419–749–4000). It can also be reviewed at the headquarters of RUS at the address provided above.

Questions and comments should be sent to RUS at the address provided. RUS will accept questions and comments on the environmental assessment for at least 30 days from the date of publication of this notice.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by the 7 CFR Part 1794, Environmental Policies and Procedures.

Dated: July 24, 2000.

Glendon D. Deal,

Acting Director, Engineering and Environmental Staff.

[FR Doc. 00–19190 Filed 7–28–00; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

[I.D. 072500E]

Submission for OMB Review; Comment Request

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

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Vessel Monitoring System for Atlantic Highly Migratory Species.

Form Number(s): None.

OMB Approval Number: 0648–0372.

Type of Request: Regular submission.

Burden Hours: 25.

Number of Respondents: 298.

Average Hour Per Response: 5 minutes.

Needs and Uses: Vessels fishing for Atlantic tuna and swordfish that use pelagic longline gear are required to install and operate vessel monitoring systems. Automatic position reports are submitted on an hourly basis whenever the vessel is at sea. NMFS proposes to revise the current requirements to add an installation checklist that vessel operators would follow and then submit to NMFS. The checklist provides information on the hardware and communications service selected by each vessel. NMFS will use the returned checklists to ensure that position reports are received and to aid NMFS in troubleshooting problems.

Affected Public: Business and other for-profit organizations.

Frequency: On occasion.

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, (202) 482–3272, Department of Commerce, Room 6086, 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: July 21, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–19276 Filed 7–28–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

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

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and requests for revocation in part.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke two antidumping duty orders in part.

EFFECTIVE DATE: July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Holly Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2000), for administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on Tapered Roller Bearings and Parts Thereof from the People's Republic of China and Polyethylene Terephthalate Film, Sheet and Strip (Pet Film) from the Republic of Korea.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than June 30, 2001.

	Period to be reviewed
Antidumping Duty Proceedings	
Canada: Oil Country Tubular Goods [1].	
A–122–506	06/01/99–05/31/00
Atlas Tube Inc.	
JAPAN: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products.	
A–588–846	02/19/99–05/31/00
Kawasaki Steel Corporation.	
Netherlands: Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide ("PPD-T").	
A–421–805	06/01/99–05/31/00
Twaron Products V.o.F.	
Republic of Korea: Polyethylene Terephthalate Film, Sheet and Strip (Pet Film).	
A–580–807	06/01/99–05/31/00
SKC Co., Limited.	
H.S. Industries Co., Ltd.	
Hyosung Corporation.	
Taiwan: Certain Stainless Steel Butt-Weld Pipe Fittings.	
A–583–816	06/01/99–05/31/00
Ta Chen Stainless Steel Pipe, Ltd.	
The People's Republic of China:.	
Tapered Roller Bearings [2].	
A–570–601	06/01/99–05/31/00

[1] This order is currently undergoing a sunset review pursuant to section 751(c) of the Act. If subsequent to publication of this initiation notice the order is revoked pursuant to sunset, any review (if initiated) or automatic liquidation instruction (if no review is initiated) will only cover through the last day prior to the effective date of revocation.

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of tapered roller bearings from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

Zhejiang changsan (Bearing) Group Co. Ltd.
Yantai CMC Bearing Co., Ltd.
Louyang Bearing Factory
Wafangdian Bearing Factory
Wafangdian Bearing Industry Co.
Wafangdian Bearing Factory, Liaoning Province
Shanghai China Bearing Factory
Shanghai Zhenhua Bearing General Company
SKF Automobile Bearing Co., Ltd. (SKF -Zhenhua or SKF—Zhenghua)
Beijing SKF—Nankou Railway Bearings Corp., Ltd.
Xi'an Haihong Bearings Factory
Dalian Metallurgical Bearings Group Corp.
Luoyang Dongsheng Bearings Corp., Ltd.
City Bearings Industrial Co., Ltd.
Fujian Yong'an Bearing Co., Ltd.
Ningbo Huanchi Group Corporation
Shandong Lunan Bearing Co., Ltd.
Xinjiang Bearing General Company
Liaoning Xingcheng Bearing Co., Ltd.
Nanjing Bearing Factory
Renben Group (Hangzhou Bearing Factory)
Qingdao No. 2 Bearing Factory
Shandong Liangshan Jingjiu Bearing Co., Ltd.
Hubei Xishui Bearing Factory
Zhangjiagang AAA Bearing Co., Ltd.
Baishan Bearing Co., Ltd.
Dandong Bearing Factory
Xiantao Special Bearing Co., Ltd.
Jamusi Bearing Factory
Luoyang Luoling Bearing Co., Ltd.
Shandong Wendeng Bearing Factory
Jingjiang Bearing Factory
Yunnan Honghe Bearing Factory
Dalong Bearing Factory
Beijing Renmin Bearing Factory
Xiangyang No. 2 Bearing Factory
Sichuang Dongfang Bearing Factory
Shanxi Baoji Bearing Factory
Shanghai Lianhe (United) Rolling Bearing Co., Ltd.
FAG Automotive Bearing (Shanghai) Co., Ltd.
Guyang Bearing Factory
Harbin Bearing Group Corporation
Xiangyang Automobile Bearing Co., Ltd.
Xiangyang Bearings
Chengdu Bearing Factory
Xibei Bearing Group Company, Ltd.
Changzhi Bearing Factory
Wuxi No. 3 Bearing Factory
Chongqing Bearing Industrial Company
Changge Bearing Factory
Guizhou Hongshan Bearing Factory I/E Corp.
Hunan Zhuzhou Bearing General Factory
Nanan General Bearing Works
Ningbo Cixi Nailin Bearings Co., Ltd.
Ningxia Xibei Bearing Factory
Shenyang General Bearings
Taizhou Guotai Bearing Co., Ltd.
Zhejiang Lishui Waite Bearing Industrial Co., Ltd.
Shijiazhuang Imported Bearings
China National Machinery & Equipment Import & Export Corporation, Beijing
China National Machinery and Equipment Import and Export Corporation (CMEC), Beijing
Henan Machinery and Equipment Import and Export Corporation
The China National Machinery and Equipment Import and Export Corporation, Henan Co., Ltd.
Guizhou Machinery Import and Export Corporation
Liaoning Machinery Import and Export Corporation
The China National Machinery and Equipment Import and Export Corporation, Liaoning Co., Ltd.
Liaoning MEC Group Co., Ltd.
Jilin Machinery Import and Export Corporation
China National Machinery Import and Export Corporation of Jilin Province
The China National Machinery and Equipment Import and Export Corporation, Guizhou Branch
China National Machinery and Equipment Import Export Company (CMEC), Zhejiang
Guizhou Machinery Import and Export Corporation Guiyang, Guizhou China
China National Automotive Industry Import & Export Corporation
China National Automotive Industry Import & Export Corporation, Guizhou China
China National Automotive Industry Guizhou Import/ Export Corp.

Xiangfan Machinery Import & Export (Group) Corp.
Xiangfan Machinery Foreign Trade Corporation
Xiangfan International Trade Corp.
Wanxiang Group Corporation
Shandong Machinery and Equipment Import & Export Corporation
Shandong Machinery and Equipment Import & Export Group Corporation
Hangzhou Metals, Minerals, Machinery & Chemical Import Export Corporation
China Metals, Minerals, Machinery & Chemicals Import Export Corporation
China Great Wall Industry Company
Premier Bearing & Equipment, Ltd.
Chin Jun Industrial, Ltd.
China National Machinery Import/ Export Corporation, Yantai
China National Machinery and Equipment Corp., Changsha
China National Machinery and Equipment Import Export Company (CMEC), Hunan
Shanghai Machinery & Equipment Import & Export Corp.
Shanghai Machinery Import/Export Corp.
Hubei Provincial Machinery Import & Export Corp.
Zhejang Machinery Import/Export Corp.
Tianshui Hailin Import & Export Corporation
Heilongjang Machinery Import/Export
Shandong Machinery Import/Export Corp.
Shanghai Pacific Machinery Import & Export Corp.
Shaanxi Machinery & Equipment I/E Corp.
Guangdong Machinery and Equipment Import & Export
Guangdong Machinery and Equipment Import & Export (Group) Corporation
East Sea Bearing Co., Ltd.
Shanghai General Bearing Co., Ltd.[3]
Direct Source International
Goldhill International Trading & Services Co.
Bilop International
China Aeolus Automotive Industries Import Export Corporation
Flying Dragon Machinery
Harbin Bearing Factory
Luoyang Bearing Research Institute of the Ministry Of Machinery & Electronics Industry
The Tenth Institute of Machinery Project Planning & Research of the Ministry of Machinery & Electronics Industry
Shanghai Rolling Bearing Factory
Xiangyang Bearing Factory
Shanghai Miniature Bearing Factory
Suzhou Bearing Factory
Chengdu General Bearing Factory
Hailin Bearing Factory
Hongshan Bearing Factory
Guiyang Bearing Factory
Haihong Bearing Factory
Lanzhou Bearing Factory
Xibei Bearing Factory
Beijing Bearing Research Institute
Changzhi People Factory
Beijing People Bearing Factory
Handan Bearing Factory
Jining Bearing Factory
Shenyang Bearing Factory
Chaoyang Bearing Factory
Shenyang Steel Ball Plant
Gongzhuling Bearing Factory
Wuxi Miniature Bearing Factory
Jiamusi Bearing Factory
Shanghai Bearing Technology Research Institute
Zhongguo Bearing Factory
Xiamen Bearing Factory
Shanghai Hongxing Bearing Factory
Shanghai Steel Ball Plant
Wuxi Bearing Factory
Hangzhou Bearing Factory
Hefei Bearing Factory
Huainan Bearing Factory
Longxi Bearing Factory
Jiangxi Bearing Factory
Liangshan Bearing Factory
Jinan Bearing Factory
Qingdao Steel Ball Plant
Huangshi Bearing Factory
Hhubei Steel Ball Plant
Changsha Bearing Factory
Guangzhou Bearing Factory
Guangxi Bearing Factory
Chongqing General Bearing Factory
Chongqing Steel Ball Plant
Yunnan Bearing Factory
Baoji Bearing Factory
Tianshui Bearing Instrument Plant
Beijing Needle Roller Bearing Factory
Tianjin Miniature Bearing Factory
Datong Bearing Factory
Hebei Rolling Mill Bearing Factory
Hebei Bearing Factory
Chengde Bearing Factory
The Third Bearing Factory of Shanxi
Anshan Bearing Factory
Yingkou Bearing Factory
Xingcheng Bearing Factory
Hunjiang Bearing Factory
Daan Bearing Factory
Shanghai Hunan Bearing Factory
Shanghai Pujiang Bearing Factory
Shanghai Changning Bearing Factory
Shanghai Needle Roller Bearing Factory
Xuzhou Revolving Support Factory
Taian Bearing Factory
Changshu Bearing Factory
Northwest Bearing Plant
Huangshi Bearing Factory
Guangxi Bearing Factory
Chongqing Bearing Factory
Yunnan Bearing Factory
Baoji Bearing Factory
Xiangtan Bearing Factory
Shaoguan Bearing Factory
Xinjiang Bearing Factory
The Second Bearing Factory of Xuzhou
Houzhou Bearing Factory
Yuxi Bearing Factory
Chifeng Bearing Factory
Huangyian Bearing Factory
Xingchang Bearing Factory
Liuan Bearing Factory
Zibo Bearing Factory
Jining Bearing Factory (Shandong)
Luoyang Dongfeng Bearing Factory
Kaifeng Bearing Factory
Ghangge Bearing Factory
The Second Machine Tools Electric Apparatus Plant of Anyang
Shashi Bearing Factory
Wuhan Bearing Factory
Changde Bearing Factory
Hengyang Bearing Factory
Hubei Bearing Factory
Yueyang Bearing Factory
Zhuzhou Bearing Factory
Fanchang Bearing Factory
Dongguan Bearing Factory
Chengdu Bearing Company
Sichuan Small Size Bearing Factory
Leshan Bearing Factory
Honghe Bearing Factory
Shaanxi Bearing Factory
Shijiazhuang Bearing factory
Shanxi Bearing Factory
Xiangtan Bearing Factory
Shaoguan Bearing Factory
Xinjiang Bearing Factory
Beijing-Pinggu Bearing Factory
Huhhot Bearing Factory
Dalian Bearing Instrument Plant
Nantong Bearing Factory
Qingjiang Bearing Factory
Wuhu Bearing Factory
Yiyang Bearing Factory
Zhongshan Bearing Factory
Handan Bearing Factory
Xingcheng Bearing Factory
China National Automotive Import & Export Corporation
China National Automotive Industry Import & Export Corporation
China National Automotive Industry Xiamen Import/Export Corporation/ Shanghai
China National Automotive Industry Xiamen Import/Export Corporation
China National Machinery/Equipment Corp., Harbin Branch
Kenwa Shipping Co., Ltd.
Far East Enterprising Co. (H.K.) Ltd.
Far East Enterprising (H.K.) Co.
Pantainer Express Line Co.
Intermodal Systems Ltd.
China Ningbo Int'l Economic & Technical Cooperation Corp.
China Ningbo Cixi Import/Export Corp.
Ningbo Xing Li Bearing Co., Ltd.
Ningbo Yinxian Import/Export Corp.
China

[3] With respect to Shanghai General Bearing Co., Ltd., this initiation notice only applies with respect to subject merchandise entered or sold during the period by Shanghai General Bearing Co., Ltd., but not produced by Shanghai General Bearing Co., Ltd.

Ningbo Yinxian Import/Export Corp. Hong Kong
Santoh HK Ltd.
Huuzhou Import and Export Corp.
Ideal Consolidators Ltd.
Cargo Services Far East Ltd.
China Resources Transportation & Godown Co., Ltd.
China Travel Service (HK) Ltd.
Fortune Network Ltd.
China Jiangsu Technical Import/Export Corp.
Kaitone Shipping Co., Ltd.
Profit Cargo Service Co., Ltd.
United Cargo Management, Inc.
Zhejang Expanded Bearing Co. China
Zhejang Expanded Bearing Co. Hong Kong
Zhejang Yongtong Company China
Zhejang Yongtong Company Hong Kong
Wafangdian Hyatt Bearing Manufacturing Co., Ltd.
China National Bearing Joint Export Corp.
PFL Pacific Forwarding, Ltd.
Sui Jun International Ltd.
Wah Shun Shipping Co., Ltd.
Aempac System, Inc.
Xinguang Ind. Prod. Import/Export Corp. of Sichuan Province
Sunway Line, Inc.
Trans-Ocean Bridge Services, Ltd.
Scanwell Container Line Ltd.
Scanwell Consolidators & Forwarders Ltd.
China Machine-Bearing International Corp.
Hyaline Shipping (HK) Co., Ltd.
Long Trend Ltd.
Waiwell Shipping Ltd.
Special Line Ltd.
YK Shipping International, Inc.
Blue Anchor Line Co.
Onan Shipping Ltd.
Shanghai Bearing Corporation
Wing Tung Wei (China) Ltd.
China Merchants S & E Co., Ltd.
Zhejiang Huangli Bearing Co., Ltd.
China Ningbo International Economic & Technical Cooperation Corporation
Ningbo Free Trade Zone
China National Machinery Imp. & Exp. Corp., Chongquing Branch
China-East Resources International
Distribution Services Ltd.
Inteks Inc. N.V.O.C.C.
Shaanxi Machinery & Equipment Imp. & Exp. Corp.
United Cargo Management Inc., Dalian Office
China Tiancheng Jiangsu Corp. Nanjing
China Tiancheng Jiangsu Corp. Shanghai
Zhejiang East Sea Bearing Co., Ltd.
Mayer Shipping Ltd. HK
Wholelucks Industrial Lim.
Peko Incorporation
O/B Manfred Development Co., (HK) Ltd.
Asia Stone Company Limited
Asia (USA) Inc. (Shanghai)
Xiamen Special Economic Zone Trade Co. Ltd.
SEC Line Ltd.
Jebsin Shipping Ltd.
Heika Express International Ltd.
J.P. Freight, Inc. Shanghai, PRC
Brilliant Ocean Ltd. Corp. (USA)
Transunion International Company Hong Kong
Roson Express Int'l Co., Ltd.
Streamline Shippers Association Hong Kong
Laconic Freight Forwarding Co., Ltd.
Mitrans Shipping Co., Ltd.
Distribution Services Ltd.
The Ultimate Freight Management (H.K.) Ltd.
Ideal Consolidators Ltd.
Luoyang Bearing Research Institute
Burlington Air Express Ltd.
Janco Int'l Freight Ltd.
Phoenix Shanghai China
Shanghai Dong Yu Materials Co., Ltd.
Guandong Lingnan Industrial Products
Guandong Lingnan Industrial Products Import & Export Corporation
Sunrise Industrial Technology Co.
Dongguan Industry Development Corp.
Hi Light Int'l, Inc.
Ever Concord Ltd.
Kin Bridge Express (USA) Inc.
Wice Marine Services Ltd.
Welley Shipping, Ltd.
WSA Lines, Ltd.
Triumph Express Service Int'l Ltd.
World Pacific Container Line Ltd.
Hellman Int'l Forwarders, Ltd.
Sino Eagle Co.
Ever Concord Ltd. (Guangzhou)
Ideal Ocean Lines, Ltd.
MSAS Cargo Int'l (Far East) Ltd.
Ocean Navigator Express Line
Sunrise Industries Technology Co.
China Mudanjiang Heading Factory
Apex Maritime Co., Inc.
Apex Maritime Co., Inc. (Dalian)
Dalian Machine Tool Accessories
Everich Shipping, Ltd.
Eternity Int'l Freight Forwarder
Ningbo Tiansheng Bearing Corp.
Trans-Am Sea Freight (HK) Ltd.
Zhong Shan Transportation Co., Ltd.
Shenzhen Rising Sun Bearing
Goldline Ltd.
Leader Express International (HK)
Transnation Shipping Ltd.
Mayer Shipping Ltd.
Shenzhen Jinyuan Industrial
Transunion International Co., Ltd.
Orient Star Consolidating
Capital Distribution Services
Buyers Consolidators Ltd.
Versatile Int'l Corp.
Panalpina China, Ltd.
Trust Freight Services, Inc.
Wah Hing Trading Co.
China North Industries
Point Talent International Ltd.
Votainer Far East BV
Seatop Shipping Ltd.
AEL Asia Express (HK) Ltd.
Kenwa Shipping Co., Ltd.
Wuxi Viking General
Exbo Shipping Co., Ltd.
Cots Shipping Co., Ltd.
Shenzen South China International
Oceanic Bridge International Inc.
Streamline Shippers Association
China Jiansu Technical Import & Export Corp.
Ever Concord Ltd.
Air Sea Container Line, Inc.
CL Consolidator Services Ltd.
OAG International, Inc.
Zhejiang Xinchang Foreign Economic
Heicone Jiang Machinery Import & Export
Wenling Foreign Trading Corporation
Scanwell Freight Express Co., Ltd.
C.U. Transport, Inc.
Shanghai Dongyu Materials Co.
EAS International
EAS International Transportation Co., Ltd.
Ensign Freight (China) Ltd.
Amec International Co., Inc.
China Dong Feng Motor
Rong Shang International Corp.
Air Sea Transport, Inc.
Air Sea Transport, Inc., Yantai Office
Air Sea Transport, Inc., Dalian
Wuhan Machinery & Equipment
STS Machinery, Inc.
USA International Business
Hang Cheong Shipping Co., Ltd.
Deckwell Sky Express, Inc.
China Machinery Equipment Import & Export Wuxi Co., Ltd.
China Machinery & Equipment Import & Export Co., Ltd. (Jiangying Bearing Works)
China Xian Import & Export Corporation
China Jiangsu Machinery and Equipment Import & Export Wuxi Co., Ltd.
China Jiangsu Machinery Import and Export (Group) Corp.
China National Packaging Import & Export Nanjing Corporation
China National Machinery and Equipment Import and Export Corporation (CMEC)
CMEC Sichan
CMEC Henan
CMEC Shandong
CMEC Jiangsu
CMEC Guangdong
CMEC Hebei
CMEC Hunan
CMEC Anhui
CMEC Hubei
CMEC Zhejiang
CMEC Liaoning
CMEC Jiangxi
CMEC Yunnan
CMEC Heilongjiang

CMEC Shaanxi
CMEC Guizhou
CMEC Fujian
CMEC Shanxi
CMEC Jilin
CMEC Gansu
CMEC Hainan
CMEC Qinghai
CMEC Chengdu
CMEC Zengzhou
CMEC Tsinan
CMEC Nanjing
CMEC Guangzhou
CMEC Shijiazhuang
CMEC Changsha
CMEC Hefei
CMEC Wuhan
CMEC Hangzhou
CMEC Shenyang
CMEC Nanchang
CMEC Kunming
CMEC Harbin
CMEC Xian
CMEC Guiyang
CMEC Fuzhou
CMEC Taiyuan
CMEC Changchun
CMEC Lanzhou
CMEC Haikou
CMEC Xining
CMEC Guangxi Zhuang
CMEC Nei Monggol
CMEC Xinjiang Uygur
CMEC Ningxia Hui
CMEC Xizang
CMEC Nanning
CMEC Hohhot
CMEC Urumqi
CMEC Yinchuan
CMEC Lhasa
CMEC Shanghai
CMEC Beijing
CMEC Tianjin
China National Machinery Import and Export Corporation (CMC)
Sichuan CMC
Henan CMC
Shandong CMC
Jiangsu CMC
Guangdong CMC
Hebei CMC
Hunan CMC
Anhui CMC
Hubei CMC
Zhejiang CMC
Liaoning CMC
Jiangxi CMC
Yunnan CMC
Heilongjiag CMC
Shaanxi CMC
Guizhou CMC
Fujian CMC
Shanxi CMC
Jilin CMC
Gansu CMC
Hainan CMC
Qinghai CMC
Chengdu CMC
Zengzhou CMC
Tsinan CMC
Nanjing CMC
Guangzhou CMC
Shijiazhuang CMC
Changsha CMC
Hefei CMC
Wuhan CMC
Hangzhou CMC
Shenyang CMC
Nanchang CMC
Kunming CMC
Harbin CMC
Xian CMC
Guiyang CMC
Fuzhou CMC
Taiyuan CMC
Changchun CMC
Lanzhou CMC
Haikou CMC
Xining CMC
Guangxi Zhuang CMC
Nei Monggol CMC
Xinjiang Uygur CMC
Ningxia Hui CMC
Xizang CMC
Nanning CMC
Hohhot CMC
Urumqi CMC
Yinchuan CMC
Lhasa CMC
Shanghai CMC
Beijing CMC
Tianjin CMC

Countervailing Duty Proceedings

None.

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: July 28, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 00–19285 Filed 7–28–00; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

Persulfates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 10, 2000, the Department of Commerce published the preliminary results of its second administrative review of the antidumping duty order on persulfates from the People's Republic of China. The merchandise covered by this order are persulfates, including ammonium, potassium, and sodium persulfates. The period of review is July 1, 1998, through June 30, 1999.

We have determined that sales of subject merchandise by Shanghai Ai Jian Import & Export Corporation have been made below normal value during the period of review. This review has now been rescinded with respect to Sinochem Jiangsu Wuxi Import & Export Trade Corporation.

EFFECTIVE DATE: July 31, 2000.

FOR FURTHER INFORMATION CONTACT: James Nunno or Shawn Thompson, AD/CVD Enforcement Group I, Office II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0783 or (202) 482–1776, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1998).

Background

On August 6, 1999, the Department published the preliminary results of administrative review of the antidumping duty order on persulfates from the People's Republic of China (PRC). *See Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission of Administrative Review,* 65 FR 18963 (April 10, 2000) (*Preliminary Results*). We gave interested parties an opportunity to comment on our preliminary results but received no comments. We are rescinding this review with respect to Sinochem Jiangsu Wuxi Import & Export Trade Corporation (Wuxi) because Wuxi reported no shipments and entry data provided by the Customs Service confirms that there were no period of review (POR) entries of persulfates sold by Wuxi. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

The products covered by this review are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, $(NH_4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$. Ammonium and potassium persulfates are currently classified under subheading 2833.40.60 of the Harmonized Tariff Schedule of the United States (HTSUS). Sodium persulfate is classified under HTSUS subheading 2833.40.20. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Separate Rates

Shanghai Ai Jian Import & Export Corporation (Ai Jian) has requested a separate, company-specific antidumping duty rate. In our *Preliminary Results*, we found that Ai Jian had met the criteria for the application of a separate antidumping duty rate. *See* 65 FR at 18964. We have not received any other information since the preliminary results which would warrant reconsideration of our separate rates determination with respect to this company. We therefore determine that Ai Jian in this administrative review should be assigned an individual dumping margin.

With respect to Guangdong Petroleum Chemical Import & Export Trade Corporation (Guangdong Petroleum), which did not respond to the Department's questionnaire, we determine that this company does not merit a separate rate. The Department assigns a single rate to companies in a non-market economy, unless an exporter demonstrates an absence of government control. We determine that Guangdong Petroleum is subject to the country-wide rate for this case because it failed to demonstrate an absence of government control.

Use of Facts Available

As explained in the preliminary results, the use of facts available is warranted in this case because Guangdong Petroleum, which is part of the PRC entity (*see* "Separate Rates" section above), has failed to respond to the original questionnaire and has refused to participate in this administrative review. Therefore, in accordance with sections 776(a)(2)(A) and (C) of the Act, we find that the use of total facts available is appropriate for the PRC-wide rate. Furthermore, in the preliminary results we determined that Guangdong Petroleum did not cooperate to the best of its ability with our requests for necessary information. Therefore, in accordance with section 776(b) of the Act, we applied adverse inferences when selecting among the facts available. As adverse facts available in this proceeding, in accordance with the Department's practice, we preliminarily assigned Guangdong Petroleum and all other exporters subject to the PRC-wide rate the petition rate of 119.02 percent, which is the PRC-wide rate established in the less than fair value (LTFV) investigation, and the highest dumping margin determined in any segment of this proceeding. As explained in the preliminary results, we determined that this margin was corroborated in accordance with section 776(c) of the Act in the LTFV investigation. *See Preliminary Results,* 65 FR at 18964–5. We have determined that no evidence on the record warrants revisiting this issue in these final results, and no interested party submitted comments on our use of adverse facts available. Accordingly, we continue to use the petition rate from the LTFV investigation of 119.02 percent.

Changes Since the Preliminary Results

Based on determinations in recent PRC cases, we have made certain changes in the margin calculation for Ai Jian. These changes are as follows:

Labor: We valued labor based on the regression-based wage rate for 1998 in accordance with 19 CFR 351.408(c)(3). For purposes of the preliminary results we used the 1997 data because more recent data was not yet available.

Electricity: We derived a surrogate value for electricity based on electricity price data published by the Center for Monitoring Indian Economy and the Conference of Indian Industries, on an electricity-specific price index published by the Reserve Bank of India. These data were recently used in the antidumping duty administrative review of manganese metal from the PRC. *See Notice of Final Results of Antidumping Duty Administrative Review of Manganese Metal from the People's Republic of China,* 65 FR 30067, 30067–8 (May 10, 2000); *Final Results Factors Valuation Memorandum from the Team to the File,* July 25, 2000.

Final Results of the Review

We determine that the following percentage weighted-average margins exist for the period July 1, 1998 through June 30, 1999:

Manufacturer/exporter	Margin (percent)
Shanghai Ai Jian Import & Export Corporation	2.62
PRC-wide Rate	119.02

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. With respect to export price sales, we aggregated the dumping margins for the reviewed sales and divided this amount by the total quantity of those sales for each importer. We will direct Customs to assess the resulting unit margins against the entered Customs quantities for the subject merchandise on each of that importer's entries under the relevant order during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of this antidumping duty administrative review for all shipments of persulfates from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Ai Jian will be the rate shown above; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) the cash deposit rate for all other PRC exporters, including Guangdong Petroleum, will be 119.02 percent, the PRC-wide rate established in the LTFV investigation; and (4) the cash deposit rate for non-

PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also 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 orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 771(i) of the Act.

Dated: July 25, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Adminstration.

[FR Doc. 00–19284 Filed 7–28–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–845]

Stainless Steel Sheet and Strip In Coils From Japan: Notice of Initiation and Preliminary Results of Changed Circumstance Antidumping Duty Review, and Intent To Revoke Order In Part

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

ACTION: Notice of initiation and preliminary results of changed circumstance antidumping duty review, and intent to revoke order in part.

SUMMARY: On October 22, 1999, the Department of Commerce (the Department) received a request on behalf of Techni Edge Manufacturing Co. ("Techni Edge") for a changed circumstance antidumping duty (AD) review and an intent to revoke in part the AD order with respect to specific stainless steel sheet and strip from Japan. On May 9, 2000, Techni Edge submitted further information in support of its request. The Department received a letter on May 12, 2000, from petitioners (Allegheny Ludlum, AK Steel (formerly Armco, Inc.), Washington Steel Division of Bethlehem Steel Corporation (formerly Lukens, Inc.), the United Steelworkers of America, AFL–CIO/CLC, the Butler Armco Independent Union and the Zanesville Armco Independent Organization, Inc.) indicating that they do not oppose Techni Edge's request for revocation in part of the order pursuant to a changed circumstance review with respect to the subject merchandise defined in the Scope of the Review section below.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or James C. Doyle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–0162 and (202) 482–0159, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351.

Background

On July 27, 1999, the Department published the Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order on stainless steel sheet and strip from Japan (64 FR 40565).

On October 22, 1999, and May 9, 2000, Techni Edge requested revocation in part of the AD order pursuant to section 751(b) of the Act with respect to specific stainless steel sheet and strip in coils from Japan, as described below.

Scope of the Review

The product covered by this exclusion request is certain stainless steel used for razor blades, medical surgical blades, and industrial blades and sold under proprietary names such as DSRIK7, DSRIK8, and DSRIK9. This stainless steel strip in coils is a specialty product with a thickness of 0.15 mm to 1.000 mm, or 0.006 inches to 0.040 inches, and a width of 6 mm to 50 mm, or 0.250 inches to 2.000 inches. The edge of the product is slit, and the finish is bright. The steel contains the following chemical composition by weight:

Carbon 0.65% to 1.00%
Silicon 1.00% maximum
Manganese 1.00% maximum
Phosporus 0.35% maximum
Sulfur 0.25% maximum
Nickel 0.35% maximum
Chromium 0.15% maximum
Molybdenum 0.30% maximum

Initiation and Preliminary Results of Changed Circumstance AD Review, and Intent to Revoke Order in Part

At the request of Techni Edge, and in accordance with sections 751(d)(1) and 751(b)(1) of the Act and section 351.216 of the Department's regulations, the Department is initiating a changed circumstance review of stainless steel sheet and strip from Japan to determine whether partial revocation of the AD order is warranted with respect to the stainless steel sheet and strip subject to this request. Section 782(h)(2) of the Act and section 351.222(g)(1)(i) of the Department's regulations provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have no further interest in the order, in whole or in part. In addition, in the event the Department determines that expedited action is warranted, section 351.221(c)(3)(ii) of the regulations permits the Department to combine the notices of initiation and preliminary results.

In accordance with section 751(b) of the Act, and sections 351.222(g)(l)(i) and 351.221(c)(3) of the Department's regulations, we are initiating this changed circumstance review and have determined that expedited action is warranted. Our decision to expedite this review stems from the domestic industry's lack of interest in applying the AD order to the specific stainless steel sheet and strip covered by this request. Additionally, in accordance with section 351.216(a) we find that the petitioners' affirmative statement of no interest constitutes good cause for the conduct of this review.

Based on the expression of no interest by petitioners and absent any objection by any other domestic interested parties, we have preliminarily determined that substantially all of the domestic producers of the like product have no interest in continued application of the

AD order to the stainless steel sheet and strip subject to this request. Therefore, we are notifying the public of our intent to revoke, in part, the AD order as it relates to imports of the merchandise described above from Japan.

Public Comment

Interested parties may submit case briefs and/or written comments no later than 14 days after the date of publication of these preliminary results. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 21 days after the date of publication. The Department will issue the final results of this changed circumstance review, which will include the results of its analysis raised in any such written comments, no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary determination. *See* section 351.216(e) of the Department's regulations.

If final revocation occurs, we will instruct the U.S. Customs Service to end the suspension of liquidation for the merchandise covered by the revocation on the effective date of the notice of revocation and to release any cash deposit or bond. *See* section 351.222(g)(4) of the Department's regulations. The current requirement for a cash deposit of estimated AD duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstance review.

This initiation of review and notice are in accordance with sections 751(b) of the Act (19 U.S.C. 1675(b)) and 19 CFR 351.216, 351.221, and 351.222.

Dated: July 24, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19283 Filed 7–28–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904: NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat; United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On July 7, 2000, CEMEX, S.A. de C.V. filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final antidumping duty sunset review made by the International Trade Administration, respecting Gray Portland Cement and Clinker from Mexico. This antidumping order was published in the **Federal Register** (65 FR 41049), on July 3, 2000. The NAFTA Secretariat has assigned Case Number USA–MEX–00–1904–05 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on July 7, 2000, requesting panel review of the final determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is August 7, 2000);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is August 21, 2000); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: July 10, 2000.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 00–19181 Filed 7–28–00; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072000D]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting via conference call of the Red Drum Stock Assessment Panel (RDSAP).

DATES: This meeting will be via conference call on August 14, 2000 beginning at 10:00 a.m. EST.

ADDRESSES: A listening station will be available at the following location: NMFS Southeast Regional Office, 9721 Executive Center Drive, North, St. Petersburg, FL 33702, Contact: Georgia Cranmore at 727–570–5305.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Peter Hood, Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The RDSAP will be convened via conference call on August 14, 2000 beginning at 10:00 a.m. EST. At the request of the Council, the RDSAP was asked to recommend how research needs listed in the RDSAP's most recent final report be accomplished, including cost estimates and a timeline for completion. Research needs included: 1) the age composition of the adults in offshore waters needs to be known, 2) the absolute abundance of adult red drum

in the Gulf of Mexico needs to be accurately measured, 3) random sampling of the commercial and recreational catches for age composition data is needed, 4) standardized stock assessment methodology needs to be developed that can accept area (state)-specific data and work with these within the context of a Gulf-wide stock assessment, 5) the area (state)-specific contributions of red drum to the offshore adult stock needs to be determined, 6) angler-release and shrimp-trawl bycatch mortality and the ages or lengths of caught-and-released fish needs to be determined, and 7) the length composition of the commercial catch needs to be measured.

The recommendations of the RDSAP will be reviewed by the Council at its next meeting held from September 11 to 14, 2000 in Mobile, AL.

Currently it is illegal to harvest or possess red drum in Federal waters.

A copy of the agenda can be obtained by contacting the Council (see **ADDRESSES**).

Although other non-emergency issues not on the agenda may come before the RDSAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the RDSAP will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

The listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by August 7, 2000.

Dated: July 24, 2000.

Richard W. Surdi,

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

[FR Doc. 00–19278 Filed 7–28–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072400D]

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council and its Demersal Species Committee, meeting as a Council Committee of the Whole, together with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Board; the Surfclam and Ocean Quahog Committee, meeting as a Council Committee of the Whole; the Atlantic Mackerel, Squid, and Butterfish Committee, meeting as a Council Committee of the Whole; the Coastal Migratory Committee, meeting as a Council Committee of the Whole, together with the ASMFC's Bluefish Board, and the Executive Committee will hold a public meeting.

DATES: The meetings will be held on Monday, August 14, 2000 to Thursday, August 17, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Sheraton Society Hill, One Dock Street, Philadelphia, PA. telephone: 215–238–6000.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: On Monday, August 14, the Council will meet from 9:30 a.m. until 5:00 p.m. On Tuesday, August 15, the Council will meet from 8:00 a.m. until 5:30 p.m. On Wednesday, August 16, the Council will meet from 8:00 a.m. until 5:00 p.m. On Thursday, August 17, the Executive Committee will meet from 8:00–9:00 a.m. The Council will meet from 9:00 a.m. until 1:00 p.m.

Agenda items for this meeting are: The swearing in of new and reappointed Council members; election of Council officers; report of the Stock Assessment Review Committee (SARC); scup management measures for 2001 (review Scup Monitoring Committee's recommendations regarding 2001 harvest level and commercial management measures, recommend 2001 harvest level and commercial management measures, review and discuss scup framework action modifying gear restricted areas); summer flounder management measures for 2001 (review and comment on NMFS August 1 action regarding 2000 quota, review Summer Flounder Monitoring Committee's recommendations regarding 2001 harvest level and commercial management measures, recommend 2001 harvest level and commercial management measures); black sea bass management measures for 2001 (review Black Sea Bass Monitoring Committee's recommendation regarding 2001 harvest level and commercial management measures, recommend 2001 harvest level and commercial management measures); bluefish management measures for 2001 (review the Bluefish Monitoring Committee's recommendations regarding 2001 harvest level and management measures, recommend bluefish harvest level and management measures for 2001); surfclam and ocean quahog management measures for 2001 (review staff recommendations for 2001 quotas and management measures, develop and recommend 2001 quota specifications for surfclam and ocean quahogs); Atlantic mackerel, squid and butterfish management measures (review Monitoring Committee's recommendations for 2001 quotas and management measures, develop and recommend 2001 quota specifications and management measures for Atlantic mackerel, squids, and butterfish); possible consideration of provisions for quota set asides for research and data collection for all species but surfclams and ocean quahogs; hear organizational and committee reports.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: July 24, 2000.

Richard W. Surdi,

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

[FR Doc. 00–19279 Filed 7–28–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072000C]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a joint public meeting of its Groundfish Oversight Committee and Groundfish Advisory Panel in August, 2000. Recommendations developed as a result of this meeting will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Tuesday, August 15, 2000, at 10 a.m.

ADDRESSES: The meeting will be held at the Radisson Warwick Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee and its advisors will conduct a joint meeting to continue development of management options for Amendment 13 to the Northeast Multispecies Fishery Management Plan. These groups will refine the alternative management approaches under consideration for Amendment 13 to the Northeast Multispecies Fishery Management Plan and will begin to develop definitive proposals. They will incorporate any guidance received from the full Council at its July Council meeting into their discussions. They also may review information on the current four year-round area closures, and develop preliminary options for changes to those areas.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: July 24, 2000.

Richard W. Surdi,

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

[FR Doc. 00–19280 Filed 7–28–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Navy

Public Hearings for the Draft Environmental Impact Statement/ Overseas Environmental Impact Statement (DEIS/OEIS) for the Naval Air Warfare Center Weapons Division (NAWCWPNS) Point Mugu Sea Range

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy (Navy) has prepared and filed with the U.S. Environmental Protection Agency (EPA) the DEIS/OEIS for the NAWCWPNS Point Mugu Sea Range. Public hearings will be held to provide information and receive oral and written comments on the DEIS/OEIS. Federal, state, local agencies, and interested individuals are invited to be present or represented at the hearings.

DATES: Public hearings will be held on August 14–16, 2000 from 6:00 p.m.–9:00 p.m. and August 21–22, 2000 from 6:00 p.m.–9:00 p.m.

ADDRESSES: August 14, 2000—Oxnard, California, Ventura Room, Oxnard performing Arts & Community Center, 800 Hobson Way; August 15, 2000—Camarillo, California, Orchid Room, 816 Camarillo Springs Road; August 16, 2000—Ventura, California, Holiday Inn, 450 East Harbor Boulevard; August 21, 2000—Santa Barbara, California, Fess Parker Doubletree Hotel, 633 East Cabrillo Boulevard; and August 22, 2000—Santa Monica, California, Community Room, Santa Monica Place (shopping mall), 395 Santa Monica Place.

FOR FURTHER INFORMATION CONTACT: Ms. Gina Smith, Naval Air Warfare Center Weapons Division, Facsimile (805) 989–0143. Additional information concerning this notice, including hearing dates and locations, may be obtained by calling toll-free (888) 217–9045 or by accessing the Point Mugu Sea Range EIS/OEIS Home Page at the following web address: http://www.nawcwpns.navy.mil/~pmeis.

SUPPLEMENTARY INFORMATION: The Navy has prepared and filed with the EPA the DEIS/OEIS for the NAWCWPNS Point Mugu Sea Range in accordance with the requirements of the National Environmental Policy Act of 1969 (42 USC Sections 4321–4345) and its implementing regulations (40 CFR Parts 1500 to 1508). The DEIS/OEIS also was prepared in accordance with the Executive Order 12114 (Environmental Effects Abroad of Major Federal Actions).

A Notice of Intent for this EIS was published in the **Federal Register** on July 25, 1997 (62 FR 40061). Five public scoping meetings were held in Oxnard, California; Camarillo, California; Ventura, California; Santa Monica, California; and Santa Barbara, California, between August 21 and August 27, 1997.

The NAWCWPNS Point Mugu Sea Range currently supports test and evaluation of sea, land, and air weapons systems, fleet training exercises, small-scale amphibious warfare training, and special warfare training. The proposed action is to continue these test and training activities on the Sea Range. The proposed action would also accommodate Theater Missile Defense (TMD) test and training, an increase in the current level of both Fleet training exercises and special warfare training, and facilities modernization at NAS Point Mugu and San Nicolas Island. The TMD test and training would include four distinct types of events: (a) Boost phase intercept (up to three events per year), (b) upper tier (up to three events per year); (c) lower tier (up to three events per year); and (d) nearshore intercept events at San Nicolas Island (up to eight events per year). One additional Fleet training exercise per year would be accommodated at the Sea Range as well as two additional special warfare exercises per year. The facilities modernization at NAS Point Mugu would involve the use of two existing launch pads to serve as new launch locations. At San Nicolas Island, a missile launcher, a vertical launcher, a new range support building, and five multiple-purpose instrumentation sites would be constructed.

The DEIS/OEIS addresses the potential effects of the proposed action on geology and soils, air quality, noise, water quality, fish and sea turtles, marine mammals, terrestrial biology, cultural resources, land use, socioeconomics, hazardous and nonhazardous materials, and public safety.

Alternatives developed and analyzed in the DEIS/OEIS include: the Preferred Alternative as described above; the No Action Alternative, in which current test and training operations would continue but increased testing and training on the Sea Range and associated facilities modernization at NAS Point Mugu and San Nicolas Island would not be accommodated; and the Minimum Components Alternative. The Minimum Components Alternative would continue current test and training operations and accommodate eight TMD nearshore intercept events, one additional fleet training exercise per year, and construction of five multiple-purpose instrumentation sites on San Nicolas Island. The proposed action is the preferred alternative because it best meets the project's purpose and need.

The DEIS has been distributed to various Federal, state, local agencies, elected officials, special interest groups, and public libraries. Complete copies of the document are available for public review at the following eight information repositories:

Oxnard Public Library, Reference Desk, 251 South "A" Street, Oxnard, California

NAS Point Mugu Library, Code 836300E, Building No. 3–10, North Mugu Road, Point Mugu, California

Ray D. Prueter Library, 510 Park Avenue, Port Hueneme, California

Camarillo Public Library, 3100 Ponderosa Drive, Camarillo, California

E.P. Foster Library, 651 E. Main Street, Ventura, California

Malibu Library, 23519 West Civic Center Way, Malibu, California

Santa Barbara Public Library, 40 East Anapamu Street, Santa Barbara, California

Santa Monica Public Library, Reference Section, 1343 6th Street, Santa Monica, California

The Executive Summary of the DEIS/OEIS may be viewed on the Point Mugu Sea Range EIS/OEIS Home Page at the following web address: http://www.nawcwpns.navy.mil/~pmeis.

The Navy will conduct five public hearings to receive oral and written comments concerning the DEIS/OEIS. At each hearing location, information poster stations will be available from 6:00 p.m. to 7:00 p.m., followed by the official hearing beginning at 7:00 p.m. and ending at 9:00 p.m. Navy representatives will be available at the hearings to receive information and comments from agencies and the public regarding issues of concern. Federal, state, local agencies, and interested parties are invited and urged to be present or represented at the hearing. Oral statements 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 for the DEIS/OEIS. 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 four minutes. Each individual may speak only once, and combining speaking times will not be permitted. Longer comments should be summarized at the public hearings and submitted in writing either at the hearings or mailed to Naval Air Warfare Center Weapons Division, Point Mugu Sea Range EIS, 521 9th Street, Point Mugu, CA 93042–5001 (Attn: Ms. Gina Smith, Code 8G0000E, facsimile (805) 989–0143). Written comments are requested not later than September 11, 2000.

Dated: July 26, 2000.

J.L. Roth,

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

[FR Doc. 00–19282 Filed 7–28–00; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before September 29, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 26, 2000.

Joseph Schubart,

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

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: The Leveraging Educational Assistance and Partnership (LEAP) Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 56; Burden Hours: 560.

Abstract: The LEAP Program uses matching Federal and State funds to provide a nationwide system of grants to assist postsecondary educational students with substantial financial need. State agencies use this performance report to account for yearly program performance. The Department uses the information collected to assess the accomplishment of the program goals and objectives and to aid in program management and compliance assurance.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify

the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe_Schubart@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. 00–19232 Filed 7–28–00; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.165A]

Magnet Schools Assistance Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

Purpose of Program: The Magnet Schools Assistance Program (MSAP) provides grants to eligible local educational agencies and consortia of such agencies to support magnet schools that are part of approved desegregation plans.

Eligible Applicants: Local educational agencies (LEAs) and consortia of such agencies.

Applications Available: August 23, 2000.

Deadline for Transmittal of Applications: December 22, 2000.

Deadline for Intergovernmental Review: February 23, 2001.

Estimated Available Funds: $92,000,000.

The actual level of funding, if any, is contingent on final congressional action. However, we are inviting applications at this time to allow enough time to complete the grant process before the end of the Federal fiscal year (October 1, 2001), if Congress appropriates funds for this program.

Estimated Range of Awards: $200,000—$3,000,000 per year.

Estimated Average Size of Awards: $1,533,000 per year.

Estimated Number of Awards: 60.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, 99 and 299. (b) The regulations for this program in 34 CFR part 280.

Priorities: Under 34 CFR 75.105(c)(2)(i) and 34 CFR 280.32(b)–(f), we award up to an additional 45 points to an application, depending on how well the application meets the five priorities listed below. These points are in addition to any points the applicant earns under the selection criteria in 34 CFR 280.31.

Need for assistance. (5 points) The Secretary evaluates the applicant's need for assistance under this part, by considering—

(a) The costs of fully implementing the magnet schools project as proposed;

(b) The resources available to the applicant to carry out the project if funds under the program were not provided;

(c) The extent to which the costs of the project exceed the applicant's resources; and

(d) The difficulty of effectively carrying out the approved plan and the project for which assistance is sought, including consideration of how the design of the magnet school project—e.g., the type of program proposed, the location of the magnet school within the LEA—impacts on the applicant's ability to successfully carry out the approved plan.

New or revised magnet schools projects. (10 points) The Secretary determines the extent to which the applicant proposes to carry out new magnet schools projects or significantly revise existing magnet schools projects.

Selection of students. (15 points) The Secretary determines the extent to which the applicant proposes to select students to attend magnet schools by methods such as lottery, rather that through academic examination.

Innovative approaches and systemic reform. (10 points) The Secretary determines the extent to which the project for which assistance is sought proposes to implement innovative educational approaches that are consistent with the State's and LEA's systemic reform plans, if any, under Title III of Goals 2000: Educate America Act.

Collaborative efforts. (5 points) The Secretary determines the extent to which the project for which assistance is sought proposes to draw on comprehensive community involvement plans.

Additionally, the Secretary gives preference to applications that use a significant portion of the program funds to address substantial problems in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture. Under 34 CFR 299.3 and 34 CFR 75.105(c)(2)(ii), the Secretary selects an application that meets this competitive priority over an application of comparable merit that does not meet this competitive priority.

Note: A list of areas that have been designated as Empowerment Zones and Enterprise Communities is published as an appendix to this notice.

The Secretary also invites applications that meet the following invitational priority. Projects that propose to help the LEA(s) improve one or more low-performing schools by:

- Selecting schools identified for school improvement or corrective action under Title I of the ESEA as magnet schools to be funded under this project;
- Maximizing the opportunity of students in low-performing schools to attend higher performing schools under the project for the reduction, elimination or prevention of minority group isolation;
- Effectively involving and informing parents about improvement goals for the MSAP schools as well as the goals for their own children; and
- Improving the quality of teaching and instruction in the low-performing schools to be funded under the project.

Under 34 CFR 75.105(c)(1) an application that meets the invitational priority does not receive a competitive or absolute preference over other applications.

SUPPLEMENTARY INFORMATION:

Applicants must submit with their applications one of the following types of plans to establish eligibility to receive MSAP assistance: (1) A desegregation plan required by a court order; (2) a plan required by a State agency or an official of competent jurisdiction; (3) a plan required by the Office for Civil Rights (OCR), United States Department of Education (ED), under Title VI of the Civil Rights Act of 1964 (Title VI plan); or (4) a voluntary plan adopted by the applicant.

Under the MSAP program regulations, applicants are required to provide all of the information required at § 280.20(a)–(g) in order to satisfy the civil rights eligibility requirements found in § 280.2(a)(2) and (b) of the regulations. This section of the notice describes those information requirements.

In addition to the particular data and other items for required and voluntary plans, described separately in the information that follows, an application must include:

- Signed civil rights assurances (included in the application package);
- A copy of the applicant's plan; and
- An assurance that the plan is being implemented or will be implemented if the application is funded.

Required Plans

1. Plans Required By a Court Order

An applicant that submits a plan required by a court must submit complete and signed copies of all court or State documents demonstrating that the magnet schools are a part of the approved plan. Examples of the types of documents that would meet this requirement include—

- A Federal or State court order that establishes or amends a previous order or orders by establishing additional or different specific magnet schools;
- A Federal or State court order that requires or approves the establishment of one or more unspecified magnet schools or that authorizes the inclusion of magnet schools at the discretion of the applicant.

2. Plans Required By a State Agency or Official of Competent Jurisdiction

An applicant submitting a plan ordered by a State agency or official of competent jurisdiction must provide documentation that shows that the plan was ordered based upon a determination that State law was violated. In the absence of this documentation, the applicant should consider its plan to be a voluntary plan and submit the data and information necessary for voluntary plans.

3. Title VI Required Plans

An applicant that submits a plan required by OCR under Title VI must submit a complete copy of the plan demonstrating that magnet schools are part of the approved plan.

4. Modifications to Required Plans

A previously approved desegregation plan that does not include the magnet school or program for which the applicant is now seeking assistance must be modified to include the magnet school component. The modification to the plan must be approved by the court, agency, or official that originally approved the plan. An applicant that wishes to modify a previously approved OCR Title VI plan to include different or additional magnet schools must submit the proposed modification for review and approval to the OCR Regional Office that approved its original plan.

An applicant should indicate in its application if it is seeking to modify its previously approved plan. However, all applicants must submit proof to ED of approval of all modifications to their plans by January 26, 2001.

Voluntary Plans

A voluntary plan must be approved by ED each time an application is submitted for funding. Even if we have approved a voluntary plan in an LEA in the past, the plan must be resubmitted to us for approval as part of the application.

An applicant submitting a voluntary plan must include in its application:

- A copy of a school board resolution or other evidence of final official action adopting and implementing the plan, or agreeing to adopt and implement the plan upon the award of assistance.
- Enrollment and other information as required by the regulations at § 280.20(f) and (g) for applicants with voluntary plans. Enrollment data and information are critical to our determination of an applicant's eligibility under a voluntary plan.

Narrow Tailoring

The purposes of the MSAP include the reduction, elimination or prevention of minority group isolation. In many instances, in order to carry out these purposes, districts take race into account in assigning students to magnet schools. In order to meet the requirements of Title VI of the Civil Rights Act of 1964 and the Fourteenth Amendment to the United States Constitution, applicants submitting voluntary plans that involve the use of race in decision making must ensure that the use of race satisfies strict scrutiny. That is, the use of race must be narrowly tailored to achieve the compelling interest in reducing, eliminating or preventing minority group isolation.

In order for us to make a determination that a voluntary plan involving a racial classification is adequate under Title VI the plan must be narrowly tailored. Among the considerations that affect a determination of whether the use of race in a voluntary plan is narrowly tailored are (1) whether the district tried or seriously considered race-neutral alternatives and determined that such measures have not been or would not be similarly effective, before resorting to race-conscious action; (2) the scope and flexibility of the use of race, including whether it is subject to a waiver; (3) the manner in which race is used, that is, whether race determines eligibility for a program or whether race is just one factor in the decision making process; (4) the duration of the use of race and whether it is subject to periodic review; and (5) the degree and type of burden imposed on students of other races.

Each of the considerations set out above should be specifically considered in framing a district's strategy. Some examples follow, although it must be recognized that the legal standards in this area are continuing to develop.

Race-Neutral Means

Before resorting to race-conscious action, school districts must try or seriously consider race-neutral alternatives and determine that they have not been or would not be similarly effective. One example of a race-neutral approach for applicants proposing to conduct a lottery for student admission to a magnet school would be to strengthen efforts to recruit a large pool of eligible students for the lottery that reflects the diverse racial and ethnic composition of the students in the applicant's district. If recruitment efforts are successful, the lottery should result in a racially and ethnically diverse student body.

It may be possible to broaden the appeal of a given magnet school by aggressively publicizing it, making application to it as easy as possible, and broadening the geographic area from which the school is intended to draw.

Use of Racial Criteria in Admissions

It may be permissible to establish a procedure whereby race is taken into account in admissions only if race-neutral steps are considered and a determination is made that they would not prove similarly effective. Racial caps are the most difficult use of race to justify under a narrow tailoring analysis.

The decision to consider race in admission decisions should be made on a school-by-school basis.

Scope and Flexibility

Over time, the enrollment at a magnet school may become stable and the school may attract a diverse group of students. At this point, use of race as a factor in admissions may no longer be necessary.

In some instances, exceptions to the use of race in admissions—where a relatively small number of students are adversely affected and their admission will not substantially affect the racial composition of the program—should be available.

Duration of the Program and Reexamination of the Use of Criteria

The school or school district should formally review the steps it has taken which involve the use of race on a regular basis, such as on an annual basis, to determine whether the use of race is still needed, or should be modified.

Effect on Students of Other Races

Where there are a number of magnet schools, it may also be possible to assign students to a comparable magnet school, if they are unable to gain admission to their first preference.

Enrollment and Other Information

A voluntary plan is a plan to reduce, eliminate, or prevent minority group isolation (MGI), either at a magnet school or at a feeder school—a school from which students are drawn to attend the magnet school. Under § 280.2, the establishment of the magnet school cannot result in an increase in MGI at a magnet school or any feeder school above the districtwide percentage of minority group students at the grade levels served by the magnet school.

The following example and those in subsequent sections of this notice are designed to assist applicants in the preparation of their application. The examples illustrate the types of data and information that have proven successful in the past for satisfying the voluntary plan regulation requirements.

District A has a districtwide percentage of 65.5 percent for its minority student population in elementary schools. District A has six elementary schools with the following minority student populations:

1. School A—67 percent.
2. School B—58 percent.
3. School C—64 percent.
4. School D—76 percent.
5. School E—47 percent.
6. School F—81 percent.

District A has five minority group isolated schools, *i.e.*, five schools with minority student enrollment of over 50 percent. District A seeks funding to establish a magnet program at School F to reduce MGI at that school. For District A to be eligible for a grant, the establishment of the magnet program at School F should not increase the minority student enrollment at feeder school C to more than 65.5 percent (the districtwide percentage). Also, the establishment of the magnet program should not increase the minority student enrollment at feeder schools A or D at all because those schools are already above the districtwide percentage for minority students. If projected enrollments at a magnet or feeder school indicate that there will be an increase in MGI, District A should provide an explanation in its application for the increase that shows it is not caused by the establishment of the magnet program. See the discussion below.

An applicant that proposes to establish new magnet schools must submit projected data for each magnet and feeder school that show that the magnet schools and all feeders will maintain eligibility for the entire three-year period of the grant. Projected data are included in the examples below.

Objective: Reduction of Minority Group Isolation in Existing Magnet Schools

In situations where the applicant intends to reduce minority isolation in an existing magnet program, whether in the magnet school or in one or more of the feeder schools, and minority isolation has increased, the applicant must provide data and information to demonstrate that the increase was not due to the applicant's magnet program, in accordance with § 280.20(g). See the following examples.

Options for Demonstrating Reduction

1. Magnet School Analysis

District Z has two existing magnet elementary schools. All of the other schools in the district are feeder schools to one or both of the magnet schools. District Z has six feeder schools and a districtwide minority enrollment of 60.0 percent at the elementary school level.

DISTRICT Z BASE YEAR DATA FOR MAGNET SCHOOLS

Magnet school (base year)	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Adams (1999)	449	382	85.1	67	14.9
Edison (1999)	387	306	79.1	81	20.9

Note: "Base Year" is the year prior to the year each school became a magnet.

DISTRICT Z CURRENT YEAR DATA FOR MAGNET SCHOOLS

Magnet school (base year)	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Adams	459	365	79.5	94	20.5
Edison	400	326	81.5	74	18.5

Since becoming a magnet school last year, Adams has decreased in MGI from 85.1 percent to 79.5 percent and the district projects that through operation as a magnet school MGI will continue to be reduced over the next three years. At Edison, the district projects that MGI will be reduced over the next three years through its operation as a magnet even though MGI increased 2.4 percent, from 79.1 percent to 81.5 percent since the school first became a magnet. Because of the increase, this school would be found ineligible unless the increase in MGI in the current year was not caused by the magnet school. This may be shown through data indicating an increase either in minority enrollment districtwide or in the area served by the magnet school.

If District Z's districtwide elementary school enrollment has become more minority isolated due to districtwide demographic changes in the student population and if a magnet or a feeder school's increase in MGI is *less* than the districtwide increase in MGI, ED will conclude that the school's increase in MGI was not the result of the magnet programs, but due to the overall effect of demographic changes in the district as a whole at the elementary level.

DISTRICT Z BASE YEAR DATA FOR FEEDER SCHOOLS

Feeder school	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Rose	398	301	75.6	97	24.4
Rocky Mt	289	199	68.9	90	31.1
Wheeler	239	144	60.3	95	39.7
King	289	144	49.8	145	50.2
Tinker	429	173	40.3	256	59.7
Holly	481	122	25.4	359	74.6
District-wide	2,961	1,771	59.8	1,190	40.2

DISTRICT Z CURRENT YEAR DATA FOR FEEDER SCHOOLS

Feeder school	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Rose	401	278	69.3	123	30.7
Rocky Mt	291	211	72.5	80	27.5
Wheeler	251	153	61.0	98	39.0
King	277	149	53.8	128	46.2
Tinker	424	198	46.7	226	53.3
Holly	475	130	27.4	345	72.6
District-wide	2,978	1,810	60.8	1,168	39.2

DISTRICT Z PROJECTED 2001–2002 DATA FOR MAGNET SCHOOLS

Magnet school	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Adams	469	349	74.4	120	25.6
Edison	410	312	76.1	98	23.9

DISTRICT Z PROJECTED 2002–2003 DATA FOR MAGNET SCHOOLS

Magnet school	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Adams	483	331	68.5	152	31.5
Edison	407	289	71.0	118	29.0

DISTRICT Z PROJECTED 2003–2004 DATA FOR MAGNET SCHOOLS

Magnet school	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Adams	489	307	62.8	182	37.2
Edison	409	266	65.0	143	35.0

DISTRICT Z PROJECTED 2001–2002 DATA FOR FEEDER SCHOOLS

Feeder school	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Rose	400	272	68.0	128	32.0
Rocky Mt	306	216	70.6	90	29.4
Wheeler	250	148	59.2	102	40.8
King	280	151	53.9	129	46.1
Tinker	417	232	55.6	185	44.4
Holly	447	170	38.0	277	62.0
District-wide	2,979	1,850	62.1	1,129	37.9

DISTRICT Z PROJECTED 2002–2003 DATA FOR FEEDER SCHOOLS

Feeder school	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Rose	396	265	66.9	131	33.1
Rocky Mt	293	202	68.9	91	31.1
Wheeler	259	153	59.1	106	40.9
King	291	169	58.1	122	41.9
Tinker	418	242	57.9	176	42.1
Holly	451	216	47.9	235	52.1
District-wide	2,998	1,867	62.3	1,131	37.7

DISTRICT Z PROJECTED 2003–2004 DATA FOR FEEDER SCHOOLS

Feeder school	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Rose	400	267	66.8	133	33.2
Rocky Mount	299	204	68.2	95	31.8
Wheeler	262	154	58.8	108	41.2
King	302	181	59.9	121	40.1
Tinker	419	244	58.2	175	41.8
Holly	441	227	51.5	214	48.5
District-wide	3,021	1,850	61.2	1,171	38.8

However, as with the Edison magnet, if the MGI in a magnet increases above the districtwide increase between the base year and the current year, an applicant must demonstrate that the magnet is not causing the problem. In order to show that the increase in MGI at a particular school is not the result of the operation of a magnet, a district should provide student transfer data on the number of minority and non-minority students who attend the magnet program from the other feeder schools in the district for the current year. If, by subtracting from the magnet enrollment those students who came from other schools, the MGI is higher than the actual MGI for the current year, it can be concluded that the increase in MGI was not caused by the magnet school.

CURRENT YEAR STUDENT TRANSFER DATA FOR MAGNET SCHOOLS THAT INCREASE IN MINORITY GROUP ISOLATION ABOVE THE DISTRICTWIDE AVERAGE

	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Edison (2000)	400	326	81.5	74	18.5
Students who transferred from feeder schools to Edison in order to attend magnet	50	31		19	
Edison enrollment with transfer students "returned" to feeder schools	350	295	84.3	55	15.7

CURRENT YEAR STUDENT TRANSFER DATA FOR FEEDER SCHOOLS THAT INCREASE IN MINORITY GROUP ISOLATION ABOVE THE DISTRICTWIDE AVERAGE

	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Rocky Mount (2000)	291	211	72.5	80	27.5
Students who transferred to Edison to attend magnet	10	8		2	
Students who transferred to Adams to attend magnet	6	6		0	
Rocky Mount enrollment if transfer students were "returned"	307	225	73.3	82	26.7

2. Feeder School Analysis

In District Z, two feeder schools whose MGI was greater than the districtwide average, Rocky Mount and Wheeler, increased in MGI by 3.7 percent and 0.7 percent respectively between the base year and the current year. Since Wheeler's MGI increase of 0.7 percent is less than the districtwide MGI increase of 1.0 percent for the same time period, Wheeler's MGI increase would be considered to be due to the demographic changes in the district and further scrutiny of Wheeler is not required.

Because Rocky Mount, a feeder school to magnet programs at Adams and Edison, increased in MGI over the districtwide average from 68.9 percent to 72.5 percent, this would make both Adams and Edison ineligible unless the district demonstrates that the increase was not because of the magnet programs. The clearest way for an applicant to show this is to provide student transfer data on the number of

minority and non-minority students who left Rocky Mount to attend magnet programs at Adams and Edison. (See student transfer data above.) By adding the number of students who transferred to the magnet programs to Rocky Mount's total enrollment, ED can determine whether the increase was due to the magnet program. If it can be demonstrated that without the magnet program, the MGI at the feeder school would be even higher, these magnet schools would be found eligible.

Some applicants may find that they are unable to provide the type of student transfer data referred to above. In some cases, these applicants may be able to present demographic or other statistical data and information that would satisfy the requirements of the statute and regulations. This demographic data must persuasively demonstrate that the operation of a proposed magnet school would reduce, eliminate, or prevent minority group isolation in the applicant's magnet schools and would not result in an increase of MGI at one of the applicant's feeder schools above the districtwide percentage for minority students at the same grade levels as those served in the magnet school. (34 CFR § 280.20(g)). For example, an applicant might include data provided to it by a local social service agency about the numbers and concentration of families in a recent influx of immigrants into the neighborhood or attendance zone of the feeder school.

3. Additional Base-Year Data

If an applicant believes that comparing a magnet program's current-year enrollment data with its base year enrollment data (*i.e.*, data from the year prior to the year each school became a magnet or a feeder) is misleading due to significant changes that have occurred in attendance zones or other factors affecting the magnet school or in the closing and combining of other schools with the magnet school, additional and more recent enrollment data for an alternative to the base year may be submitted along with a justification for its submission.

Objective: Conversion of an Existing School to a New Magnet Program

District X will convert Williams, an existing elementary school, to a new elementary magnet program. Currently, Williams has a minority enrollment of 94.67 percent. The district projects that the magnet program will reduce minority group isolation at Williams to 89 percent in the first year of the project. The projection of enrollment should be based upon reasonable assumptions and should clearly state the basis for these assumptions, e.g., parent or student interest surveys, or other objective indicators, such as waiting lists for other magnet schools in the district.

DISTRICT X CURRENT YEAR DATA FOR MAGNET & FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Hill (Magnet)	450	426	94.7	24	5.3
Shaw (Feeder)	398	179	44.9	219	55.1
Smith (Feeder)	477	186	39.0	291	61.0
District-wide	4,704	2,598	55.2	2,106	44.8

DISTRICT X PROJECTED 2001–2002 DATA FOR MAGNET & FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Hill (Magnet)	450	400	89.0	50	11.0
Shaw (Feeder)	404	195	48.3	209	51.7
Smith (Feeder)	471	191	40.5	280	59.5
District-wide	4,712	2,622	55.6	2,090	44.4

DISTRICT X PROJECTED 2002–2003 DATA FOR MAGNET & FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Hill (Magnet)	500	415	83.0	85	17.0
Shaw (Feeder)	406	203	50.0	203	50.0
Smith (Feeder)	482	205	42.5	277	57.5
District-wide	4,794	2,683	55.9	2,111	44.1

DISTRICT X PROJECTED 2003–2004 DATA FOR MAGNET & FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Hill (Magnet)	600	450	75.0	150	25.0
Shaw (Feeder)	410	215	52.4	195	47.6
Smith (Feeder)	477	229	48.0	248	52.0
District-wide	4,815	2,690	55.9	2,125	44.1

Objective: Construction of New Magnet School/Reopening a Closed School

District Y will construct a new school, Ashe, and open its magnet program at the beginning of the 2002–2003 school year. There is no pre-existing school, and consequently, it appears that no enrollment data are readily available to use as a comparison. However, the district estimates that if the proposed magnet school had opened as a "neighborhood school," without a magnet program designed to attract students from outside the "neighborhood" or attendance zone, it would have a minority enrollment of 67 percent. This estimate was based on national census tract data, supplemented by more current data on the neighborhood provided by the local county government. The district further reasonably anticipates, based on surveys and other indicators, that when the new school opens as a magnet school in 2002, it will have a minority enrollment of 58 percent.

Note that in this example, since the school will not open until the second year of the project (the 2002–2003 school year), data are needed only for the current year and each of the two years of the project during which the magnet at Ashe will be implemented.

DISTRICT Y CURRENT YEAR DATA FOR MAGNET AND FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Ashe (Magnet)	600	400	66.7	300	33.3
Mason (Feeder)	298	101	33.9	197	66.1
Vine (Feeder)	324	111	34.2	213	65.8
Districtwide	2,511	1,339	53.3	1,172	46.7

DISTRICT Y PROJECTED 2002–2003 DATA FOR MAGNET AND FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Ashe (Magnet)	600	348	58.0	252	42.0
Mason (Feeder)	290	133	45.8	157	54.2
Vine (Feeder)	332	144	43.4	188	56.6
Districtwide	2,559	1,352	52.8	1,207	47.2

DISTRICT Y PROJECTED 2003–2004 DATA FOR MAGNET AND FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Ashe (Magnet)	600	300	50.0	300	50.0
Mason (Feeder)	300	145	48.3	155	52.7
Vine (Feeder)	336	170	50.6	166	49.4
Districtwide	2,604	1,383	56.2	1,221	43.8

Objective: Reduction, Elimination, or Prevention of MGI at Targeted Feeder Schools

Many applicants apply for MSAP funding to reduce, eliminate, or prevent minority group isolation at a magnet school. However, some applicants have established magnet programs at schools that are not minority-isolated for the purpose of reducing, eliminating, or preventing minority isolation at one or more targeted feeder schools. The data requirements and analysis for this type of magnet program are the same as described for "Existing Magnet Schools." In this example, MGI is being reduced in each of the targeted feeder schools.

BASE YEAR DATA FOR MAGNET AND FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Grant (Magnet)	505	62	12.3	443	87.7
North (Feeder)	449	347	77.3	102	22.7
Lewis (Feeder)	404	355	87.9	49	12.1
Clark (Feeder)	471	459	97.5	12	2.5
Districtwide	1,829	1,223	66.9	606	33.1

CURRENT YEAR DATA FOR MAGNET AND FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Grant (Magnet)	520	105	20.2	415	79.8
North (Feeder)	453	338	74.6	115	25.4
Lewis (Feeder)	398	335	84.1	63	15.9
Clark (Feeder)	477	443	92.9	34	7.1
Districtwide	1,848	1,221	66.1	627	33.9

PROJECTED 2001–2002 DATA FOR MAGNET AND FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Grant (Magnet)	526	139	26.5	387	73.5
North (Feeder)	461	331	71.9	130	28.1
Lewis (Feeder)	424	347	81.8	77	18.2
Clark (Feeder)	499	427	85.5	72	14.5
District-wide	1,910	1,244	65.1	664	34.9

PROJECTED 2002–2003 DATA FOR MAGNET AND FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Grant (Magnet)	532	200	37.5	332	62.5
North (Feeder)	480	329	70.0	141	30.0
Lewis (Feeder)	445	344	77.2	101	22.8
Clark (Feeder)	528	425	80.4	103	19.6
District-wide	1,975	1,298	65.7	677	34.3

PROJECTED 2003–2004 DATA FOR MAGNET AND FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Grant (Magnet)	548	263	48.0	285	52.0
North (Feeder)	475	316	66.5	159	33.5
Lewis (Feeder)	460	342	74.4	118	25.6
Clark (Feeder)	536	402	75.0	134	25.0
Districtwide	2,019	1,323	65.5	696	44.1

Objective: Prevention of Minority Group Isolation

An applicant that applies for MSAP funding for the purposes of preventing minority isolation must demonstrate that without the intervention of the magnet program, the magnet school or targeted feeder school will become minority-isolated within the project period. Generally this may be documented by showing a trend in the enrollment data for the proposed school. For example, if a neighborhood school currently has a 45 percent minority enrollment and, for the last three years, minority enrollment has increased an average of three percent each year (36 percent, 39 percent, and 42 percent), it is reasonable to expect that, in three years, the school would exceed 50 percent thereby becoming minority-isolated during the project period without the intervention of a magnet. The applicant in this example should submit this enrollment data in its application.

The preceding examples are not intended to be an exhaustive set of examples. Applicants with questions about their desegregation plans and the information required in support of those desegregation plans (including applicants that find that these examples do not fit their circumstances and applicants that find that the enrollment data requested are unavailable or do not reflect accurately the effectiveness of their proposed magnet program) are encouraged to contact ED for technical assistance, prior to submitting their application by calling the contact person listed under the **FOR FURTHER INFORMATION CONTACT** heading.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20749–1398. Telephone (toll free): 1–877–576–7827. 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 at its Web site: *http://www.ed.gov/pubs/edpubs.html,* or you may contact ED Pubs at its e-mail address: *Edpubs@inet.ed.gov*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.165A.

FOR FURTHER INFORMATION CONTACT: Steven L. Brockhouse, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E112, Washington, DC

20202–6140. Telephone (202) 260–2476, or via Internet: OESE_MSAP@ed.gov

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

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting ED Pubs. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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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: 20 U.S.C. 3021–3032.

Dated: July 24, 2000.

Michael Cohen,

Assistant Secretary, Elementary and Secondary Education.

Appendix—Empowerment Zones and Enterprise Communities

EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

Empowerment Zones

California: Los Angeles
California: Oakland
Georgia: Atlanta
Illinois: Chicago
Kentucky: Kentucky Highlands*
Maryland: Baltimore
Massachusetts: Boston
Michigan: Detroit
Mississippi: Mid Delta*
Missouri/Kansas: Kansas City, Kansas City
New York: Harlem, Bronx
Ohio: Cleveland
Pennsylvania/New Jersey: Philadelphia, Camden
Texas: Houston
Texas: Rio Grande Valley*

Enterprise Communities

Alabama: Birmingham
Alabama: Chambers County*
Alabama: Greene, Sumter Counties*
Arizona: Phoenix
Arizona: Arizona Border*
Arkansas: East Central*
Arkansas: Mississippi County*
Arkansas: Pulaski County
California: Imperial County*
Michigan: Five Cap*
Michigan: Flint
Michigan: Muskegon
Minnesota: Minneapolis
Minnesota: St. Paul
Mississippi: Jackson
Mississippi: North Delta*
Missouri: East Prairie*
Missouri: St. Louis
Nebraska: Omaha
Nevada: Clarke County, Las Vegas
New Hampshire: Manchester
New Jersey: Newark
New Mexico: Albuquerque
New Mexico: Mora, Rio Arriba, Taos
California: L.A., Huntington Park
California: San Diego
California: San Francisco, Bayview, Hunter's Point
California: Watsonville*
Colorado: Denver
Connecticut: Bridgeport
Connecticut: New Haven
Delaware: Wilmington
District of Columbia: Washington
Florida: Jackson County*
Florida: Tampa
Florida: Miami, Dade County
Georgia: Albany
Georgia: Central Savannah*
Georgia: Crisp, Dooley Counties*
Illinois: East St. Louis
Illinois: Springfield
Indiana: Indianapolis
Iowa: Des Moines
Kentucky: Louisville
Louisiana: Northeast Delta*
Louisiana: Macon Ridge*
Louisiana: New Orleans
Louisiana: Ouachita Parish
Massachusetts: Lowell
Massachusetts: Springfield Counties*
New York: Albany, Schenectady, Troy
New York: Buffalo
New York: Newburgh, Kingston
New York: Rochester
North Carolina: Charlotte
North Carolina: Halifax, Edgecombe, Wilson Counties*
North Carolina: Robeson County*
Ohio: Akron
Ohio: Columbus
Ohio: Greater Portsmouth*
Oklahoma: Choctaw, McCurtain Counties*
Oklahoma: Oklahoma City
Oregon: Josephine*
Oregon: Portland
Pennsylvania: Harrisburg
Pennsylvania: Lock Haven*
Pennsylvania: Pittsburgh
Rhode Island: Providence
South Dakota: Deadle, Spink Counties*
South Carolina: Charleston
South Carolina: Williamsburg County*
Tennessee: Fayette, Haywood Counties*
Tennessee: Memphis
Tennessee: Nashville
Tennessee/Kentucky: Scott, McCreary Counties*
Texas: Dallas
Texas: El Paso
Texas: San Antonio
Texas: Waco
Utah: Ogden
Vermont: Burlington
Virginia: Accomack*
Virginia: Norfolk
Washington: Lower Yakima*
Washington: Seattle
Washington: Tacoma
West Virginia: West Central*
West Virginia: Huntington
West Virginia: McDowell*
Wisconsin: Milwaukee

[FR Doc. 00–19198 Filed 7–28–00; 8:45 am]

BILLING CODE 4001–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2571–001]

Duquesne Light Company; Notice of Filing

July 19, 2000.

Take notice that on July 14, 2000, pursuant to the Commission's Order dated June 15, 2000, Duquesne Light Company (Duquesne) tendered for filing under Duquesne's market-based rate tariff, an amended long-term service agreement between Duquesne and Orion Power Midwest, L.P., (Orion).

Duquesne reports that service commenced to Orion on April 28, 2000.

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 August 4, 2000. 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. 00–19195 Filed 7–28–00; 8:45 am]

BILLING CODE 6717–01–M

* Denotes rural designee.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2396–001]

Energetix, Inc.; Notice of Filing

July 25, 2000.

Take notice that on July 14, 2000, Energetix, Inc., tendered for filing with the Commission revisions to its market-based rate tariff, FERC Electric Rate Schedule No. 1 and its code of conduct.

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 August 4, 2000. 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. 00–19194 Filed 7–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–173–000]

Entergy Nuclear New York Investment Company I; Notice of Amendment to Application for Commission Determination of Exempt Wholesale Generator Status

July 25, 2000.

Take notice that on July 21, 2000, Entergy Nuclear New York Investment Company I, c/o RL&F Service Corp., One Rodney Square, 10th Floor, Tenth & King Street, Wilmington, DE, filed with the Federal Energy Regulatory Commission an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. The amendment affirms that the applicant will engage indirectly and exclusively through one or more affiliates as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935 in the business of owning and/or operating eligible facilities in the United States and selling electric energy at wholesale.

Any person desiring to be heard concerning the amended application for exempt wholesale generator status should file a motion to intervene or comments 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). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application. All such motions and comments should be filed on or before August 4, 2000, and must be served on the applicant. 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 or on the Internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–19196 Filed 7–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–176–000]

Entergy Nuclear New York Investment, Company II Notice of Amendment to Application for Commission Determination of Exempt Wholesale Generator Status

July 25, 2000.

Take notice that on July 21, 2000, Entergy Nuclear New York Investment Company II, c/o RL&f Service Corp., One Rodney Square, 10th Floor, Tenth & King Street, Wilmington, DE, filed with the Federal Energy Regulatory Commission an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. The amendment affirms that the applicant will engage indirectly and exclusively through one or more affiliates, as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, in the business of owning and/or operating eligible facilities in the United States and selling electric energy at wholesale.

Any person desiring to be heard concerning the amended application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE, 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). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application. All such motions and comments should be filed on or before August 4, 2000, and must be served on the applicant. 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 or on the Internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–19197 Filed 7–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–93–000, et al.]

Midland Cogeneration Venture Limited Partnership, et al.; Electric Rate and Corporate Regulation Filings

July 25, 2000.

Take notice that the following filings have been made with the Commission:

1. Midland Cogeneration Venture Limited Partnership

[Docket No. EL00–93–000]

Take notice that on July 24, 2000, Midland Cogeneration Venture Limited Partnership (MCV) filed a Petition for Declaratory Order and Request for Expedited Consideration. MCV states that the purpose of the filing is to obtain an order declaring that the Commission would not consider MCV to be a person primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration or small power production facilities) in violation of Section 3(18) of the Federal Power Act, 16 U.S.C. 791a et seq.(1994), if MCV complies with Consumers Energy Company's (Consumers) Open-Access Transmission Tariff (OATT) by purchasing Delivery Scheduling and Balancing Service, a service which

transmission customers are required to take or supply under Schedule 4A of Consumers' OATT.

Comment date: August 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Gas and Electric Company

[Docket No. ER00–3214–000]

Take notice that on July 20, 2000, Pacific Gas and Electric Company (PG&E), tendered for filing as a change in rate schedule, a revised "Interconnection Agreement between Northern California Power Agency and Pacific Gas and Electric Company" (PG&E–NCPA IA). The PG&E–NCPA IA, dated November 26, 1991, was accepted with its appendices for filing by the Commission on May 12, 1992, and designated as PG&E Rate Schedule FERC No. 142. The changes to the PG&E–NCPA IA consist of revised sections of Appendices A and E thereto and a Letter Agreement for the Sale of Additional Short-Term Firm Transmission Service, dated June 2, 2000 (Letter Agreement). The changes to Appendices A and E include certain market-based energy rates. The Letter Agreement provides for NCPA to pay the backbone rate for Short-Term Firm Transmission Type I Service beginning April 1, 1998.

Copies of this filing were served upon NCPA, the California Independent System Operation Corporation, the California Power Exchange Corporation and the California Public Utilities Commission.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. New York Independent System Operator, Inc.

[Docket No. ER00–3215–000]

Take notice that on July 20, 2000, the New York Independent System Operator, Inc. (NYISO), tendered for filing a Revision to Procedures Governing Auctions of Transmission Congestion Contracts and a proposed tariff change related thereto.

A copy of this filing was served upon all parties who have executed Service Agreements under the ISO OATT.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Mid-Atlantic Energy Development Company

[Docket No. ER00–3216–000]

Take notice that on July 20, 2000, Mid-Atlantic Energy Development Company (Mid-Atlantic), tendered for filing a Power Sales Agreement dated July 21, 2000 between Mid-Atlantic as seller and Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company (collectively, the FirstEnergy Operating Companies) as purchasing parties (the Agreement).

Mid-Atlantic states that its has acquired and is installing three new natural gas-fired combustion turbines, each of which has a generation capacity of approximately 130 MW. Mid-Atlantic states that under the Agreement, it will sell all of the capacity and associated energy from those units to the FirstEnergy Operating Companies at negotiated rates.

Mid-Atlantic is proposing to make the Agreement effective as of July 21, 2000.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Duquesne Light Company

[Docket No. ER00–3217–000]

Take notice that on July 20, 2000, pursuant to North American Electric Reliability Council, 91 FERC ¶ 61,122 (2000) (NERC), Duquesne Light Company tendered for filing a notice of a generic amendment to its Open Access Transmission Tariff (OATT) reflecting the North American Electric Reliability Council (NERC) revised Transmission Loading Relief (TLR) procedures accepted by the Commission in NERC.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Portland General Electric Company

[Docket No. ER00–3218–000]

Take notice that on July 20, 2000, Portland General Electric Company (PGE), tendered for filing under PGE's Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 11 (Docket No. ER99–1263–000), an executed Service Agreement for Service at Market-Based Rates with Tractebel Energy Marketing, Inc.

Pursuant to 18 CFR Section 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR Section 35.3 to allow the Service Agreement to become effective June 27, 2000.

A copy of this filing was caused to be served upon Tractebel Energy Marketing, Inc., as noted in the filing letter.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. EnergyUSA-TPC Corporation

[Docket No. ER00–3219–000]

Take notice that on July 20, 2000, EnergyUSA-TPC Corporation (EnergyUSA), an indirect wholly owned subsidiary of NiSource, Inc., tendered for filing its FERC Electric Rate Schedule 1 and a Statement of Policy and Code of Conduct.

EnergyUSA seeks an effective date of September 18, 2000 for the tariff sheets submitted with this filing.

EnergyUSA states that it meets all requirements to sell electric energy and capacity at market based rates. In addition, EnergyUSA states Statement of Policy and Code of Conduct meets all Commission requirements regarding transactions and relationships with its franchised public utility affiliates.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. FirstEnergy System

[Docket No. ER00–3220–000]

Take notice that on July 20, 2000, FirstEnergy System tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for H.Q. Energy Services (U.S.) Inc., the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is July 19, 2000, for the above mentioned Service Agreement in this filing.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. FirstEnergy System

[Docket No. ER00–3221–000]

Take notice that on July 20, 2000, FirstEnergy System filed Service Agreements to provide Firm Point-to-Point Transmission Service for H.Q. Energy Services (U.S.) Inc., the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is July 19, 2000 for the above mentioned Service Agreement in this filing.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Illinois Power Company

[Docket No. ER00–3222–000]

Take notice that on July 20, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Consumers Energy Company (d/b/a Consumers Energy Traders) 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 July 15, 2000.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Illinois Power Company

[Docket No. ER00–3223–000]

Take notice that on July 20, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Amerada Hess Corporation 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 June 23, 2000.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Virginia Electric and Power Company

[Docket No. ER00–3224–000]

Take notice that on July 20, 2000, Virginia Electric and Power Company (Virginia Power or the Company), tendered for filing a Service Agreement for Long Term Firm Point-to-Point Transmission Service with Virginia Power's merchant function, The Wholesale Power Group. This Agreement will be designated as Service Agreement No. 292 under Company's FERC Electric Tariff, First Revised Volume No. 5.

The foregoing Service Agreement is tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide long term firm point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of July 19, 2000, the date of filing of the Service Agreement.

Copies of the filing were served upon The Wholesale Power Group, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER00–3225–000]

Take notice that on July 20, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and Roswell Energy, Inc. Under the Service Agreement, Virginia Power will provide services to Roswell Energy, Inc. 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 July 19, 2000, the date of filing of the Service Agreement.

Copies of the filing were served upon Roswell Energy, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Virginia Electric and Power Company

[Docket No. ER00–3226–000]

Take notice that on July 20, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing a Letter of Termination of the Service Agreement between Virginia Electric and Power Company and Duke Energy Trading and Marketing, L.L.C. (formerly Louis Dreyfus Electric Power Inc.) dated January 1, 1995 and approved by the FERC in a letter order on February 14, 1995 in Docket No. ER95–417–000. Virginia Power requests that the Letter of Termination be designated as First Revised Service Agreement No. 8 under FERC Electric Tariff, Original Volume No. 4.

Virginia Power also respectfully requests an effective date of the termination of the Service Agreement of September 20, 2000, which is sixty (60) days from the date of filing of the Letter of Termination.

Copies of the filing were served upon Duke Energy Trading and Marketing, L.L.C., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. MidAmerican Energy Company

[Docket No. ER00–3227–000]

Take notice that on July 20, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission a Firm Transmission Service Agreement with Cinergy Services, Inc. (Cinergy), dated June 30, 2000, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of June 30, 2000 for the Agreement with Cinergy, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Cinergy, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. American Energy Company

[Docket No. ER00–3228–000]

Take notice that on July 20, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission a Non-Firm Transmission Service Agreement with IES Utilities, Inc. (IES), dated July 10, 2000, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of July 10, 2000, for the Agreement with IES, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on IES, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Midwest Generation, LLC

[Docket No. ER00–3230–000]

Take notice that on July 20, 2000, Midwest Generation, LLC. (Midwest), tendered for filing an amendment to Service Agreement No. 1 under Midwest's FERC Electric Tariff, Original Volume No. 1 (the Collins Generating Station Power Purchase Agreement between Commonwealth Edison Company and Midwest).

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. MidAmerican Energy Company

[Docket No. ER00–3231–000]

Take notice that on July 20, 2000, MidAmerican Energy Company (MidAmerican), tendered for filing with the Commission a Notice of Cancellation pursuant to Section 35.15 of the Commission's regulations. MidAmerican requests that the following rate schedule be canceled effective as of 11:59 p.m. on May 31, 1998:

1. Full Requirements Power Agreement dated July 6, 1988, between Iowa Public Service Company (a predecessor company of MidAmerican) and City of Estherville, Iowa. This Agreement has been designated as MidAmerican Service Agreement No. 4 under FERC Electric Tariff No. 7.

MidAmerican requests a waiver of Section 35.15 to the extent that this Notice of Cancellation has not been filed within the time required by such section. MidAmerican inadvertently failed to submit the Notice of Cancellation upon expiration of the agreement under its own terms.

MidAmerican has mailed a copy of this filing to City of Estherville, Iowa, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities commission.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Southern Company Services, Inc.

[Docket No. ER00–3232–000]

Take notice that on July 20, 2000, Southern Company Services, Inc. (SCS), on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (Southern Companies), tendered for filing a Notice of Cancellation of the following rate schedules:

1. Service Schedule B (Short Term Power) and Service Schedule C (Economy Interchange) to the Interchange Service Contract dated March 18, 1996 by and between Tampa Electric Company, Southern Companies, and SCS (FERC Rate Schedule—Southern Operating Cos. No. 93).

2. Service Schedule B (Short Term Power) and Service Schedule C (Economy Interchange) to the Interchange Service Contract dated February 9, 1996 by and between Western Gas Resources Power Marketing, Inc., Southern Companies, and SCS (FERC Rate Schedule—Southern Operating Cos. No. 88).

3. Service Schedule B (Short Term Power) and Service Schedule C (Economy Interchange) to the Interchange Contract dated June 30, 1991 by and between Cajun Electric Power Cooperative, Inc., Southern Companies, and SCS (FERC Rate Schedule—Southern Operating Cos. No. 76).

4. Service Schedule B (Short Term Power) and Service Schedule C (Economy Interchange) to the Interchange Contract dated December 18, 1991 by and between Duke Power Company, Southern Companies, and SCS (FERC Rate Schedule—Southern Operating Cos. No. 77).

5. Service Schedule B (Short Term Power) and Service Schedule C (Economy Interchange) to the Interchange Service Contract dated November 3, 1995 by and between Koch Power Services Inc., Southern Companies, and SCS (FERC Rate Schedule—Southern Operating Cos. No. 82).

6. Service Schedule C (Economy Interchange) to the Interchange Contract dated December 22, 1988 by and between Florida Power Corporation, Southern Companies, and SCS (FERC Rate Schedule—Southern Operating Cos. No. 70).

7. Service Schedule B (Short Term Power) and Service Schedule C (Economy Interchange) to the Interchange Service Contract dated February 9, 1996 by and between Intercoast Power Marketing Company, Southern Companies, and SCS (FERC Rate Schedule—Southern Operating Cos. No. 90).

These service schedules set forth the general terms and conditions governing certain transactions for Short Term Power and Economy Interchange service between Southern Companies and the above referenced parties, including the sale of such services by Southern Companies. Each of these service schedules has been terminated by the mutual agreement of the respective parties to each interchange contract listed above because such parties no longer desire to conduct transactions under such service schedules.

Comment date: August 10, 2000, 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, 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 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. 00–19226 Filed 7–28–00; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6842–9]

Agency Information Collection Activities; PCBs: Consolidated Reporting and Recordkeeping Requirements; Submission to OMB

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the Information Collection Request (ICR) entitled: "PCBs: Consolidated Reporting and Recordkeeping Requirements" (EPA ICR No. 1446.07, OMB No. 2070–0112) has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden. The Agency is requesting that OMB renew for 3 years the existing approval for this ICR, which is scheduled to expire on October 31, 2001. A **Federal Register** notice announcing the Agency's intent to seek the renewal of this ICR and the 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on January 10, 2000 (65 FR 1366). EPA received no comments on this ICR during the comment period.

DATES: Additional comments may be submitted on or before August 30, 2000.

ADDRESSES: Send comments, referencing EPA ICR No. 1446.07 and OMB Control No. 2070–0112, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail

Code 2822), 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; And to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone on (202) 260-2740, by e-mail: "farmer.sandy@epa.gov," or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1446.07.

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew and consolidate currently approved information collections pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR No. 1446.07; OMB Control No. 2070–0112.

Title: PCBs: Consolidated Reporting and Recordkeeping Requirements.

Abstract: Section 6(e)(1) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e), directs EPA to regulate the marking and disposal of PCBs. Section 6(e)(2) bans the manufacturing, processing, distribution in commerce, and use of PCBs in other than a totally enclosed manner. Section 6(e)(3) establishes a process for obtaining exemptions from the prohibitions on the manufacture, processing, and distribution in commerce of PCBs. Since 1978, EPA has promulgated numerous rules addressing all aspects of the life cycle of PCBs as required by the statute. The regulations are intended to prevent the improper handling and disposal of PCBs and to minimize the exposure of human beings or the environment to PCBs. These regulations have been codified in the various subparts of 40 CFR part 761. There are approximately 100 specific reporting, third-party reporting, and recordkeeping requirements covered by 40 CFR part 761.

To meet its statutory obligations to regulate PCBs, EPA must obtain sufficient information to conclude that specified activities do not result in an unreasonable risk of injury to health or the environment. EPA uses the information collected under the 40 CFR part 761 requirements to ensure that PCBs are managed in an environmentally safe manner and that activities are being conducted in compliance with the PCB regulations. The information collected by these requirements will update the Agency's knowledge of ongoing PCB activities, ensure that individuals using or disposing of PCBs are held accountable for their activities, and demonstrate compliance with the PCB regulations. Specific uses of the information collected include determining the efficacy of a disposal technology; evaluating exemption requests and exclusion notices; targeting compliance inspections; and ensuring adequate storage capacity for PCB waste.

This ICR consolidates six separate existing ICRs that address PCB reporting and recordkeeping requirements. Detailed discussions of the existing ICRs and how their associated reporting and/or recordkeeping burdens have changed as a result of the final rule are found in the supporting statement for the information collection that is the subject of this notice.

Responses to the collection of information are mandatory (see 40 CFR part 761). Respondents may claim all or part of a document confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting burden for this collection of information is estimated to average 0.57 hours per response for an estimated 1,300,240 respondents making one or more submissions of information annually. These estimates include 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. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these regulations are displayed in 40 CFR part 9.

Respondents/Affected Entities: Entities potentially affected by this action are companies that currently possess PCB Items, PCB-contaminated equipment, or other PCB waste.

Estimated Total No. of Respondents: 1,300,240.

Estimated Total Annual Respondent Burden: 741,261 hours.

Frequency of Collection: On occasion.

Changes in Burden Estimates: This consolidation of six existing ICRs, the burden for which totals 2,007,618 hours, will result in a net reduction of 1,266,357 hours. This reduction reflects numerous factors, including program changes and adjustments to the burdens of specific existing reporting or recordkeeping requirements, and is described in detail in the ICR.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: July 20, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–19256 Filed 7–28–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6843–2]

Notice of Public Meeting on Drinking Water Source Contamination Prevention

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The Environmental Protection Agency (EPA) Office of Ground Water and Drinking Water is holding a meeting on September 11, 2000 from 9 a.m. to 3 p.m. at the Embassy Suites Hotel in Alexandria, Virginia to discuss the development of a national drinking water source contamination prevention strategy. With this strategy, EPA intends to develop a national vision for preventing contamination of the lakes, rivers, springs and aquifers that serve as public drinking water sources. This strategy will guide future prevention activities, identify meaningful measures to track progress toward this vision, and identify approaches to data management. All interested public are invited to participate and provide input on the future direction of this part of the national drinking water program.

Background

Drinking water source contamination prevention means that mechanisms are in place that significantly lower the likelihood of contaminants of concern entering waters that serve as public drinking water supplies, or that are likely to be used as a drinking water supply in the future. It is an important first step to providing safe drinking water to the public.

EPA-is writing this strategy as a follow-up to the input received through public forums held during 1999. Public comments indicated that there needs to be:

- More agreement on the meaning of drinking water source contamination prevention and the near term milestones;
- Better coordination with water pollution prevention programs to make sure that source water contamination prevention is an integral part of comprehensive water quality planning and protection effort;
- Increased clarity and understanding over the players and their roles in source water contamination prevention; and
- National consensus on the best way to measure progress for source water contamination prevention, and the data needed at the national level.

The tentative meeting agenda is as follows:

I. Welcome and Charge 9:00–9:15; Cynthia Dougherty, Director, EPA Office of Ground Water and Drinking Water (OGWDW)

II. Overview of Strategic Plan 9:15–10; Bill Diamond, Director, EPA Drinking Water Protection Division (DWPD), OGWDW Discussion 10–11; Facilitator

III. Presentation and Discussion of a National Goal; 11:15–12:45 Joan Harrigan-Farrelly, EPA DWPD, OGWDW

IV. Measuring Achievement; 1:45–3:00. Presentation and open discussion of proposed measures and the process for identifying national measures for source water contamination prevention Roy Simon, EPA, DWPD, OGWDW

EPA encourages input from all interested public, even those unable to attend the meeting. Copies of the draft strategy will be made available to anyone requesting copies.

Date: September 11, 2000, 9 am to 3 pm

Location: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Please register with the Safe Drinking Water Hotline (800) 426–4791, or by e-mail, HOTLINE-SDWA@EPA.GOV. Registrants will receive an agenda and background materials, including a draft strategy prior to the meeting.

Dated: July 24, 2000.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 00–19257 Filed 7–28–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6842–8]

Massachusetts Marine Sanitation Device Standard; Notice of Determination Buzzards Bay

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On June 16, 2000, notice was published that the State of Massachusetts had petitioned the Regional Administrator, Environmental Protection Agency, to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for all waters of Buzzards Bay. The petition was filed pursuant to section 312(f)(3) of Public Law 92–500, as amended by Public Laws 95–217 and 100–4, for the purpose of declaring these waters a "No Discharge Area" (NDA).

Section 312(f)(3) states: After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

The information submitted to me by the State of Massachusetts certified that there are thirty disposal facilities available to service vessels operating in Buzzards Bay. A list of the facilities, phone numbers, locations, and hours of operation is appended at the end of the determination.

Based on the examination of the petition and its supporting information, which included site visits by EPA New England staff, I have determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the area covered under this determination which include all of Buzzards Bay.

Longitude	Latitude
71°07′12.80″	41°29′48.48″
71°05′45.60″	41°25′05.52″
71°03′32.04″	41°25′24.96″
71°59′51.72″	41°22′30.00″
70°56′57.12″	41°24′33.12″
70°.54′29.88″	41°25′17.04″
70°54′11.52″	41°25′17.04
70°51′19.80″	41°26′24.00″
70°50′22.92″	41°26′44.88″
70°48′28.80″	41°26′56.76″
70°48′18.00″	41°26′59.28″
70°42′06.12″	41°30′34.92″
70°41′58.20″	41°30′37.80″
70°40′51.60″	41°30′55.44″
70°40′58.44″	41°31′14.16″
70°37′27.48″	41°44′14.64″—Canal Entrance West
70°37′21.36″	41°44′10.68″—Canal Entrance East

This determination is made pursuant to section 312(f)(3) of Public Law 92–500, as amended by Public Laws 95–217 and 100–4.

FOR FURTHER INFORMATION CONTACT: A response to comments was prepared for the seven communications the EPA New England received during the 30 day comment period, and may be requested from EPA by written request to: Ann Rodney, U.S. EPA New England, 1 Congress Street, Suite 1100, CWQ, Boston, MA 02114–2023.

Dated: July 28, 2000.

Mindy S. Lubber,

Regional Administrator, EPA-New England.

City/town and location	VHF chan.	Telephone	Hours
Falmouth:			
Woods Hole Marine, pumpout boat	9	508–540–2402.	
Quisset Harbor boatyard, pumpout boat	9	508–548–0506	8–6/7.
Brewer's Fiddler Cove, dockside facility	9	508–564–6327	9–5/7.
Brewer's Fiddler Cove, pump–out cart	9	508–564–6327	9–5/7.
Town owned boat: W. Falmouth/Waquoit Bay			
Bourne:			
Parker's Boat Yard, dockside facility	69	508–563–9366	8–8/7.
Kingman Marine, dockside facility	9	508–563–7136	8–8/7.
Dockside Facility, Pocasset River, town operated			
Monument Beach Marina, dockside facility, town owned			
Bourne Marina, dockside facility	9	508–759–0623	8–5/7.
Bourne Marina, pumpout boat #1, serving northside	9	508–759–0623	8–5/7.

City/town and location	VHF chan.	Telephone	Hours
Bourne Marina, pumpout boat #2, serving southside	9	508–759–0623	8–5/7.
Wareham:			
Bevans/Continental Marina, dockside facility	9	508–759–5451	Call.
Onset Bay Marina, dockside facility	9	508–295–0338	Call.
Onset Bay Marina, pumpout boat	9	508–295–0338	Call.
Pt. Independence YC, dockside facility	9	508–295–3972	Call.
Stonebridge Marina, dockside facility	9	508–295–8003	Call.
Onset Town Pier, dockside facility	9	508–295–8160	Call.
Warr's Marine, dockside facility	9	508–295–0022	Call.
Warr's Marine (Town oper.) pumpout boat #1	9	508–291–3100	Call.
Marion:			
Island Wharf, dockside facility	9	508–748–3535	8–5/7.
Island Wharf, pumpout boat	9	508–748–3535	8–5/7.
Mattapoisett:			
Mattapoisett Boat Yard, pumpout boat	68	508–758–3812	8–4/5.
Mattapoisett Town Dock, pumpout boat			
Mattapoisett Town Dock, dockside facility	68	508–758–4191	8–5/5.
Fairhaven:			
Earl's Marina, dockside facility	18	508–993–8600	7–6/7.
Shipyard Marine, pumpout boat does entire town	9	508–979–4023	On Call.
Shipyard Marine, pumpout boat			
New Bedford:			
Pope's Island Marina, dockside facility	9, 74	508–979–1456	7–8/7.
State Pier facility, dockside facility, large vessels			
Proposed Boat			
Dartmouth:			
No. Side Bridge, Town Dock, pumpout boat	9	508–999–0759	8–8/7.
Davis & Tripp's Marina, pumpout boat	9	508–999–0759	8–8/7.
Westport:			
Tripp's Marina	9	508–636–4058	Call.
Westport Point-Town Dock, boat #1	9	508–636–1105	Call.
Westport Point-Town Dock, boat #2	9	508–636–1105	Call.
Bay-wide:			
CBB Bay Keeper, Gosnold and Bay-wide	TBA	508–999–6363	TBA.

[FR Doc. 00–19255 Filed 7–28–00; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2427]

Petitions for Reconsideration and Clarification of Action In Rulemaking Proceedings

July 24, 2000.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in the Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by August 15, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Anniston and Ashland, Alabama, College Park, Covington, and Milledgeville, Georgia) (MM Docket No. 98–112, RM–9027, RM–9268, RM–9384).

Number of Petitions Filed: 1.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Drummond and Victor, Montana) (MM Docket No. 99–134, RM–9543, RM–9572).

Number of Petitions Filed: 1.

Subject: Numbering Resource Optimization (CC Docket No. 99–200).

Number of Petitions Filed: 21.

Subject: Amendment of Section 73.202(b), Table of Allotments FM Broadcast Stations (Winslow, Camp Verde, Mayer and Sun City West, Arizona) (MM Docket No. 99–246, RM–9593, RM–9770).

Number of Petitions Filed: 1.

Subject: Establishment of an Improved Model for Predicting the Broadcast Television Field Strength Received at Individual Locations (ET Docket No. 00–11).

Number of Petitions Filed: 2.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 00–19228 Filed 7–28–00; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–1648]

Limited Low Power Television/ Television Translator/Class A Television Auction Filing Window; Partial Extension

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces that the limited low power television/ television translator/Class A television auction filing window originally scheduled to close on August 4, 2000, has been partially extended to August 31, 2000. However, the deadline for FCC Form 175 submissions remains August 4, 2000.

DATES: FCC Form 175's are due by 6 p.m., Eastern Standard Time (EST) on August 4, 2000. FCC Form 301–CA's or

346's are due by 7 p.m. EST on August 31, 2000.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Video Services Division, Mass Media Bureau at (202) 418–1600.

SUPPLEMENTARY INFORMATION: The filing window for the submission of FCC Form 175 will commence at 9 a.m. EST on July 31, 2000 and continue to 6 p.m. EST on August 4, 2000. Late-filed FCC Form 175's will not be considered. However, we will extend the deadline for the submission of the portions of FCC Forms 301–CA or 346 from August 4, 2000, to 7 p.m. EST August 31, 2000. We remind interested parties that a paper copy of the electronically filed FCC Form 175 must be included with each of the FCC Form 301–CA or 346 filings submitted from July 31st through August 31st.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 00–19171; Filed 7–28–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[30Day–56–00]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Center for Disease Control and Prevention (CDC) is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Evaluation of ATSDR Activities Among Priority Populations—New—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and its 1986 Amendments, The Superfund Amendments and Re-authorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from the exposure to hazardous substances into the environment.

As the agency responsible for determining the nature and extent of health problems at Superfund sites, ATSDR staff conduct public health assessments, health consultations and studies that serve as the basis for intervention strategies. ATSDR staff develop and disseminate to the public scientific and technical reports on the health effects of hazardous substances. Additionally, ATSDR staff collaborate with other governmental agencies, external partners and organizations to create and implement health services, educational and preventive programs.

To date, however, ATSDR has not conducted agency-wide quantitative research to evaluate the effectiveness of its services, products and programs. ATSDR staff is seeking information from its priority populations to determine their awareness of, access to and utilization of ATSDR products, programs and services. ATSDR staff will also evaluate whether priority populations derived health benefits from interventions.

ATSDR's priority populations include individuals, health care providers, health department officials and members of community organizations who live within two miles of National Priority Sites. Randomly stratified samples of individuals in these priority populations will be selected and asked to answer a questionnaire on two separate occasions within the three-year project. The questionnaire will be designed to use Computer Assisted Telephone Interviews (CATI) so that respondent burden can be reduced.

ATSDR will use the data from this study to evaluate and improve the effectiveness of health promotion and intervention activities in communities. This will translate into more effective organizational decisions on resource utilization, improved performance, and assessment of the future direction of the agency.

The total annual burden hours are 2,200.

Respondents	Number of respondents per year	Number of responses per respondent	Avg. burden per response (in hrs.)
Individuals in priority populations	6,667	1	.33

Dated: July 25, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–19207 Filed 7–28–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–00–44]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Farm Stressor Inventory for Adult Farmers Supervising Children or Adolescents—New-National Institute of Occupational Health and Safety (NIOSH). The farm economic crisis of the mid-1980's brought renewed attention to severe episodes of stress, depression, and suicide experienced by farmers. Since that time, a variety of farm stress studies have been published that document some of the more severe consequences of stress and ill-health related to the economic and workload pressures experienced by farmers during this period. However, in the majority of these studies the effects of a stressful environment and the farmers' personal reactions to these environmental stressors cannot be separated. Lacking in these studies is a clear methodological distinction between:

1. Each farmer's description of the environmental stressors, (*e.g.* the amount and types of work performed),
2. The farmer's acute stress reaction, (*e.g.*, his/her immediate personal reaction to these conditions in terms of worry, sleep difficulties, bad temper, etc.), and
3. The build-up of chronic strain in response to accumulating stress, (*e.g.* depression, personality changes, withdrawal, anger, etc.).

Also lacking during these early studies of farm stress are the complex responsibilities of parents supervising the work of their children (and others). It has long been recognized that farm children make a critically important contribution to the labor needs on most family farms. More recently, increasing attention has been paid to the hazards faced by these children as they work. A number of studies have been conducted into a variety of aspects of child and adolescent labor on farms. However, only a small amount of attention has been given to the cognitive and emotional demands on adults while supervising children in farm tasks. This study will investigate supervision of child farm labor as a major work environment stressor.

Family owned and operated farms constitute the vast majority of farms in the U.S. Children of any age who are family members may work on the home farm without legal restrictions. Legal restrictions on employment in farm work apply to workers outside the resident family:

1. Adolescents who are sixteen or older are considered adults with respect to farm work and may work on any farm;
2. Adolescents who are fourteen or fifteen may be hired to work on any farm, with restrictions.
3. Children who are thirteen and under may be hired for selected non-hazardous activities with parental permission; and,
4. Children as young as ten may be hired for some short-term harvest activities with parental permission.

The purpose of this study is to conduct a psychometric validation of a new survey of farm work stressors including the supervision of children. As described above, the focus of the survey is on the work environment stressors encountered by farmers. Measures of acute stress and chronic strain will also be assessed, but the primary focus is an assessment of the work environment on family farms where children or adolescents also work.

A random sample will be drawn from a list of farms in the U.S. The sample will be selected to represent U.S. farms with respect to type and size of operation and by geographic location. Approximately 2,500 farms will be selected for initial telephone contact. Principal owner-operators of the selected farms will be contacted to briefly describe the project and to determine: (1) If children or adolescents have worked on the farm in the past year (adolescents who are fourteen or older need not be family members), and (2) if the farmer is willing to complete the one-hour survey. Approximately 700 farmers from the original sample are anticipated to have supervised children and to be willing to complete the survey (the qualified sample). Surveys will be mailed to the 700 farmers, along with a postage-paid reply envelope.

A comprehensive psychometric analysis will be performed on the data in the completed surveys. There is no cost to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden hours
Farmers (initial contacts)	2,500	1	6/60	250
Farmers (survey)	700	1	1	700
Total				950

Dated: July 25, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–19210 Filed 7–28–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–00–45]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC. Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Information Collection Procedures for Evaluating Toxicological Profiles (0923–0020)—Extension—Agency for Toxic Substance and Disease Registry (ATSDR). The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and its 1986 Amendments, The Superfund Amendments and Reauthorization Act (SARA), to prepare toxicological profiles in accordance with guidelines developed by ATSDR and EPA. Each profile is revised and republished as necessary, but no less often than every three years. The principal audiences for the toxicological profiles are health professionals at the federal, state, and local levels, interested private sector organizations and groups, and members of the public.

This is a request for a three year extension of a previously approved data collection to collect information pertaining to: (a) Affiliation of users of the profiles, (b) clarity of discussion in the profiles, (c) consistency of information in the profiles, (d) completeness of information in the profile, and (e) utility of information in the profile.

The information will be used to maintain customer satisfaction concerning use of the profiles by these multi-disciplinary users. This will also ensure that we continue to provide a client-oriented product. This effort will be accomplished through enhancement of the system used for updating existing toxicological profiles and improving the utility of newly developed profiles by use of these user surveys. There is no cost to respondents.

Respondents	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Individuals completing questionnaires	1000	1	15/60	250

Dated: July 24, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–19211 Filed 7–28–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–57–00]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 30 days of this notice.

Proposed Project

Microbial Contamination of Produce: A Field Study in the Lower Rio Grande Valley, Texas—New—National Center for Environmental Health (NCEH). Foodborne diseases are common; an estimated 6–33 million cases occur each year in the United States. Although most of these infections cause mild illness, severe infections and serious complications do occur. The public health challenges of foodborne diseases are changing rapidly. In recent years, new and emerging foodborne pathogens have been described and changes in food production have led to new food safety concerns. Foodborne diseases have been associated with many different foods, including recent outbreaks linked to contaminated fresh fruits (*e.g.*, cantaloupe, strawberries) and vegetables (*e.g.*, leaf lettuce, alfalfa sprouts).

NCEH proposes to conduct a study to determine what specific farm and produce processing practices are

associated with fecal contamination of fruits and vegetables. Growing, handling and processing methods used in the produce industry may increase the risk that these foods will become contaminated with fecal matter. The study will describe the chain of farm to shipping practices for three vulnerable produce groups (leafy lettuces, leafy herbs, green onions). Critical agricultural practices where contamination with foodborne pathogens is likely will be identified by measuring the microbial quality of produce at each step during harvesting and processing (farm to shipping). Sources of fecal contamination will be determined by measuring the microbial quality of irrigation and process water, measuring fecal indicator organisms on hand rinses from farm laborers and handlers, and conducting sanitary surveys of sources of human and animal feces in and around the farms and processing areas. CDC/NCEH is requesting a 3-year clearance. The total annual burden hours are 54.2.

Respondents	No. of respondents	Responses/respondents	Avg. burden/respondent (in hrs.)
Farm Recruiting visit	14	1	30/60
Packing Facility Recruiting visit	9	1	30/60
Farm Manager interview (in person)	12	2	30/60
Packing Facility Manager interview (in person)	8	1	30/60
Hand rinse sample collection	160	1	30/60

Dated: July 21, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–19208 Filed 7–28–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–55–00]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 30 days of this notice.

Proposed Projects

STOP IT NOW! Public Awareness Campaign—New—It is estimated that one in five girls and one in ten boys have been sexually abused before the age of eighteen. The National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC) has recognized child sexual abuse as a public health problem for several years. As a result, CDC plans to evaluate the effectiveness of the STOP IT NOW! public awareness campaign in Philadelphia as an innovative approach to child sexual abuse prevention and modify the campaign for national use. Ultimately, CDC will examine some of the more promising interventions implemented in communities across the nation to determine if these can be replicated. STOP IT NOW! is a non-profit organization founded to challenge and change sexual abuse behaviors toward children.

The goals of the proposed data collection are:

—To inform the implementation of the campaign

—To inform the modification and expansion of the program to a national level

—To collect baseline data that will later be compared to post-campaign data to evaluate the effectiveness of the campaign.

The total annual burden hours are 280.

Form	Type of respondents	No. of respondents per year	No. of responses per respondent	Avg. burden per response (in hours)
1	Philadelphia Residents	600	1	15/60
2	Legal Community	130 (65 intervention 65 comparison)	1	15/60
3	Treatment Community	130 (65 intervention 65 comparison)	1	15/60
4	Police	130 (65 intervention 65 comparison)	1	15/60
5	Child Protective Services	130 (65 intervention 65 comparison)	1	15/60

Dated: July 24, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–19209 Filed 7–28–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 000147]

Innovative HIV Testing: Operational Research Among People of Color Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program to conduct Human Immunodeficiency Virus (HIV) related operational research for the control and prevention of HIV. The purpose of this program is to: (1) Encourage studies of using the new rapid HIV tests in different settings (Operational Research), specifically focused on African American, Latino, and other racial and ethnic minorities that are underserved and/or disproportionally affected by the HIV epidemic, and conducted by researchers who have experience working with these populations; (2) learn more about the effects of rapid HIV testing on motivators and barriers to HIV testing at the individual, provider and system levels; and (3) foster collaborations between organizations serving minority communities and their respective state and local health departments in the design and implementation of innovative practical strategies using rapid HIV tests to increase knowledge of HIV serostatus and facilitate entry into prevention and care systems.

For the purpose of this announcement, operational research is defined as the design, implementation, and systematic observation of model health service delivery systems to evaluate their performance and improve their effectiveness.

For the purpose of this program announcement, research studies should specifically focus on racial and ethnic minorities that are underserved and/or disproportionally affected by the HIV epidemic (African Americans, Hispanics, American Indians, Asian and Pacific Islanders). Applicants should demonstrate access to and experience working with the selected minority population(s). Applications are encouraged from research organizations involving minority researchers as principal investigators (PIs) or major co-investigators.

This program addresses the "Healthy People 2010" focus area of HIV. For the conference copy of "Healthy People 2010" visit the internet site: <http://www.health.gov/healthypeople>.

B. Eligible Applicants

Applications may be submitted by public and private non-profit organizations, community-based, national, and regional organizations, State and local governments or their bona fide agents or instrumentalities, federally recognized Indian Tribal governments, Indian tribes or organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $800,000 is available in FY 2000 to fund approximately four awards. It is expected that the average award will be $200,000, ranging from $100,000—$300,000. It is expected that awards will begin September 30, 2000, and will be made for a 12 month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period are based on the availability of funds and success in demonstrating progress toward achievement of objectives.

Funding Preferences

Preference for awards will be given to: (1) Ensuring geographic and risk group diversity; and (2) applicants with at least two years of demonstrated experience conducting operational research with minority populations that are underserved and/or disproportionally affected by the HIV epidemic.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1 (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities
   a. Develop and draft a research protocol.
   b. Implement activities according to the approved research protocol.
   c. Share study-related data with CDC as appropriate, with the frequency and in the format agreed upon after protocol development.
   d. Compile and disseminate findings of the operational research.
2. CDC Activities
   a. Assist as needed in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.
   b. Monitor and evaluate scientific and operational accomplishments of the project through periodic site visits, telephone calls, and review of technical reports and interim data analysis.
   c. Assist as needed in facilitating the planning and implementation of the necessary linkages with local or State health departments, and with the logistics of using investigational rapid HIV tests in operational research projects.
   d. Facilitate the technological and methodological dissemination of successful prevention and intervention models to appropriate target audiences such as State and local health departments, community based organizations, and other health professionals.
   e. Provide technical assistance in planning and evaluating strategies and protocols, as requested, and ongoing consultation and technical assistance for effective program planning and management.
   f. Convene meetings annually or as necessary for protocol development, information sharing, problem solving, and training.

E. Application Content

Application

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop your application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should consist of:

1. Abstract (Not to exceed 1 page): An executive summary of the program proposed under this announcement.

2. Program Plan (Not to exceed 10 pages): In developing the application under this announcement, please review the recipient activities and, in particular, evaluation criteria and respond concisely and completely.

3. Budget: Submit an itemized budget and supporting justification that is consistent with your proposed program plan.

F. Submission and Deadlines

Application

Submit the original and five copies of the application on Form PHS 398 (OMB Number 0925–0001) (Adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available at the following Internet address: www.cdc.gov/. . . Forms, or in the application kit. On or before September 8, 2000, submit your application to the Grants Management Specialist listed in the "Where to Obtain Additional Information" section of this announcement. Eligible applicants are encouraged to call the contact person for program technical assistance, also listed in the "Where to Obtain Additional Information" section of this announcement, before developing and submitting their applications.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Need: Inclusion of a brief review of the scientific literature related to the use of rapid HIV testing and pertinent to the study being proposed; statement of specific research questions or hypotheses and techniques that will guide the operational research, the originality and need for the proposed research, the extent to which it does not replicate past or present research efforts, and how findings will be used to guide prevention and control efforts. (15 points)

2. Scientific Merit: The quality of the research design and plans to develop and implement the study, including identification of the rapid HIV tests to be used and a statement as to whether the design of the study is adequate to measure outcomes, including sample size calculations, when warranted. (25 points)

3. Collaboration and Minority Participation: Plans and supporting evidence for:

(a) Established and proposed linkages with community-based organizations serving racial and ethnic minorities that are underserved and/or disproportionately affected by the HIV epidemic, and the health department with jurisdiction for the proposed project area. This should include a description of the demographics of clients served by the CBO, evidence of past cooperative projects, and/or letters of intent which describe the relationship, roles, and responsibilities under the planned collaboration.

(b) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation, the proposed justification when representation is limited or absent, and a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits. (20 points)

4. Operational Feasibility. Extent to which the proposed activities, if well executed, support attaining project objectives and, if successful, lend themselves to replication in similar program settings to facilitate diffusion of innovation in rapid HIV testing to other communities. (20 points)

5. Project Management, Implementation Plan and Schedule.

(a) Extent to which personnel involved in this project are qualified, with realistic and sufficient time commitments. This should include curriculum vitae and evidence of past achievements appropriate to the project.

(b) Evidence of access to sufficient numbers of potential participants, and for the adequacy of facilities and other resources necessary to carry out the project.

(c) Inclusion of a time line with realistic and measurable milestones for major project activities (20 points)

6. Other (not scored)

(a) Budget: Will be reviewed to determine the extent to which it is reasonable, clearly justified, consistent with the intended use of the funds, and allowable. All budget categories should be itemized.

(b) Human Subjects: Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. A quarterly progress report,

2. Financial status report, no more than 90 days after the end of the budget period, and

3. Final financial status report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see attachment 1 in the application kit.

AR–1—Human Subjects Requirements
AR–2—Inclusion of Women and Racial and Ethnic Minorities in Research Requirements
AR–4—HIV/AIDS Confidentiality Provisions
AR–5—HIV Program Review Panel Requirements
AR–6—Patient Care Prohibitions
AR–7—Executive Order 12372 Review
AR–8—Public Health System Reporting Requirements
AR–9—Paperwork Reduction Act Requirements
AR–10—Smoke-Free Workplace Requirements
AR–11—Healthy People 2010
AR–12—Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act, Section 317(k)(2)[42 U.S.C. 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number 93.943, Epidemiologic Research Studies of Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) Infection in Selected Population Groups.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an

application kit, call 1–888-GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the announcement number of interest.

If you have questions after reviewing the contents of all documents, business management technical assistance may be obtained from: Roslyn Currington, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number: (770) 488–2720, Facsimile at (770) 488–2777, Email address:http://www.RCURRINGTON@CDC.GOV

For program technical assistance, contact: Bernard Branson, M.D. National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE, MS E46, Atlanta, GA 30333, Telephone (404) 639–6166, Email address: HTTP:\\BBranson@CDC.GOV

Dated: July 25, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–19212 Filed 7–28–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project

Title: Head Start Family and Child Experiences Survey (FACES).

OMB No.: Revision of a currently approved collection (OMB No. 0970–0151).

Description: The Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) of the Department of Health and Human Services (DHHS) is requesting comments on plans to extend the Head Start Family and Child Experience Survey (FACES). This study is being conducted under contract with Westat, Inc. (with Elsworth Associates and the CDM Group as their subcontractors) (#105–96–1912) to collect information on Head Start performance measures. This revision is intended to extend the current design to a national probability sample of 43 additional Head Start programs in order to ascertain what progress has been made since 1997 in meeting Head Start program performance goals.

FACES currently involves seven phases of data collection. The first phase was a Spring 1997 Field test in which approximately 2400 parents and children were studies in a nationally stratified random sample of 40 Head Start programs. The second and third phases occurred in Fall 1997 (Wave 1) and Spring 1998 (Wave 2) when data were collected on a sample of 3200 children and families in the same 40 programs. Spring 1998 data collection included assessments of both Head Start children completing kindergarten (kindergarten field test) as well as interviews with their parents and ratings by their kindergarten teachers. In the fourth and fifth phases, follow-up continued for a second program year, plus a kindergarten follow-up. The sixth and seventh waves of data collection involve data collection in spring of the first-grade year for both cohorts of children, those competing kindergarten in spring 1999, and those completing kindergarten in spring 2000. The current plan is to extend data collection to a new cohort of 2825 children and families in a new sample of 43 Head Start programs.

This schedule of data collection is necessitated by the mandates of the Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62), which requires that the Head Start Bureau move expeditiously toward development and testing of Head Start Performance Measures, and by the 1994 reauthorization of Head Start (Head Start Act, as amended, May 18, 1994, Section 649 (d)), which requires periodic assessments of Head Start's quality and effectiveness.

Respondents: Federal Government, Individuals or Households, and Not-for-profit institutions.

Annual Burden Estimates

Estimated Response Burden for Respondents to the Head Start Family and Child Experience Survey (FACES 2000)—Fall 2000, Spring 2001, Spring 2002, Spring 2003.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Year 1 (2000):				
Head Start Parents	2825	1	1.00	2825
Head Start Children	2825	1	0.66	1865
Head Start Teachers (child ratings)	195	14	0.25	706
Center Directors	172	1	1.00	172
Education Coordinators	172	1	0.75	129
Classroom Teachers	195	1	1.00	195
Year 2 (2001):				
Head Start Parents	2400	1	0.75	1800
Head Start Children	2400	1	0.66	1584
Head Start Teachers (child ratings)	195	12	0.25	600
Family Services Coordinators	172	1	0.75	129
Year 3 (2002):				
Head Start Parents	800	1	0.75	600
Head Start Children	800	1	0.66	528
Head Start Teachers (child ratings)	65	12	0.25	200
Kindergarten Parents	1600	1	0.75	1200
Kindergarten Children	1600	1	0.75	1200
Kindergarten Teachers	1600	1	0.50	800
Year 4 (2003):				
Kindergarten Parents	800	1	0.75	600
Kindergarten Children	800	1	0.75	600

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Kindergarten Teachers	800	1	0.50	400

Annualized Totals:

Year 1, 5892

Year 2, 4113

Year 3, 4528

Year 4, 1600

Estimated Total Annual Burden Hours: 4033.

Note: The 4033 Total Annual Burden Hours is based on an average of 2000, 2001, 2002, and 2003 estimated burden hours.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of the this publication.

Dated: July 24, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–19259 Filed 7–28–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–1022]

COPA Distributors, Inc.; Withdrawal of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a color additive petition (CAP 8C0263) proposing that the color additive regulations be amended to provide for the safe use of pyrogallol and ferrous sulfate as a color additive in hair dyes.

FOR FURTHER INFORMATION CONTACT: James C. Wallwork, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3078.

SUPPLEMENTARY INFORMATION: In a notice published in the**Federal Register** of December 8, 1998 (63 FR 67695), FDA announced that a color additive petition (CAP 8C0263) had been filed by COPA Distributors, Inc., c/o Research It!, Inc., 116 Huckleberry Lane, Henderson, NV 89014. The petition proposed to amend the color additive regulations in Part 73—*Listing of Color Additives Exempt From Certification* (21 CFR part 73) to provide for the safe use of pyrogallol and ferrous sulfate as a color additive in hair dyes. COPA Distributors, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 71.6(c)(2)).

Dated: June 29, 2000.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–19175 Filed 7–28–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1200]

Dietary Supplements Containing Ephedrine Alkaloids; Availability; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening from August 10 to September 30, 2000, the comment period for a notice that published in the **Federal Register** of April 3, 2000 (65 FR 17510), that announced the availability of new adverse event reports (AER's) and related information concerning dietary supplements containing ephedrine alkaloids. This action is being taken in conjunction with a separate **Federal Register** notice by the U.S. Department of Health and Human Services' Office of Women's Health (OWH), which is part of the U.S. Public Health Service (PHS), announcing that it will hold a public meeting on August 8 and 9, 2000, to discuss available information about the safety of dietary supplements containing ephedrine alkaloids. FDA is also giving notice of the availability of a report on phenylpropanolomine and risk of hemorrhagic stroke.

DATES: Submit written comments on the notice of availability by September 30, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, e-mail: FDADockets@oc.fda.gov, or http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Marquita B. Steadman, Center for Food Safety and Applied Nutrition (HF–26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6733.

SUPPLEMENTARY INFORMATION:

I. Reopening the Comment Period

In the **Federal Register** of April 3, 2000 (65 FR 17510), FDA published a notice announcing a new public docket that makes available new AER's and related information concerning dietary supplements containing ephedrine alkaloids. The **Federal Register** notice (65 FR 17510) also announced FDA's intent to participate in a public forum to address safety information on such products. Interested persons were given until May 18, 2000, to submit written comments on the April 3, 2000, **Federal Register** notice to FDA's public docket (Docket No. 00N–1200). FDA later extended this comment period until July 3, 2000 (65 FR 32113, May 22, 2000).

In a separate **Federal Register** notice (65 FR 43021, July 12, 2000), OWH announced that it will convene a public meeting to discuss available information about the safety of dietary supplements containing ephedrine alkaloids. These products are promoted for uses such as weight loss, body building, and increased energy. This meeting will afford all interested persons an opportunity to provide focused comment in a manner that will assist PHS in understanding the benefits and risks associated with dietary supplements containing ephedrine alkaloids. The PHS public meeting is scheduled for August 8 and 9, 2000. For more information, refer to the July 12, 2000, **Federal Register** notice, or visit the OWH Internet site (The National Women's Health Information Center) at http://www.4woman.gov/owh/public.

In light of this public meeting, FDA is reopening the comment period for the April 3, 2000, notice from August 10 to September 30, 2000. The information and comments generated from the PHS public meeting, along with the information in the public docket (Docket No. 00N–1200), will be considered by FDA in assessing the safety of dietary supplements containing ephedrine alkaloids that are promoted for uses such as weight loss, body building, and increased energy.

The agency has added a report entitled "Phenylpropanolomine and Risk of Stroke: Final Report of the Hemorrhagic Stroke Project" to the public docket (Docket No. 00N–1200). The agency seeks written comment on this report and its relevancy to an assessment of the safety of dietary supplements containing ephedrine alkaloids.

II. How to Submit Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments from August 10 to September 30, 2000. You may also send comments to the Dockets Management Branch via the Internet at http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm, or e-mail: FDADockets@oc.fda.gov. Comments are to be identified with the docket number found in brackets in the heading of this document. You may review received comments in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

You may request a transcript of the PHS meeting in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. You may also examine the transcript of the meeting after August 25, 2000, at the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday, as well as on the Internet at http://www.fda.gov.

Dated: July 25, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–19286 Filed 7–26–00; 4:06 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10014]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the Information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. Due to an unanticipated event, we are requesting an emergency review because the data collection and the associated time frame is required by a Congressionally mandated demonstration project (Informatics, Telemedicine, and Education Demonstration Project). This project is defined under Section 4207 of the Balanced Budget Act of 1997 which specifies an overall time frame of four years. In order to meet this overall time frame study the pilot phase for the recruitment of subjects should begin in late August 2000, with the full implementation of the recruitment phase beginning on October 1, 2000. Subject recruitment, in turn, will involve data collection involved in the Paper Reduction Act submission.

HCFA is requesting OMB review and approval of this collection by 8/7/2000, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by 8/3/2000. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: New Collection;

Title of Information Collection: Informatics, Telemedicine, and Education Demonstration Project;

Form No.: HCFA–10014 (OMB# 0938–NEW);

Use: Section 4207 of the Balanced Budget Act of 1997 mandated HCFA to conduct a demonstration project to evaluate the effectiveness of advanced computer and telecommunications technology ("telemedicine") to manage the care of people with diabetes. HCFA issued a request for proposals and, after review of the responses, selected a consortium led by Columbia University to conduct this project.

The consortium includes the following organizations and departments: Columbia University (Department of Medicine/Division of General Medicine, Department of Medical Informatics, and Russ Berrie Diabetes Center), NewYork Presbyterian Hospital, Harlem Hospital Center (Department of Medicine/Division of General Medicine, and Harlem Renaissance HealthCare Network), The Hebrew Home for the Aged at Riverdale, State University of New York (SUNY) Upstate Medical Center (Department of Medicine/Division of Endocrinology and Metabolism, Department of Family Medicine, Joslin Diabetes Center), Arnot Ogden Hospital, Olean General Hospital, Good Samaritan Hospital, American Diabetes Association, Bell Atlantic Telephone Co., and American TeleCare, Inc.

The project is designed as a randomized controlled trial. Half of the participants will receive the intervention, consisting of a home telemedicine unit and electronic services that can be accessed through this unit, and half will continue to receive usual care. There will be an urban component, to be conducted in northern Manhattan, and a rural component, to be conducted in upstate New York with SUNY, as the hub. Half of the participants will come from the urban area and half from the rural area, and randomization will be blocked within these components. Eligibility for participation requires that subjects be eligible Medicare beneficiaries with diabetes mellitus, reside in a medically underserved area (either MUA or HPSA) at time of enrollment, possess mental and visual capacities required for meaningful participation, and provide written informed consent.

Participants randomized to the intervention group will receive a home telemedicine unit (HTU) consisting of a web-enabled computer with modem connection to an existing telephone line. The HTU has several components: (a) a video camera and microphone that provides 8 frames/sec video and voice conferencing with nurse case managers at the Berrie Diabetes Center at Columbia University (urban component) or the Joslin Diabetes Center at SUNY Upstate Medical Center (rural component), (b) an FDA-approved home glucometer and blood pressure cuff (connected to the HTU through a generic medical device data port) to enable uploading of home fingerstick glucose and blood pressure data into a high performance computer database (NewYork Presbyterian Hospital Clinical Information System), (c) access to patients = own clinical data through graphic and other data displays, and (d) access to a special educational web page to be created for the project by the American Diabetes Association in English and Spanish and in regular and low-literacy versions in each language.

Nurse case managers will receive training in diabetes management, following the Veterans Hospital Administration diabetes guidelines, and in the use of computer-based case management tools. These tools will facilitate monitoring and interactions with patients through videoconferencing. The HTU devices will be provided by American TeleCare, Inc. Installation, training, help desk support, and de-installation of the HTUs at the end of the project will be provided by Gentiva HealthServices.

Sample size was determined using least detectable difference calculations, and was based on balancing adequacy of statistical power and involvement of the smallest number of subjects. Outcome parameters considered in these calculations included glycosylated hemoglobin, blood pressure levels, and others. These calculations assumed blocked randomization (urban and rural components), repeat measures at one and two years of follow-up, and attrition rates at two years of fifteen percent in the intervention group and twenty percent in the control group. The attrition assumption, which was purposely conservative, projects that approximately twelve hundred of the original fifteen hundred people randomized will fully complete the study. Baseline mean levels and standard deviations for glycosylated hemoglobin and systolic and diastolic blood pressures were based on reviews of published observational studies for subjects sixty five years of age and older.

The sample size is adequate for an intervention effect on systolic blood pressure of 5 mm Hg reduction. Unadjusted for clustering and unreliability, with n=600 completers in each group, power is 0.97, while for an effect of 3 mmHg power is approximately 0.68. For glycosylated hemoglobin, it is noteworthy that tight glucose control in type 2 diabetics has a relatively modest effect compared to duration of diabetes on this parameter. Recent data (UKPDS 33; Lancet 1998; 352:837–53) show that glycosylated hemoglobin levels continued to rise over time in both the intensively treated and control groups, although intervention resulted in lower levels compared to control. The power analysis indicated that a difference in mean glycosylated hemoglobin level of 0.6% (7.9% vs. 8.5% in the two groups) could be detected with a sample size of n=138 per group; adjustment for the cluster effect increased this number to 207 per group.

Thus, the study is adequately powered to detect a difference of this magnitude in the overall study, and also possibly in subgroups defined by race/ethnicity, sex, or by urban/rural source. The study is not over-powered, since the intervention effect for this variable may be smaller, due to the older age and longer duration of diabetes in the subjects, and because subgroup analysis would be highly desirable.

Project evaluation will comprise the following: (a) Feasibility will be assessed by whether the implementation is successful, (b) acceptability will be assessed by whether participants can use the devices effectively, like the devices and the electronic service delivery model of care, and are satisfied with their care, (c) effectiveness will be evaluated primarily by comparing mean and adjusted mean levels of clinical outcomes in the intervention vs. control groups, and (d) cost-effectiveness will be assessed based on effectiveness, measures of health care services utilization, and technology and service costs of the intervention.

The demonstration will include collection of a comprehensive array of clinical, demographic, utilization, physician and patient satisfaction, and other data. Clinical data will be collected from all (intervention and control) participants at three visits: Visit 1 (baseline), Visit 2 (one year follow-up), and Visit 3 (two year follow-up). These data will include consent, demographics, medical and medication history, blood pressure, anthropometric data, fasting blood sample, and questionnaire data regarding health care service utilization, health status, smoking status, and satisfaction with care. Additional evaluation data will be collected from all participants by telephone at three-month intervals between the in-person visits. These data will focus on health care utilization and smoking status.

Clinical data will be collected from participants in the intervention arm of the study through the HTU. Participants will be encouraged to use the HTU to interact with the nurse case manager and to take an active role in self-monitoring of home glucose and blood pressure levels. These data will be used in the clinical management of the intervention arm participants by the project nurse case managers as well as the participants own primary care providers, who will also receive these data. Intervention group participants

may provide as little or as much of this category of data as they choose.

Frequency: Quarterly;

Affected Public: Business or other for-profit, and Individuals or Households;

Number of Respondents: 5,550;

Total Annual Responses: 10,043;

Total Annual Hours: 19,999.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of Information requirements. However, as noted above, comments on these Information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by 8/3/2000:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: July 13, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–19182 Filed 7–28–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4448–FA–03]

Announcement of Funding Awards for the Welfare-to-Work Section 8 Tenant-Based Assistance Program for Fiscal Year 1999

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the FY 1999 Notice of Funding Availability (NOFA) for the Welfare-to-Work Section 8 Tenant-Based Assistance Program. This announcement contains the consolidated names and addresses of those award recipients under the Section 8 Welfare-to-Work Rental Voucher program.

FOR FURTHER INFORMATION CONTACT: For questions concerning the Welfare-to-Work Section 8 Voucher awards, contact the Office of Public and Indian Housing's Grant Management Center, Director, Michael E. Diggs, Department of Housing and Urban Development, Washington, D.C., telephone (202) 358–0221. For the hearing or speech impaired, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1 (800) 877–8339. (Other than the "800" TTY number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: This program provides tenant-based Section 8 rental assistance (vouchers) to help eligible families make the transition from welfare to work. Tenant-based Section 8 rental assistance is to be provided in connection with programs where housing agencies (HAs), Indian tribes and their tribally designated housing entities (TDHEs) have demonstrated that tenant-based rental assistance is critical to the success of eligible families in obtaining or retaining employment. No additional funding was provided under the NOFA for welfare-to-work services for families. Funding was only for Section 8 Welfare-to-Work rental voucher housing assistance and regular Section 8 administrative fees for administration of such housing assistance. The rental assistance provided must be coordinated with other welfare reform and welfare-to-work initiatives. Recipients awarded Welfare-to-Work vouchers may use some of their current pool of other Section 8 voucher funding to augment the welfare-to-work vouchers in order to enlarge the pool of vouchers available to those families qualifying for the recipient's approved welfare-to-work program.

The Fiscal Year 1999 awards announced in this Notice were selected for funding in a competition announced in a NOFA published in the **Federal Register** on January 28, 1999 (64 FR 4496). Applications were scored and selected for funding based on the selection criteria in that Notice and a national competition.

The amount appropriated in Fiscal Year 1999 to fund Welfare-to-Work Rental Vouchers was $283,000,000. Of that amount, $2.83 million was reserved for HUD to conduct a detailed evaluation of the effect of providing Section 8 Welfare-to-Work Rental Voucher assistance. Another $32,340,700 was awarded to 8 HAs for local self-sufficiency/welfare-to-work initiatives in 8 set-aside communities under a separate Notice of Funding Availability (NOFA) published March 8, 1999. The remaining $247,829,300 was made available to fund 113 applications in rank order beginning with the highest scoring application under the national competition, and inclusive of 121 HAs and/or tribes/TDHEs funded, when accounting for multiple HAs in neighboring jurisdictions filing under one joint application. In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 121 awards made under the national competition, including joint applicants, and the 8 set-aside awards in Appendix A to this document.

Dated: July 24, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

APPENDIX A

NOTICE OF FUNDING AVAILABILITY FOR THE FY 1999 PUBLIC AND INDIAN HOUSING SECTION 8 TENANT-BASED ASSISTANCE PROGRAM

Applicant	Contact	Street Address	City	State	Zip	Funding	Units
1 Housing Authority of Walker County	Charles D. Barton	P.O. Box 607	Dora	Alabama	35062	152,469	69
2 Housing Authority of Prichard	Charles Pharr	800 Hinson Avenue	Pritchard	Alabama	36610	2,593,879	525
3 Phoenix Housing Authority	James Boozer	830 East Jefferson St.	Phoenix	Arizona	85034	331,821	50
4 Los Angeles County	Carlos Jackson	4800 E Cesar Chavez Ave	Los Angeles	California	90022	4,358,125	700
5 Los Angeles City	Donald J. Smith	2600 Wilshire Blvd.	Los Angeles	California	90057	4,850,684	700
6 Housing Authority of Fresno City	Edward L. Stacey	1331 Fulton Hall P.O. Box 11985.	Fresno	California	93776–1985	2,666,969	700
J* Housing Authority of Fresno County	Edward L. Stacey	1331 Fulton Hall P.O. Box 11985.	Fresno	California	93776–1985	2,666,969	700
7 Sacramento Co. Housing Authority	Anne Moore	630 I St.	Sacramento	California	95814	3,318,718	700
8 Merced Housing Authority	Mitchell C. Sperling	405 U St.	Merced	California	95340	2,086,811	400
9 San Joaquin Housing Authority	Antonio Pizano	P. O. Box 447	Stockton	California	95201	2,543,047	700
10 Tulare Housing Authority	Tim Sciacqua	Housing Authority of Tulare P.O. Box 791.	Visalia	California	93279	1,300,303	400
11 Monterey Housing Authority	James Nakashima	123 Rico St.	Salinas	California	93907	2,240,073	450
12 Marin Housing Authority	Janet Miller Schoder	4020 Civic Center Dr.	San Rafael	California	94903	598,317	60
13 Vallejo Housing Authority	Gary W. Truelson	251 Georgia St. PO Box 1432.	Vallejo	California	94590	3,653,401	639
14 San Jose City Housing Authority	John C. Burns	505 W. Julian St.	San Jose	California	95110	3,861,432	366
15 Santa Clara Housing Authority	John C. Burns	505 W. Julian Street	San Jose	California	95110	7,395,824	700
16 Almeda City Housing Authority	Ophelia Basgal	22941 Atherton St.	Hayward	California	94541–6633	689,835	100
17 Plumas Co	Martin Zone	P. O. Box 319	Quincy	California	95971	200,331	60
18 Anaheim Housing Authority	Elisa Stipkovich	201 S. Anaheim Suite 203	Anaheim	California	92805	3,946,239	700
19 Culver City	Jody Hall-Esser	9770 Culver Blvd	Culver City	California	90232	353,696	75
20 Norwalk Housing Authority	Ernie Garcia	12035 Firestone Blvd	Norwalk	California	90650	563,947	100
21 Colorado Springs Housing Authority	Richard Sullivan	30 South Nevada Suite 304	Colorado Springs.	Colorado	80903	630,976	125
22 Jefferson County Housing Authority	Alan Feinstein	6025 W. 38th Avenue	Wheat Ridge	Colorado	80033	1,023,253	200
23 Colorado Dept. of Human Services	Marva L. Hammons	4131 S. Julian Way	Denver	Colorado	80236	1,095,885	160
24 Department of Social Services	Rita M. Pacheco	25 Sigourney St.	Hartford	Connecticut	06106	9,139,184	1489
25 Tampa Housing Authority	Jerome D. Ryans	1514 Union St.	Tampa	Florida	33607	2,725,197	450
26 Lakeland Housing Authority	Herbert Hernandez	P. O. Box 1009	Lakeland	Florida	33802–1009	1,195,353	373
27 Broward County	Kevin Cregan	1773 North State Rd 7	Lauderhill	Florida	33313	1,653,268	250
J* Fort Lauderdale	William Lindsey	437 S.W. 4th Avenue	Fort Lauderdale.	Florida	33315	1,023,917	150
J* Pompano Beach	Ralph Adderly	P.O. Box 2006	Pompano Beach.	Florida	33061–2006	387,039	75
J* Hollywood	Teresa Vomsaal	7300 North Davie RD Extension.	Hollywood	Florida	33024	638,764	100
28 Augusta Housing Authority	Jacob Ogelsby	P.O. Box 3246	Augusta	Georgia	30914–3246	1,961,301	700
29 Atlanta Housing Authority	Renee Lewis Glover	1720 Peachtree St., NW Suite 500.	Atlanta	Georgia	30309	3,372,579	450
30 Georgia Department of Community Affairs.	Terry Ball	60 Executive Park South, NE	Atlanta	Georgia	30329	8,242,737	2000
31 Hawaii Co Housing Authority	Stephen K. Yamashiro.	50 Wailuku Dr.	Hilo	Hawaii	96720	909,974	200
32 Maui County Housing Authority	James H. Apana	200 South High St	Wailuku, Maui	Hawaii	96793	3,326,754	370
33 Hawaii HCDC (Honolulu)	Donald K. W. Lau	Housing & Community Developm P.O. Box 17907	Honolulu	Hawaii	96817	7,043,055	1108
34 Chicago HA	Joseph Shuldiner	626 West Jackson Blvd	Chicago	Illinois	60661	4,059,616	700
J* Lake County	Alon Jeffrey	33928 North Route 45	Grayslake	Illinois	60030–1700	411,039	75
J* DuPage County	John Day	128A S. County Farm Rd.	Wheaton	Illinois	60187	1,129,246	150
J* Cook County	Gary Jump	310 S. Michigan 15th Floor	Chicago	Illinois		627,202	100
35 Champaign Housing Authority	Elawence Davis	205 W. Park Ave.	Champaign	Illinois	61820	1,322,983	200

NOTICE OF FUNDING AVAILABILITY FOR THE FY 1999 PUBLIC AND INDIAN HOUSING SECTION 8 TENANT-BASED ASSISTANCE PROGRAM—Continued

Applicant	Contact	Street Address	City	State	Zip	Funding	Units
36 Housing of Hopkinsville	William L. Jones	400 North Elm St. P.O. Box 437.	Hopkinsville	Kentucky	42241–0437	241,658	60
37 Housing Authority of Pike County	Gaye Newsome	PO Box 1468	Pikeville	Kentucky	41502	620,501	185
38 Boston Housing Authority	Sandra B. Henriquez	52 Chauncy St	Boston	Massachusetts.	02111	3,337,263	300
39 Massachusetts Dept. of Hsg & Comm Dev..	Jane W. Gamble	One Congress St.	Boston	Massachusetts.	02114	13,041,671	2000
40 Housing Authority of Baltimore City	Daniel Henson	417 E Fayette St.	Baltimore	Maryland	21202	4,120,895	700
41 Housing Opportunities Commission	Richard J. Ferrara	10400 Detrick Ave.	Kensington	Maryland	20895	1,586,185	200
42 Housing Authority of Rockville	George T. Young	14 Moore Dr.	Rockville	Maryland	20850	411,952	50
43 St. Mary's County Housing Authority	Dennis Nicholson	23115 Leonard Hall Dr. P.O. Box 653.	Leonardtown	Maryland	20650	1,024,513	200
44 Baltimore County Dept of Social Services.	Lois B. Cramer	One Investment Place	Suite P–3 Towson.	Maryland	21204	2,047,776	700
45 Plymouth (Wayne)	Sharon Lee Thomas	1160 Sheridan	Plymouth	Michigan	48170	2,831,688	408
46 Ann Arbor HC (Wahtenaw)	Elizabeth A. Lindsley	727 Miller Ave	Plaza 1, 5th Floor.	Ann Arbor Michigan.	48103	1,361,970	250
47 Grand Rapids HC	Carlos A. Sanchez	1420 Fuller, SE	Grand Rapids	Michigan	49507	914,187	250
48 Wyoming	Michelle R. Scott	2450 36th St SW	Wyoming	Michigan	49509	783,934	175
49 MSHDA—Benton Harbor	Larry Valencic	401 South Washington Square.	P.O. Box 30044 Lansing.	Michigan	48909	66,206	20
50 MSHDA—Muskegon/Holland	Larry Valencic	401 South Washington Square.	P.O. Box 30044 Lansing.	Michigan	48909	601,069	160
51 MSHDA—Grand Rapids (non-metro)	Larry Valencic	401 South Washington Square.	P.O. Box 30044 Lansing.	Michigan	48909	1,984,861	500
52	MSHDA—Jackson	Larry Valencic	401 South Washington Square P.O. Box 30044 Lansing.	Michigan	48909	65,639	20
53 MSHDA—Lansing	Larry Valencic	401 South Washington Square.	P.O. Box 30044 Lansing.	Michigan	48909	213,031	50
54 St. Paul Housing Authority	Barbara Sporlein	480 Cedar St	St. Paul	Minnesota	55101	250,533	45
55 Metropolitan Council HRA	James Solem	230 East Fifth St.	St. Paul	Minnesota	55101	646,278	150
56 Billings Housing Authority	Lucy Brown	2415 1st Ave. North	Billings	Montana	59101	303,787	75
J* Missoula Housing Authority	Edward Mayer	1319 E. Broadway Missoula	Montana	59802	146,014	40	
57 Raleigh Housing Authoirty	Steve Beam	P.O. Box 28007	Raleigh	North Carolina.	27611–8007	3,942,569	700
58 Laurinburg Housing Authority	Nancy Walker	P. O. Box 1437	Laurinburg	North Carolina.	28353	290,229	100
59 Northwestern Regional Housing Authority.	EG Ned Fowler	P. O. Box 2510	Boone	North Carolina.	28607	354,580	100
60 New Hampshire Housing Finance Authority.	Claire Monier	P. O. Box 5087	Manchester	New Hampshire.	03108	2,571,740	500
61 Newark Housing Authority	Robert Graham	57 Sussex Ave	Newark	New Jersey	07103	5,271,130	700
62 Perth Amboy Housing Authority	Douglas Dzema	881 Amboy Ave PO Box 390	Perth Amboy	New Jersey	08862	1,326,589	160
63 West New York Housing Authority	Robert DiVincent	6100 Adams St	West New York.	New Jersey	07093	955,780	146
64 Bergen County Housing Authority	Jack R. D'Ambrosio	21 Main St—Court Plaza South Room 307W.	Hackensack	New Jersey	76017000	4,809,722	700

65 Monmouth County Housing Authority	Harry Larrison, Jr.	Monmouth County Hsg Agy PO Box 3000.	Freehold	New Jersey	07728	3,624,354	500
66 Albuquerque Housing Authority	Gerald Ortiz y Pino P. O. Box 1292.		Albuquerque	New Mexico	87103	3,155,326	700
67 Las Vegas Housing Authority	Frederick A. Brown	420 N. 10th St.	Las Vegas	Nevada	89101	4,713,157	700
68 New York Housing Authority	Paul Graziano	250 Broadway	New York	New York	10007	5,767,747	700
69 Albany NY Housing Authority	Steven Longo	4 Lincoln Square	Albany	New York	12202–1632	2,196,332	497
70 Rochester Housing Authority	Thomas McHugh	140 West Ave	Rochester	New York	14611	1,875,010	450
71 Geneva Housing Authority	Andrew Tyman	P. O. Box 153	Geneva	New York	14456	222,724	50
72 City of Niagara Falls Housing Authority	James C. Galie	1022 Main St. PO Box 69	Niagara Falls	New York	14302–0069	277,302	100
73 Town of Colonie Housing Authority	Mary Brizzell	Memorial Town Hall	Newtonville	New York	12128	174,563	50
74 Lucas MHA	Dennis Morgan	211 S Byrne Rd	Toledo	Ohio	43615	836,030	200
75 Akron MHA	Anthony W. O'Leary	100 West Cedar St.	Akron	Ohio	44307	348,854	100
76 Zanesville MHA	Philip Allen	407 Pershing Rd.	Zanesville	Ohio	43701	147,647	50
77 Licking Housing Authority	Sylvia Ray Taylor	85 West Church Street	Newark	Ohio	43055	411,459	100
78 Hamilton MHA	David Krings	138 East Court St Room 507	Cincinnati	Ohio	45202	420,445	100
79Housing Authority of the Cherokee Nation.	David Sutherland	Cherokee Nation HA PO Box 1007.	Tahlequah	Oklahoma	74465	3,054,381	638
80 Tulsa Housing Authority	Roy Hancock	415 E. Independence P. O. Box 6369.	Tulsa	Oklahoma	74148–0369	2,267,702	400
81 Norman Housing Authority	Kay Absher	700 North Berry Rd.	Norman	Oklahoma	73069	390,872	100
82 Douglas County Housing Authority	E Ilona McCracken	902 West Stanton St	Roseburg	Oregon	97470	139,194	35
83 Housing Authority of the City of Salem	Marcia King	P. O. Box 808	Salem	Oregon	97308–0808	931,180	225
84 Washington County	Susan Wilson	111 NE Lincoln St #200–L	Hillsboro	Oregon	97124	3,158,812	700
J* Portland	Dennis L. West	135 S.W. Ash St.	Portland	Oregon	97204	4,344,065	700
85 Mid-Columbia	Ruby Mason	506 East Second St.	The Dallas	Oregon	97058	194,608	50
J* Umatilla County	Stanley Stradley	155 S.W. 10th St.	Hermiston	Oregon	97838	189,270	50
86 Central Oregon Regional Hsg Authority	Cyndy Cook	2445 SW Canal Blvd	Redmond	Oregon	97756	448,102	100
87 Confederated Tribes of Siletz	Connie Hoffman	Siletz Indian Housing Authorit PO Box 549.	Siletz	Oregon	97380	214,677	37
88 Butler Co. Housing Authority	Perry O'Malley	P.O. Box 1917	Butler	Pennsylvania.	16003–1917	1,180,584	300
89 Montgomery County Housing Authority	Ronald Jackson	1875 New Hope St.	Norristown	Pennsylvania.	19401	309,204	50
90 Easton Housing Authority	Gary A. Smith	157 S. 4th St.	Easton	Pennsylvania.	18044	245,500	50
91 Chester County Housing Authority	Troy L. Chapman	30 West Barnard St. 1st Floor.	West Chester	Pennsylvania.	19382	329,636	50
92 Aiken Housing Authority	Regional Barner	100 Rodgers Terrace	Aiken	South Carolina.	29801	812,113	165
93 Chattanooga Housing Authority	Michael Kucharzak	505 West ML King Blvd. P. O. Box 1486.	Chattanooga	Tennessee	37401	2,631,924	650
94 Austin Housing Authority	James L. Hargrove	P.O. Box 6159	Austin	Texas	78762–6159	3,593,260	700
95 Houston Housing Authority	Ernie Etuk	Housing Authority of Houston PO Box 2971.	Houston	Texas	77252–2971	3,596,301	700
96 City of Amarillo, Commty Service Division.	John Ward	P. O. Box 1971	Amarillo	Texas	79101–1971	422,905	100
97 Hidalgo County Housing Authority	Mike Lopex	1800 N. Texas Blvd.	Weslaco	Texas	78596	322,844	100
98 Texoma Council of Governments (Fanning).	Frances Pelley	3201 Texoma Parkway Suite 240.	Sherman	Texas	75090	161,761	50
99 Texoma Council of Governments (Grayson).	Frances Pelley	3201 Texoma Parkway Suite 240.	Sherman	Texas	75090	376,453	100
100 Salt Lake County Housing Authority	Scott Lancelot	3595 South Main St.	Salt Lake City	Utah	84114	2,411,669	400
101 Salt Lake City	Rosemary Kappes	1776 S. West Temple	Salt Lake City	Utah	84115–1816	988,722	200
102 St. George Housing Authority	Brenda Butler	975 N 1725 W #101	St. George	Utan	84770	292,083	80
103 Chesapeake Housing Authority	Brenda Willis	1468 S. Military Highway P.O. Box 1304.	Chesapeake	Virginia	23327	1,507,277	350
104 Virginia HDA (Bedford, Culpepper)	John Ritchie	601 S. Belvidere St.	Richmond	Virginia	23220	6,401,365	860
105 King County Housing Authorities	Stephen Norman	120 Sixth Ave. North	Seattle	Washington	98109–5003	4,306,414	700

NOTICE OF FUNDING AVAILABILITY FOR THE FY 1999 PUBLIC AND INDIAN HOUSING SECTION 8 TENANT-BASED ASSISTANCE PROGRAM—Continued

Applicant	Contact	Street Address	City	State	Zip	Funding	Units
J* Seattle Housing Authority	Harry Thomas	120 Sixth Ave. North	Seattle	Washington	98109–5003	4,564,687	700
106 Everett Housing Authority	Allan L. White	3107 Colby	Everett	Washington	98206–1547	4,219,735	575
J* Snohomish	Robert E. Davis	12625 4th Avenue, West Suite 200.	Everett	Washington	98204	3,667,860	700
107 Island County Housing Authority	Steven Gulliford	7 NW 6th St.	Coupeville	Washington	98239–3400	203,323	35
108 Bellingham/Whatcom County	John Harmon	P. O. Box 9701	Bellington	Washington	98227–9701	1,961,427	430
109 Thurston County Housing Authority	Christine Lowell	503 West 4th Ave.	Olympia	Washington	98501	1,279,537	250
110 Spokane Housing Authority	Mary Jo Harvey	W 55 Mission Suite 104	Spokane	Washington	99201–3298	2,468,483	700
111 City of Wala Wala				Washington		252,722	75
112 Kenosha	Mark McCarthy	625 52nd St Room 98	Kenosha	Wisconsin	53140–3480	$746,495	200
113 Parkersburg Housing Authority	Donna J. Morris	1901 Cameron Ave	Parkersburg	West Virginia.	26101	$655,040	233
SUBTOTALS						247,829,299	44798
1 Alaska Housing Finance Agency	Daniel R. Fauske	P.O. Box 101020	Anchorage	Alaska	99510	4,000,000	652
2 San Bernardino	John McGrath	1053 North D St.	San Bernardino.	California	92410	4,000,000	700
3 Miami-Dade	Merrett Stierheim	111 NW 1st St. 29th Floor	Miami	Florida	33125	4,000,000	581
4 Prince Georges County	Jalal Green	9400 Peppercorn Place Suite 200.	Largo	Maryland	20774	4,000,000	469
5 Kansas City	Dallas Parks	712 Broadway	Kansas City	Missouri	64105	4,000,000	700
6 Charlotte Housing Authority	Harrison Shannon	P.O. Box 36795	Charlotte	North Carolina.	28236	4,000,000	700
7 New York City DHPD	Richard T. Roberts	100 Gold St	New York	New York	10038	4,340,700	700
8 Cuyahoga	Terri Hamilton	1441 West 25th St	Cleveland	Ohio	44113	4,000,000	700
SUBTOTALS						32,340,700	5202
HUD Evaluation Study						2,830,000	
TOTALS						282,999,999	50000

J = joint application with multiple HAs

[FR Doc. 00–19193 Filed 7–28–00; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–30]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 21, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

[FR Doc. 00–18947 Filed 7–28–00; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Environmental Assessment and Land Protection Plan for the Proposed Establishment of Mountain Longleaf National Wildlife Refuge, Calhoun County, Alabama

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability of a draft environmental assessment and land protection plan for the proposed establishment of Mountain Longleaf National Wildlife Refuge in Calhoun County, Alabama.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service, Southeast Region, proposes to establish a new national wildlife refuge at Fort McClellan, a U.S. Army military base that was recently closed under the Base Realignment and Closure Act. The purpose of the proposed refuge is to protect, enhance, and manage a unique mountain longleaf pine ecosystem for the benefit of neotropical migratory birds and a diversity of native wildlife and plants, with special emphasis on the red-cockaded woodpecker and other endangered and threatened species. A Draft Environmental Assessment and Land Protection Plan for the establishment of the proposed refuge has been prepared by Service biologists in coordination with the U.S. Army, the Alabama Game and Fish Division, and The nature Conservancy. The assessment considers the biological, environmental, and socioeconomic effects of establishing the refuge and evaluates three alternative actions and their potential impacts on the environment. Written comments or recommendations concerning the proposal are welcomed and should be sent to address given below.

DATES: Land acquisition planning for the project is currently underway. The draft environmental assessment and land protection plan will be available to the public for review and comment on August 14, 2000. Written comments must be received no later than September 15, 2000, in order to be considered for the preparation of the final environmental assessment.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail your comments to Mr. Charles R. Danner, Planning and Support Team, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 420, Atlanta, Georgia 30345. You may hand-deliver your comments to Mr. Danner at the same address. Or you may submit your comments by telephone at 1–800–419–9582. Our practice is to make comments, including the names and 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 may also 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 and businesses, and from individuals identifying themselves as representatives or officials of organizations and businesses, available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: The proposal would establish a new national wildlife refuge on up to 15,000 acres of land in Calhoun County, Alabama, through an interagency transfer from the United States Army. The Service is proposing to establish the refuge by accepting the Army's offer to transfer the project lands in fee title.

The objectives of the proposed refuge are to (1) preserve and enhance the natural mountain longleaf pine ecosystem; (2) help perpetuate the neotropical migratory bird resource; (3) preserve a natural diversity and abundance of native fauna and flora, with special emphasis on the red-cockaded woodpecker and other endangered and threatened species; and (4) provide compatible, wildlife-dependent recreational opportunities such as hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

Dated: July 24, 2000.

Sam D. Hamilton,

Regional Director.

[FR Doc. 00–19214 Filed 7–28–00; 8:45 am]
BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability, Draft Natural Resource Restoration Plan

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service), on behalf of the Department of the Interior (DOI), as a natural resource trustee, announces the release for public review of the Draft Natural Resource Restoration Plan (NRRP) for the Jack's Creek/Sitkin Smelting National Priorities List Superfund Site (Jack's Creek/Sitkin Smelting Site). The Draft NRRP describes the DOI's proposal to restore natural resources injured as a result of

chemical contamination at the Jack's Creek/Sitkin Smelting Site.

DATES: Written comments must be submitted on or before August 31, 2000.

ADDRESSES: Requests for copies of the Draft NRRP may be made to: Mark Roberts, U.S. Fish and Wildlife Service, Pennsylvania Field Office, 315 South Allen Street, Suite 322, State College, Pennsylvania 16801.

Written comments or materials regarding the Draft NRRP should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Mark Roberts, Environmental Contaminants Branch, U.S. Fish and Wildlife Service, Pennsylvania Field Office, 315 South Allen Street, Suite 322, State College, Pennsylvania 16801. Interested parties may also call (814) 234–4090 or send e-mail to mark_roberts@fws.gov for further information.

SUPPLEMENTARY INFORMATION: Under the authority of the Comprehensive Response, Compensation and Liability Act of 1980, as amended (CERCLA), "natural resource trustees may assess damages to natural resources resulting from a discharge of oil or a release of a hazardous substance * * * and may seek to recover those damages." Natural resource damage assessments are separate from the cleanup actions undertaken at a hazardous waste site, and provide a process whereby the natural resource trustees can determine the proper compensation to the public for injury to natural resources. At the Jack's Creek/Sitkin Smelting Site in Mifflin County, Pennsylvania, DOI was the sole natural resource trustee involved in the federal government's settlement with de minimus responsible parties. The Service determined that contamination at the Site had degraded habitat and injured trust resources (migratory birds). The injuries resulted from the exposure of migratory birds (such as killdeer, eastern bluebird, song sparrow, purple finch, American goldfinch, American robin, eastern phoebe, mourning doves, wood thrush, yellow warbler, and various species of waterfowl and shorebirds) to cadmium, chromium, copper, lead, mercury, selenium, silver, and zinc contamination in at least 5 acres of wetlands and 37 acres of upland habitat on the site.

As part of a Consent decree requiring remedial actions at the Jack's Creek/Sitkin Smelting Site, DOI agreed to a monetary settlement with de minimus responsible parties for natural resource damages. The settlement of $128,908 was designated for restoration, replacement, or acquisition of the equivalent natural resources injured by the release of contaminants at the site, and included reimbursement for costs related to assessing the damages.

The Draft NRRP is being released in accordance with the Natural Resource Damage Assessment Regulations found at Title 43, Part 11 of the Code of Federal Regulations. The Draft NRRP describes habitat restoration and protection alternatives identified by the DOI, and evaluates each of the possible alternatives based on all relevant considerations. The DOI's Preferred Alternative entails the use of the settlement funds to restore several acres of wetlands and upland habitat located within the Jack's Creek watershed. Details regarding the proposed project is contained in the Draft NRRP.

The Final Revised Procedures for the Service in implementing the National Environmental Protection Act were published in the **Federal Register** on January 16, 1997. That publication provides for a categorical exclusion for natural resource damage assessment restoration plans prepared under CERCLA when only minor or negligible change in the use of the affected areas is planned. The DOI has determined that the Preferred Alternative will result in only minor change in the use of the affected area. Accordingly this Restoration Plan qualifies for a categorical exclusion under NEPA.

Interested members of the public are invited to review and comment on the Draft NRRP. Copies of the Draft NRRP are available from the Service's Pennsylvania Field Office at 315 South Allen Street, Suite 322. State College, Pennsylvania 16801. Additionally the Draft NRRP is available for review at the Mifflin County Library located at 123 North Wayne Street, Lewistown, Pennsylvania. All comments received on the Draft NRRP will be considered and a response provided either through revision of this Draft Plan and incorporation into the Final Natural Resource Restoration Plan, or by letter to the commentor.

Author: The primary author of this notice is Mark Roberts, U.S. Fish and Wildlife Service, Pennsylvania Field Office, 315 South Allen Street, Suite 322, State College, Pennsylvania 16801.

Authority: The authority for this action is the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C.

Dated: July 24, 2000.

John R. Lemon,

Acting Deputy Regional Director, Region 5, U.S. Fish and Wildlife Service.

[FR Doc. 00–19184 Filed 7–28–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

St. Croix Meadows Racing Park, Draft Environmental Assessment; Notice of Availability

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability.

SUMMARY: The Department of the Interior (DOI) announces the availability for public review and comment the draft environmental assessment (EA) for the proposed acquisition of the St. Croix Meadows Racing Park in trust for the Sokaogon Chippewa Community of Wisconsin, Lac Courte Oreilles Band of Lake Superior Chippewa and Red Cliff Band of Lake Superior Chippewa (Tribes), located in Hudson, St. Croix County, Wisconsin.

DATES: DOI invites all interested parties to submit comments on the draft EA during a comment period ending August 30, 2000. Written comments must be postmarked by August 30, 2000 to ensure consideration. Comments postmarked after that date will be considered to the extent practicable.

ADDRESSES: Written comments on the draft EA should be directed to: Nancy Pierskalla, Office of Indian Gaming Management, Bureau of Indian Affairs, 1849 C Street NW, MS 2070 MIB, Washington, DC 20240; by telefax at (202) 273–3153, or via the Internet: nancypierskalla@bia.gov. The draft EA is available electronically through the Internet at www.doi.gov/bia/gaming/hudson.htm. Copies of the draft EA are also available for review at the Hudson Public Library, 911 4th Street, Hudson, Wisconsin 54016, the Bureau of Indian Affairs, Midwest Regional Office, One Federal Drive, Room 550, Fort Snelling, Minnesota 55111, and the Bureau of Indian Affairs, Great Lakes Agency, 615 West Main, Ashland, Wisconsin 54806.

If you prefer to send your comments through the Internet, use the following address: nancypierskalla@bia.gov.

FOR FURTHER INFORMATION CONTACT: Nancy Pierskalla, Office of Indian Gaming Management, Bureau of Indian Affairs, 1849 C Street NW, MS 2070 MIB, Washington, DC 20240; by telephone at (202) 219–4066; or by telefax at (202) 273–3153.

SUPPLEMENTARY INFORMATION: By letter dated March 23, 2000, Roger McGeshick, Jr, Chairman, Sokaogon Chippewa Community of Wisconsin, gaiashkibos, Chairman, Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and Jean Buffalo-Reyes, Chairwoman, Red

Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the Tribes), submitted to the Assistant Secretary—Indian Affairs (AS–IA), the Tribes application for a two-part Secretarial determination that a gaming establishment on a 55.82 acre parcel of land to be acquired in trust for the benefit of the Tribes in Hudson, St. Croix County, Wisconsin, is in the best interest of the Tribe and its members, and not detrimental to the surrounding community, in accordance with Section 20(b)(1)(A) of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719(b)(1)(A).

The Tribes intend to use the Hudson Property for Class III gaming purposes. The main building of the St. Croix Meadows Racing Facility consists of a two story grandstand with a mezzanine level. The grandstand has two full floors, an intermediate mezzanine and a small rooftop booth area. The enclosed area of the grandstand is approximately 160,000 square feet. The ground floor area is 64,000 square feet, the mezzanine area is 32,000 square feet, the upper "grandstand" floor is 62,000 square feet, and a booth area of 2,600 square feet is at the roof level. A transitional plan has been developed for the retrofitting of the facility. The first phase will include the opening of the temporary casino in the clubhouse area on the second floor. The temporary facility will contain approximately 1,000 gaming machines and 15 table games. Pari-mutual areas will be maintained in the terrace areas adjacent to the structural glass wall overlooking the racetrack. There are existing food and beverage and lounge areas on this floor which will service both the temporary casino and pari-mutual operations.

The second phase of the operation is the development of the permanent casino which is expected to utilize approximately 50,000 square feet of the ground floor and contain 1,500 gaming machines and 30 table games. After the permanent casino is operating, the third floor temporary casino will be closed and converted into an upscale dining area and an extensive buffet restaurant area. Pari-mutual wagering will be offered along the glass on both the first and third floor gaming areas and in the sports bar area on the first floor.

The Bureau has prepared an Environmental Assessment (EA) under the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.*, to evaluate the potential impacts of the trust acquisition and to assist it in determining whether an environmental impact statement is required for the proposed acquisition. In the EA, the BIA analyzes the impacts of the proposed acquisition and the no action alternative (not acquiring the property in trust). Under the Settlement Agreement in Paragraph 10 in the case Sokaogon Chippewa Community, *et al.*, v. Babbitt. *et al.*, Case No. 95–C–0659–C, the BIA is releasing the draft EA for a thirty-day public comment period. Comments will be accepted at the address listed in the **ADDRESSES** section of this notice.

Dated: July 25, 2000.

Nancy Jemison,

Acting Deputy Commissioner of Indian Affairs.

[FR Doc. 00–19275 Filed 7–28–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–110–0777–30–24– 1A; HAG0–0303]

Notice of Intent to Prepare a Cascade-Siskiyou National Monument Management Plan/Environmental Impact Statement and Initiation of Public Scoping

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Pursuant to the Federal Land Policy and Management Act and the National Environmental Policy Act, the Bureau of Land Management, Medford District, Ashland Resource Area will be preparing a Management Plan and Environmental Impact Statement (EIS) for the Cascade-Siskiyou National Monument located in Jackson County, Oregon. The Cascade-Siskiyou National Monument was established by William J. Clinton, President of the United States of America, on June 9, 2000. As a result of the national monument designation on federal land previously identified as the Cascade Siskiyou Ecological Emphasis Area, a supplemental draft environmental impact statement (SDEIS) to the Cascade Siskiyou Ecological Emphasis Area Draft Management Plan/Environmental Impact Statement (USDI/BLM March, 2000) will be prepared. Upon completion of the SDEIS and a 90 day public review period, a Cascade-Siskiyou National Monument Management Plan/Final Environmental Impact Statement will be prepared. The planning process for the Cascade-Siskiyou National Monument will follow the Bureau of Land Management (BLM) planning process found in 43 Code of Federal Regulations 1610. This notice amends the Notice of Intent [OR–110–0777–30–24–1A;–HAG99–0298] to Prepare a Cascade-Siskiyou Ecological Emphasis Area Plan/Environmental Impact Statement published in the **Federal Register** (Vol. 64, No. 166) on Friday, August 27, 1999.

DATES: Written scoping comments for the supplemental draft environmental impact statement will be accepted through August 31, 2000. Comments previously received on the Cascade Siskiyou Ecological Emphasis Area Draft Management Plan/Environmental Impact Statement will be used in preparing the supplemental draft environmental impact statement. No public scoping meetings are scheduled.

The tentative project schedule is as follows:

1. Analyze comments, identify and address additional issues and develop appropriate alternative(s), if necessary.
2. File Supplemental Draft Environmental Impact Statement—December 2000 (90 day public review period).
3. File Final Environmental Impact Statement—July 2001 (30 day public review period).
4. Record of Decision—October 2001.

SUPPLEMENTARY INFORMATION: The Cascade-Siskiyou National Monument consists of the federal and managed by the Bureau of Land Management previously identified as the analysis area in the Cascade Siskiyou Ecological Emphasis Area (CSEEA) Draft Management Plan/Environmental Impact Statement (USDI/BLM March, 2000), with the addition of appropriately 290 acres and the exclusion of all lands in California. The National Monument is an ecological wonder, with biological diversity unmatched in the Cascade Range. This rich enclave of natural resources is a biological crossroads—the interface of the Cascade, Klamath, and Siskiyou ecoregions, in an area of unique geology, biology, climate, and topography. The Monument is home to a spectacular variety of rare and beautiful species of plants and animals, whose survival in this region depends upon its continued ecological integrity.

The Cascade-Siskiyou National Monument encompasses the following special designated areas on land managed by the Bureau of Land Management in Oregon.

—Soda Mountain Wilderness Study Area recommended for wilderness designation (5,867 ac.);
—Pacific Crest National Scenic Trail;
—Four Areas of Critical Environmental Concern, including two Research Natural Areas;
—Portions of land previously recognized as a Late-Successional Reserve before the monument designation.

Public participation has been an integral part of the planning process with the CSESA Draft Management Plan/Environmental Impact Statement and continues with this scooping process for the supplemental draft management plan (40 CFR 1501.7 and 43 CFR 1610.2), which defines:

1. Defining the scope of the analysis and nature of the decision to be made.
2. Identifying the issues and determining the significant issues for consideration and analysis within the environmental impact statement.
3. Defining the proper skills required for the interdisciplinary team.
4. Exploring possible alternatives.
5. Identifying potential environmental effects.
6. Determining potential cooperating agencies.
7. Identifying groups or individuals interested or affected by the decision.

Public participation will be solicited by mail to known interested and/or affected members of the public and key contacts. In addition, news releases will be used to give the public general notice. Comments from interested persons and organizations will be used in preparation of the supplemental draft environmental impact statement.

Local and regional groups differ over future management of the Cascade-Siskiyou National Monument. The presidential proclamation provided specific directions on minerals, commercial timber harvest, and off-road vehicle use in order to protect the objects for which the monument was designated. In addition, the proclamation directed the Secretary of the Interior to study the impacts of livestock grazing on the objects of biological interest in the monument in order to determine the compatibility of livestock grazing in protecting those objects. The formal designation also expanded the planning boundary and has the potential to have some off-site effects which were not addressed in the CSEEA Draft Management Plan/ Environmental Impact Statement.

The completed management plan will provide direction for management of public lands within the Cascade-Siskiyou National Monument. Several management alternatives were identified and analyzed in the CSEEA Draft Management Plan/Environmental Impact Statement and, as a result of the monument designation, additional alternatives may be proposed. These alternatives will be developed based on internal staff discussions, public comments, and meting with government agencies.

The BLM is seeking information, comments and assistance from federal, state, and local agencies and other individuals or organization interested in or affected by management plan.

The analysis will be completed by an interdisciplinary team. Disciplines to be represented on the team include, but are not limited to, archaeology, anthropology, botany, fire management, fisheries, forestry, geology, hydrology, realty, recreation, rangeland management, wilderness, and soils.

COMMENTS: Comments should be sent to Richard J. Drehobl, Ashland Field Manager/Interim Monument Manager, Medford District Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504.

FOR FURTHER INFORMATION CONTACT: Tom Sensenig (541) 618–2319 or Bill Yocum (541) 618–2384. Fax can be sent to Tom Sensenig or Bill Yocum at (541) 618–2400 and e-mails to <*110mb@or.blm.gov*>. Information concerning the analysis will be available at the BLM office in Medford at the address shown above.

Pursuant to 7 CFR Part 1, subpart B, Section 1.27, all written submissions in response to this notice, the published scoping newsletter, draft, supplemental, and final environmental impact statements will be made available for public inspection including the submitter's name and address, unless the submitter specifically requests confidentiality. Anonymous comments will not be accepted. All written submissions from business entities and organizations, submitted on official letterheads, will be made available for public inspection in their entirety.

Dated: July 25, 2000.

Richard J. Drehobl,

Ashland Field Manager/Interim Monument Manager, Cascade-Siskiyou National Monument.

[FR Doc. 00–19217 Filed 7–28–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–010–1220–00]

Meeting of the Central California Resource Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Meeting of the Central California Resource Advisory Council.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (public law 92–463) and the Federal Land Policy and Management Act of 1976 (sec. 309), the Bureau of Land Management Resource Advisory Council for Central California will meet in Bishop.

DATES: Friday and Saturday, August 11–12, 2000.

ADDRESSES: Patio Room, Tri-County Fairgrounds, Sierra Street and Fair Drive, Bishop, California.

SUPPLEMENTARY INFORMATION: The 12 member Central California Resource Advisory Council is appointed by the Secretary of the Interior to advise the Bureau of Land Management on public land issues. On Friday, the Council will hear reports on the General Accounting Office investigation of the BLM. Land exchange program and local grazing issues in the Bishop area. Saturday's session will be taken up with a discussion of off-highway vehicle issues, with a presentation of a national OHV strategy by the BLM. There will be a public comment period at 10:45 a.m. Saturday on OHV issues only. There will be other opportunities on both Friday and Saturday for public comments on any public land issue. Written comments will also be accepted, either at the meeting or at the address below.

FOR FURTHER INFORMATION CONTACT: Larry Mercer, Public Affairs Officer, Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, CA 93308, telephone 661–391–6010.

Dated: July 14, 2000.

Ron Fellows,

Field Manager.

[FR Doc. 00–19185 Filed 7–28–00; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–940–01–5410–10–B128; CACA 41781]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: The private land described in this notice, aggregating 640.00 acres, is segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine its suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Kathy Gary, California State Office, Federal Office Building, 2800 Cottage Way, Room W–1928, Sacramento, California 95825, (916) 978–4677.

Serial No. CACA 41781.

T. 4 S., R. 17 E., Mount Diablo Meridian
Sec. 26, S½SE¼,
Sec. 35, W½SE¼, NE¼.
County-Mariposa.

Minerals Reservation—All coal and other minerals.

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interest; or two years from the date of publication of this notice, whichever occurs first.

David McIlnay,

Chief, Lands Section.

[FR Doc. 00–19186 Filed 7–28–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–940–01–5410–10–B130; CACA 41770]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: The private land described in this notice, aggregating 75 acres, is segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine its suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development. **FOR FURTHER INFORMATION CONTACT:** Kathy Gary, California State Office, Federal Office Building, 2800 Cottage Way, Room W–1928, Sacramento, California 95825, (916) 978–4677. Serial No. CACA 41770.

T. 21 N., R. 3 E., Mount Diablo Meridian Sec. 1, NE¼SW¼, NW¼SW¼.
County—Butte.

Minerals Reservation—All coal and other minerals.

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interest; or two years from the date of publication of this notice, whichever occurs first.

David McIlnay,

Chief, Lands Section.

[FR Doc. 00–19187 Filed 7–28–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of new information collection survey.

SUMMARY: To comply with the requirements of the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on an information collection request (ICR) to conduct a new survey on "Gulf of Mexico Labor Needs." We are preparing an ICR, which we will submit to the Office of Management and Budget (OMB) for review and approval.

DATES: Submit written comments by September 29, 2000.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the 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.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600 for questions on the PRA information collection process or to obtain a copy of the survey. For information on the survey itself, contact Harry Luton in the Gulf of Mexico Regional Office, telephone (504) 736–2784.

SUPPLEMENTARY INFORMATION:

Title: Survey—Gulf of Mexico Labor Needs.

OMB Control Number: 1010–NEW.

Abstract: MMS is responsible for managing mineral resources on the Federal outer continental shelf (OCS). The National Environmental Policy Act (NEPA) of 1969, the Outer Continental Shelf Lands Act (OCSLA), as amended, the Coastal Zone Management Act (CZMA) of 1996, and the Endangered Species Act of 1973, require MMS to assess, mitigate, and monitor the effects of the OCS program on the environment.

The OCS oil and natural gas exploration and production industry impacts local and regional economies through many activities, including the demand for labor, the demand for services, and the demand for capital goods. Though thought to be in decline a decade ago, several mid-1990's changes have reinvigorated the industry. These include technical innovations such as three- and four-dimensional seismic surveys and subsurface completion systems that allow companies to operate in very deep

water, as well as passage of the Deep Water Royalty Relief Act of 1995. This recent and unexpected growth has increased the significance and urgency of the need for MMS to obtain data on current Gulf of Mexico (GOM) OCS conditions and operating practices.

We propose to conduct a survey to collect and analyze information for use in MMS documents and management decisions. We will use the information within NEPA documents, with special emphasis on development in deep water. We will use the patterns and trends found in the data to support descriptions of how the GOM offshore oil and natural gas industry operates, how it resembles and differs from other regional markets, and what trends appear to be influencing its current direction. The OCSLA stipulates that MMS management of the OCS must include evaluations of the effects of industry activities on area resources. The CZMA policies on industrial and water use in the OCS affect many MMS decisions relating to planning, procedures, and interactions with industry, governments, and communities. The Endangered Species Act requires MMS to evaluate OCS activity and its affect on regional populations. The data collected through the proposed survey is necessary for MMS to successfully do each of these.

The information under the proposed data collection will be obtained by randomly sampling from the following eight populations: (1) Seismic companies; (2) platform and rig construction companies; (3) pipeline operating companies; (4) air transportation companies; (5) OCS field production operating companies; (6) employees from each of the previous sectors; (7) contracting organizations for operating companies; and (8) operating companies that have bid for a lease within the GOM. For the purposes of the proposed tests, an offshore employee "earns money by working in any of three segments—operating companies, service and supply companies, and transportation companies. The offshore worker charges time directly to GOM activities." The employee form will provide important economic information to supplement and cross check the industry data and will include demographic information to help characterize the economic effects of the program and the worker point of view concerning certain industry trends.

Questionnaire completion is voluntary. The questionnaires will be administered under the guidelines established under 45 CFR 46. Procedures designed to protect the confidentiality of the information provided will include the use of coded identification numbers to protect the identities of respondents and the businesses they represent. The final report will summarize data by geographic region, business type, or population category so that individual persons and companies will not be identifiable. Identifying information will be removed from data files.

We do not consider that the information requested in the proposed survey instruments necessitate a classification as Confidential Business Information. As stated, we will take efforts to ensure the anonymity of the collected data. As the test surveys are, and future surveys will be, voluntary, companies may choose not to respond to questions on proprietary information, but they can be assured that proprietary data will not be able to be associated with their company.

Frequency: This survey will be conducted once every 5 years.

Estimated Number and Description of Respondents: Estimated 6,338 respondents from the categories listed in the following chart.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: Estimated 10,792 burden hours as described in the following chart.

Respondent	Total hour burden (divided by)	Predicted No. of respondents (equals)	Predicted hour burden per respondent
Seismic	292.25	21	13.9
Platform/Rig Construction	1,065.75	63	16.9
Pipeline Operators	473.00	34	13.9
Air Transportation	83.50	6	13.9
Operators	2,667.00	126	21.2
Employees	4,398.25	5,865	0.75
Contractors	1,622.75	189	8.6
Bidders	189.75	34	5.6
Total	10,792.25	6,338	

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: Beyond labor, the proposed information collection poses no cost burden to respondents. MMS will pay for all postage and telephone charges. Respondents will incur no capital and operation and maintenance costs.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *"

Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Dated: July 18, 2000.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 00–19188 Filed 7–28–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 22, 2000. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by August 15, 2000.

Patrick W. Andrus,

Acting, Keeper of the National Register.

CALIFORNIA

Sacramento County

Brewster Building, 201 Fourth St., Galt, 00000981

FLORIDA

Orange County

Palm Cottage Gardens, 2267 Hempel Ave., Gotha, 00000982

IOWA

Black Hawk County

Walnut Street Baptist Church, 415 Walnut St., Waterloo, 00000983

Webster County

Oakland Cemetery, 1600 N. 15th St., Fort Dodge, 00000984

Worth County

First Methodist Episcopal Church, 401 2nd. St., Kensett, 00000985

MASSACHUSETTS

Berkshire County

Methodist Episcopal Society of Tyringham, 128–130 Main Rd., Tyringham, 00000986

NEW YORK

Allegany County

Rail and Titsworth Canal Warehouse, Hughes Rd., Belfast, 00000987

NORTH CAROLINA

Beaufort County

Zion Episcopal Church, US 264, 0.2 mi. E of jct. with NC 1601, Washington, 00000988

Davie County

Hodges Business College, NC 1819, 0.15 mi. SE of jct. with NC 801, Mocksville, 00000990

Durham County

Clark and Sorrell Garage, 323 Foster St., Durham, 00000991

Henderson County

Druid Hills Historic District, (Hendersonville MPS) Roughly bounded by Meadowbrook Terrace, US 25N, Ashwood Rd., and Ridgewood Ave., Hendersonville, 00000989

NORTH DAKOTA

Burleigh County

Brandt, Dr. Albert M. and Evelyn M., House, 323 E. Ave. B, Bismarck, 00000992

SOUTH DAKOTA

Clay County

Lincoln School #12, (Schools in South Dakota MPS), 45352 Timber Rd., Meckling, 00000995

Edmunds County

Edmunds County Courthouse, (Federal Relief Construction in South Dakota MPS), Second Ave., bet. 2nd and 3rd Sts., Ipswich, 00000997

Gregory County

Herrick Public School, (Schools in South Dakota MPS) 450 Eighth St., Herrick, 00001000

Lincoln County

Taylor, J.W., House, 308 N. Broadway St., Canton, 00001001

Meade County

Sturgis High School, (Schools in South Dakota MPS) 1425 Cedar St., Sturgis, 00000998

Moody County

First Scandinavian Baptist Church, 2.5 mi. S of Trent, Trent, 00000999

Pennington County

Casper Supply Company of SD, 415 Main St., Rapid City, 00000996

Roberts County

Hart School #3, (Schools in South Dakota MPS), Rte. 1, Sisseton, 00000994

TENNESSEE

Davidson County

Cheekwood, 1200 Forest Park Dr., Nashville, 00000993

[FR Doc. 00–19271 Filed 7–28–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

DEPARTMENT OF TREASURY

OFFICE OF MANAGEMENT AND BUDGET

Public Comment on Financial Privacy and Bankruptcy

AGENCIES: Department of Justice, Department of the Treasury, and Office of Management and Budget.

SUMMARY: The Department of Justice, Department of Treasury and Office of Management and Budget, in consultation with the Administrative Office of the U.S. Courts, are conducting a study (the "Study") of how the filing of a bankruptcy affects the privacy of individual consumer information that becomes part of a bankruptcy case. The Study will consider how the privacy interests of debtors in personal bankruptcy cases are affected by the public availability of information about them in those cases. It will also consider the need for access to this information and accountability in the bankruptcy system. Finally, it will consider how changes in business practices and technology may affect all of these interests. To assist in the Study, these agencies are requesting public comment on a series of questions.

DATES: To ensure their consideration in the Study, comments and responses to the questions listed below, along with any other comments, should be submitted by September 8, 2000.

ADDRESSES: All submissions must be in writing or in electronic form. Written submissions should be sent to Leander Barnhill, Office of General Counsel, Executive Office for United States Trustees, 901 E Street, NW., Suite 780, Washington DC 20530. Electronic submissions should be sent by email to USTPrivacyStudy@usdoj.gov. The submissions should include the submitter's name, address, telephone number, and if available, FAX number and e-mail address. All submissions should be captioned "Comments on Study of Privacy Issues in Bankruptcy Data."

SUPPLEMENTARY INFORMATION:

I. Background

On April 30, 2000, the President announced the "Clinton-Gore Plan to Enhance Consumers' Financial Privacy: Protecting Core Values in The Information Age." As part of the Plan, the President directed three federal agencies to conduct a study on "how best to handle privacy issues for sensitive financial information in bankruptcy records," including "the privacy impact of electronic availability of detailed bankruptcy records, containing financial information of vulnerable debtors." The Study, to be jointly conducted by the Department of Justice, the Department of Treasury, and the Office of Management and Budget (the "Study Agencies"), will be prepared in consultation with the Administrative Office of the U.S. Courts, and will be completed by December 31, 2000. The Study Agencies are requesting public comment on a series of questions regarding privacy issues

related to records that are established in the course of bankruptcy proceedings conducted in federal courts, including questions raised by electronic access to such bankruptcy records. The Study Agencies solicit responses to any or all of the questions listed below and welcome any other comments on these topics.

The Study Agencies also are aware of public attention in recent weeks focused on the troubling practice of organizations in bankruptcy seeking to sell personal data regarding their former customers, in violation of such organizations' privacy policies. Although this issue is outside the main scope of the Study—the privacy needs of debtors—the Study Agencies believe that this topic also involves the intersection of privacy and bankruptcy, and merits further attention. In part because of pending regulatory enforcement actions and/or pending legislation, the Study Agencies are not making this subject part of the formal Study. Nevertheless, the Study Agencies invite comments about the effect that a business bankruptcy filing has on consumer/customer information that the business has collected. Comments should not address pending legislative proposals or regulatory activities. After reviewing the comments and any other developments, the Study Agencies will determine whether it is appropriate to examine this issue in greater depth.

Currently, there are two different types of data maintained and used in a bankruptcy proceeding. The first is information in a court record that is made available to any member of the public. The second is information held by trustees administering bankruptcy cases that is not generally available to the public. These two categories of data are referred to here as "public record data" and "non-public data," respectively, and they are described more fully below. Each is currently governed by a different set of rules and procedures, and the privacy and access interests in each may vary.

A. Public Record Data

A consumer or individual who files a case under either chapter 7 or chapter 13 of the Bankruptcy Code, 11 U.S.C. 101 *et seq.*, must provide detailed financial information as part of the schedules filed with the bankruptcy court. This includes a list of bank accounts and identifying numbers, credit card account numbers, social security numbers, balances in bank accounts, balances owed to creditors, income, a detailed listing of assets, and a budget showing the individual's regular expenses. By statute, 11 U.S.C. 107(a), all documents filed with the court are "public records and open to examination by an entity at reasonable times without charge." Bankruptcy trustees (private entities appointed by U.S. Trustees) obtain this information in the course of administering cases assigned to them.

Much of the information provided in connection with a bankruptcy case is similar to financial information that, in other contexts, such as banking and credit reporting, may be covered by a system of regulation designed to ensure the confidentiality of such information. For example, in other contexts, an individual would be given notice of what uses might be made of the individual's bank account information or social security number, and would have some degree of choice as to how such information will be used. Security safeguards may also attach to the information.

In the past, access to public court record data has as a practical matter been quite limited. The individuals who obtained individual case files from the courts were those willing to spend considerable time, effort, and sometimes money. The development of electronic databases and other technologies allows for more widespread dissemination of information in bankruptcy records, along with far more convenient access, including access via the Internet. In some instances, courts are adopting technologies to convert their paper files to electronic form. This could result in a high volume of court records, including records containing sensitive personal information, appearing on the Internet.

B. Non-Public Data

While substantial amounts of personal data are filed by debtors in the bankruptcy courts, additional data are gathered by bankruptcy trustees in the course of administering the cases assigned to them. The trustee often will collect information about claims filed by creditors in a given case. The trustee also may find it necessary to supplement information that a debtor has provided in the bankruptcy schedules, and may request tax returns, as well as supporting information about the value of the debtor's assets, amounts of liabilities, and routine living expenses. The trustee's files also may contain information gathered from investigations about alleged wrongdoing in the case. In chapter 13 cases, the trustee tracks a debtor's payments to creditors under a payment plan. In general, only the parties in interest in a bankruptcy case (as defined by the court) receive both public and non-public data. By statute, the trustee "shall, unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest." 11 U.S.C. 704(7), 1302(b)(1). However, there are no well-defined limits on the trustee's authority to provide this information to others, nor on the authority of such third parties to use, sell, or transfer this information. In addition, some trustees and creditors are considering compiling information contained in bankruptcy records electronically for easier administration of bankruptcy cases in which they have a claim. They may also envision some possible commercial use.

II. Elements of the Study

The Study will examine:

- The types and amounts of information that are collected from and about individual debtors, as well as analyzed and disseminated, in personal bankruptcy cases.
- Current practices, and practices envisioned for the future, for the collection, analysis, and dissemination of information in personal bankruptcy proceedings.
- The needs of various parties for access to financial information in personal bankruptcy cases, including specifically which individuals or entities require access to which particular types of information, for what purposes, and under what circumstances.
- The privacy issues raised by the collection and use of financial and other information in personal bankruptcy cases.
- The effect of technology on access to, and the privacy of, a debtor's personal information.
- Business or governmental models that can provide access to, and protect debtors' privacy interests in, bankruptcy records.
- Principles for the responsible handling of information in bankruptcy records, and recommendations for any policy, regulatory, or statutory changes.

II. Questions to be Addressed

The Study Agencies seek comment and supporting information from all sources, including bankruptcy professionals, consumer representatives, privacy advocates, creditors, information brokers, the academic community, and the general public. The Study Agencies will summarize the comments in the Study. Views are welcome on any aspect of this subject, but the following questions are offered to stimulate thought in specific areas of interest.

1.01 What types and amounts of information are collected from and about individual debtors, analyzed, and disseminated in personal bankruptcy cases?

(1.1) What types of information are collected, maintained, and disseminated in bankruptcy?
(1.2) Which of these data elements are public record data?
(1.3) Which are non-public record data held by bankruptcy trustees?
(1.4) How much data is at issue?
(1.5) Are certain types of data more sensitive than others; that is, are there types of data in which debtors would have a stronger privacy interest? If so, which ones?
(1.6) How valuable is the information in the marketplace?

2.0 What are the current practices, and practices envisioned for the future, for the collection, analysis, and dissemination of information in personal bankruptcy proceedings?

(2.1) What methods of data collection and aggregation are now used by the courts, creditors, trustees, and other private actors to collect, analyze, and disseminate public record data and non-public data?
(2.2) What methods are being contemplated for the future?

3.0 What access do various parties need to financial information in personal bankruptcy cases? Which individuals or entities require access to which particular types of information, for what purposes, and under what circumstances?

(3.1) What entities currently access public record data?
(3.2) What entities currently access non-public data from trustees?
(3.3) What specific data elements do they need, and for what purposes?
(3.4) Are the purposes for which the information is sought consistent with the public interest?

A. Public Record Data

(3.5) What data elements in public record data should remain public for purposes of accountability in the bankruptcy system? For other purposes?
(3.6) Is there certain information that need not be made available to the general public, but could be made available to a limited class of persons?
(3.7) If so, what are these data elements, to whom should they be made available, and for what purpose?
(3.8) Is there a need to make the following data elements publicly available: (a) Social security numbers, (b) bank account numbers, (c) other account numbers?

B. Non-Public Data

(3.9) What issues, if any, are raised by existing limitations on trustees' handling of personal information?
(3.10) Are all of the data elements held by bankruptcy trustees necessary for case administration purposes? If not, which data elements are not?
(3.11) What interests would be served by private or commercial enterprises collecting, compiling electronically, and redistributing information from bankruptcy cases?

4.0 What are the privacy issues raised by the collection and use of personal financial and other information in personal bankruptcy proceedings?

A. Public Record Data

(4.1) Do debtors' have privacy interests in information contained in public record data made available through the bankruptcy courts? If so, what are those interests? Do they vary by data element? If so, how?
(4.2) What are the benefits of a public record system for court records in bankruptcy cases?
(4.3) What are the costs of collecting and retaining data in bankruptcy cases?
(4.4) To what extent do individuals who file for bankruptcy understand that all of the information contained in the public bankruptcy file is available to the public?
(4.5) Should debtors in bankruptcy be required to forego some expectation of privacy that other consumers have under other circumstances?
(4.6) Are there characteristics about debtors in bankruptcy that raise special concerns about wide public dissemination of their personal financial information?

B. Non-Public Data

(4.7) What are debtors' expectations about what uses and disclosures of information will be made by bankruptcy trustees?
(4.8) What, if any, privacy interests lie in non-public bankruptcy data held by bankruptcy trustees?
(4.9) If non-public data were made widely available to the public or to creditors for other non-bankruptcy purposes, what might be the consequences?
(4.10) Are privacy interests affected if the distribution of non-public data bankruptcy information is for profit?

5.0 What is the effect of technology on access to and privacy of personal information?

(5.1) Do privacy issues related to public record data in bankruptcy cases change when such data are made available electronically? On the Internet? If so, how?
(5.2) Do privacy interests in non-public data change when such data are compiled electronically for ease of administration of bankruptcy cases? For commercial use? For other use?
(5.3) Are new technologies being used to improve access to court records? Non-public bankruptcy data? Should they be? Why or why not?

6.0 What are current business or governmental models for protecting privacy and ensuring appropriate access in bankruptcy records?

(6.1) What statutes, rules, or policies can serve as models for maintaining appropriate levels or access and privacy protection for public bankruptcy records? For non-public bankruptcy information held by trustees?
(6.2) What statutes, rules, or policies are ineffective in providing appropriate access and privacy interests?
(6.3) What statutes, rules, or policies, are otherwise relevant to this Study?

7.0 What principles should govern the responsible handling of bankruptcy data? What are some recommendations for policy, regulatory or statutory changes?

A. Public Record Data

(7.1) To what extent are privacy safeguards appropriate for public record data? If safeguards are appropriate, what should they be? How should they be crafted to ensure that they do not interfere with legitimate public needs to access certain bankruptcy data?
(7.2) Should notice about the public nature of bankruptcy filings be provided to individuals who file for bankruptcy? What form should such notice take?
(7.3) Should there be any restrictions on the degree of accessibility of such information, such as rules that vary if information is made available electronically? Via the Internet? If so, what should they be? Should policies on the handling of information in bankruptcy cases be technology neutral, so that the rules for dealing with information are the same regardless of what medium is used to disclose such information? Why or why not?
(7.4) Are there any data elements in public record data that should be removed from the public record and held instead as non-public data by bankruptcy trustees or courts?
(7.5) Is there some experience with other public records that is relevant to the privacy and access issues in bankruptcy cases? Do any records or

filing systems, for example in the courts, provide instruction in this regard?

B. Non-Public Data

(7.6) To what extent are privacy safeguards appropriate for non-public data held by bankruptcy trustees in bankruptcy cases? If some safeguards are appropriate, how should they be structured? How should they be crafted to ensure that they not interfere with the needs of bankruptcy trustees to administer their cases?

(7.7) Should debtors receive notice of what uses and disclosures will be made of their information in the hands of bankruptcy trustees? What would be the effects of such disclosures?

(7.8) Should restrictions be imposed on the use and disclosure of information held by bankruptcy trustees? If so, what types of restrictions? What would be the effects of such restrictions?

(7.9) Should debtors be permitted to access the information held about them by bankruptcy trustees? If so, under what circumstances? What would be the effects of such access?

(7.10) If bankruptcy data are compiled and made easily and widely available to users outside of the bankruptcy system, should these users be charged for the collection and distribution process? How would the amount of the charge be set?

Dated: July 21, 2000.

Kevyn Orr,

Director, Executive Office For United States Trustees, Department of Justice.

Dated: July 24, 2000.

Gregory A. Baer,

Assistant Secretary for Financial Institutions, Department of the Treasury.

Dated: July 21, 2000.

John T. Spotila,

Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.

[FR Doc. 00–19204 Filed 7–28–00; 8:45 am]

BILLING CODE 4410–40–P; 4810–25–P; 3110–01–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 200–2000]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice, proposes to modify the following system of records—previously published November 4, 1997 (62 FR 59732):

Deportable Alien Control System (DACS), JUSTICE/INS–012.

INS proposes (1) to replace routine use C with an updated version which will expand access to more entities for law enforcement purposes; (2) to remove routine use disclosure D and replace it with two new routine use disclosures, identified as I and J (former routine use I is now H); (3) to make minor changes in the Categories of Records and Authority for Maintenance of the System sections to reflect changes required by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L. 104–208, September 30, 1996); and (4) to modify the Retention and Disposal section to reflect changes made in this system of records.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment on the new routine use disclosures. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by August 30, 2000. The public, OMB, and the Congress are invited to send written comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modification.

Dated: July 19, 2000.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/INS–012

SYSTEM NAME:

Deportable Alien Control System (DACS).

SYSTEM LOCATION:

Headquarters, Regional and District offices, and other offices of the Immigration and Naturalization Service (INS) in the United States as detailed in JUSTICE/INS–999, last published in the **Federal Register** on April 13, 1999 (64 FR 18052).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Aliens deported and alleged to be deportable by INS.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system is a computer data base that contains biographic information about deported and deportable aliens such as name, date and country of birth; United States and foreign addresses; file number, charge, amount of bond, hearing date, case assignment, scheduling date, section(s) of law under which deportability/excludability/removability is alleged; data collected to support the INS position on deportability/excludability/removability, including information on any violations of law and conviction information; date, place, and type of last entry into the United States; Attorney/representative's identification number; family data, and other case-related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1103, 1227, 1228, 1229, 1229a, and 1231.

PURPOSE(S):

The system provides INS with an automated data base which assists in the deportation or detention of aliens in accordance with immigration and nationality laws. It also serves as a docket and control system by providing management with information concerning the status and/or disposition of deportable aliens.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSE OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To clerks and judges of Federal courts exercising jurisdiction over the deportable aliens in determining grounds for deportation.

B. To other Federal, State, and local government law enforcement and regulatory agencies and foreign governments, including the Department of Defense and all components thereof, the Department of State, the Department of the Treasury, the Central Intelligence Agency, the Selective Service System, the United States Coast Guard, the United Nations, and INTERPOL, and individuals and organizations during the course of an investigation or the processing of a matter, or during a proceeding within the purview of the immigration and nationality laws to elicit information required by INS to carry out its functions and statutory mandates.

C. To the appropriate agency/organization/task force, regardless of whether it is Federal, State, local, foreign, or tribal, charged with the enforcement (e.g., investigation and prosecution) of a law (criminal or civil), regulation, or treaty, of any record contained in this system of records which indicates either on its face, or in conjunction with other information, a violation or potential violation of that law, regulation, or treaty

D. Where there is an indication of a violation or potential violation of the

law of another nation (whether civil or criminal), to the appropriate foreign government agency charged with enforcing or implementing such laws and to international organizations engaged in the collection and dissemination of intelligence concerning criminal activity.

E. To other Federal agencies for the purpose of conducting national intelligence and security investigations.

F. To a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

G. To the General Services Administration and the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

H. To any Federal agency, where appropriate, to enable such agency to make determinations regarding the payment of Federal benefits to the record subject in accordance with that agency's statutory responsibilities.

I. To an actual or potential party or his or her attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, or informal discovery proceedings.

J. In a proceeding before a court or adjudicative body before which INS or the Department of Justice (DOJ) is authorized to appear when any of the following is a party to the litigation or has an interest in the litigation and such records are determined by INS or DOJ to be arguably relevant to the litigation: (1) DOJ, or any DOJ component, or subdivision thereof; (2) any DOJ employee in his or her official capacity; (3) any DOJ employee in his or her individual capacity when the DOJ has agreed to represent the employee or has authorized a private attorney to represent him or her; and (4) the United States, where INS or the DOJ determines that the litigation is likely to affect it or any of its subdivisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in a data base on magnetic disks.

RETRIEVABILITY:

These records are retrieved by name and/or nationality, A-file number, or alien's Bureau of Prisons number, when applicable.

SAFEGUARDS:

Most INS offices are located in buildings under security guard, and access to premises is by official identification. Access to terminals is limited to INS employees with user identification numbers. Access to records in this system is by restricted password and is further protected by secondary passwords.

RETENTION AND DISPOSAL:

The following INS proposal for retention and disposal is pending approval by NARA. Cases which have been closed for a year are archived and stored in the database for 75 years, then deleted. Daily population reports are retained for six months and then destroyed. Work Measurement Reports are destroyed three years after creation. Copies of forms used within this system of records are placed in the Alien File. Electronic copies of records (copies from electronic mail and word processing systems) which are produced and made part of the file can be deleted within 180 days after the recordkeeping copy has been produced.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, Detention and Deportation, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager identified above.

RECORDS ACCESS PROCEDURE:

Make all requests for access in writing to the Freedom of Information Act/Privacy Act (FOIA/PA) Officer at the nearest INS office, or the INS office maintaining the desired records (if known) by using the list of Principal Offices of the Immigration and Naturalization Service Appendix, JUSTICE/INS–999, published in the **Federal Register**. Clearly mark the envelope and letter "Privacy Act Request." Provide the A-file number and/or the full name, nationality, and date of birth, with a notarized signature of the individual who is the subject of the record, and a return address.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information in the record to the FOIA/PA Officer at one of the addresses identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope "Privacy Act Request." The record must be identified in the same manner as described for making a request for access.

RECORD SOURCE CATEGORIES:

Basic information is obtained from "The Immigration and Naturalization Service (INS) Alien File (A-File) and Central Index System (CIS), JUSTICE/INS–001A." Information may also come from the alien, the alien's attorney/representative, INS official, other Federal, State, local, and foreign agencies and the courts.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 00–19201 Filed 7–28–00; 8:45 am]
BILLING CODE 4410–CJ–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 201–2000]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Federal Bureau of Prisons (Bureau) proposes to establish a new system of records entitled, "Employee Assistance Program ("EAP") Record System" (JUSTICE/BOP–014). This system, which will become effective September 29, 2000, is being established to assist staff in providing crisis intervention, assessment, counseling, and referrals to outside treatment providers for Bureau employees who are experiencing personal or work-related problems.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be provided a 30-day period in which to comment on the routine uses of a new system. The Office of Management and Budget (OMB), which has oversight responsibilities under the Privacy Act, requires a 40-day period in which to review the system.

Therefore, please submit any comments by September 29, 2000. The public, OMB, and the Congress are invited to send written comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

A description of the system of records is provided below. In addition, the Department of Justice has provided a report to OMB and the Congress in accordance with 5 U.S.C. 552a(r).

Dated: July 20, 2000.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/BOP–014

SYSTEM NAME:

Employee Assistance Program Record System.

SYSTEM LOCATION:

Records may be retained at the Central Office, Regional Offices, and at any of the Bureau of Prisons (Bureau) facilities. A list of these system locations may be found at 28 CFR part 503 and on the Internet at *http://www.bop.gov.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Bureau of Prisons who have sought counseling or been referred for treatment or referral through the Employee Assistance Program (EAP). To the limited degree that treatment and referral may be provided to family members of Bureau employees, these individuals are also covered by the system. The remainder of this notice will refer to all persons covered by the system as "EAP client(s)."

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records of EAP clients who have sought or been referred to the EAP for treatment and/or referral. These records may include the following:

(1) Identification data, including name, Social Security number, driver's license number, Bureau employee number, EAP system-generated number, job title and/or series, age and/or date of birth, sex, financial history, medical/mental health insurance information, home and/or work addresses, e-mail addresses and telephone numbers;

(2) Information from other Bureau staff and/or the employee's supervisor, on work place or performance problems, address and telephone numbers for the supervisor and/or other Bureau staff, and referral memoranda and/or e-mail correspondence from the employee's supervisor and/or other staff;

(3) Information and correspondence from outside sources, *e.g.* initial contacts from interested persons who are not Bureau staff;

(4) Information generated by EAP staff concerning the EAP client, including background information, assessment, prognosis and counseling details;

(5) Information concerning referrals to community-based treatment programs or individuals, including the initial referral, addresses, telephone numbers, and credentials of treatment facilities or individuals providing treatment, and records of the employee's attendance, billing accounts, and progress;

(6) Pertinent employee records including leave and/or work Time and Attendance (T and A) records, written consent forms, disciplinary actions and/or abeyance agreements, drug testing records and information on confirmed unjustified positive drug tests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 290dd *et seq.*; 42 CFR part 2; Executive Order 12564; 5 U.S.C. 3301, 7361, 7362, 7901 and 7904; 44 U.S.C. 3101 and Pub. L. 100–71, 101 Stat. 391, Sec. 503 (July 11, 1987).

PURPOSE OF THE SYSTEM:

These records assist EAP staff in the execution of its assessment, counseling and referral function. They document the nature and effects of EAP client problems and counseling by EAP staff, referral to, and participation in, outside treatment and counseling programs, and the EAP client's progress. These records may also be used to track compliance with abeyance agreements made to mitigate employee discipline actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant data from this system will be disclosed as follows:

(a) To appropriate State or local authorities to report incidents of suspected child, elder, or domestic abuse and/or neglect, as required under State law;

(b) To any person or entity to the extent necessary to meet a bona fide medical emergency;

(c) To any person or entity to the extent necessary to prevent immediate loss of life or serious bodily injury;

(d) To referral community health care providers authorized to provide services to EAP clients, to the extent that it is appropriate, relevant, and necessary to enable the provider to perform such services as evaluation, counseling, treatment, and/or rehabilitation; and

(e) To any person who is responsible for the care of an EAP client when the EAP client to whom the records pertain is mentally incompetent or under legal disability.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Documentary records are maintained in manual file folders and/or index cards and stored in locked GSA security-approved containers. Computer records are stored in electronic media via a configuration of personal computer, client/server, and mainframe systems architecture, using hard drives, floppy diskettes, CDs, magnetic tape, and/or optical disks.

RETRIEVABILITY:

Records are indexed and retrieved only by a personal code number generated by the system.

SAFEGUARDS:

Electronic information is safeguarded in accordance with Bureau of Prisons rules and policy governing automated information systems security and access. These safeguards include the maintenance of records and technical equipment in restricted areas, and the required use of proper passwords and user identification codes to access the system. Documentary records are kept in locked GSA security-approved containers in restricted access buildings. Only the EAP Administrator or designated Bureau staff will access or disclose the records.

RETENTION AND DISPOSAL:

Records are retained for three years after the EAP client ceases contact with the EAP counselor (in accordance with General Records Schedule No. 1, Item No. 26) unless a longer retention period is necessary because of pending administrative or judicial proceedings. In such cases, the records are retained for six months after the case is closed. Computerized records are destroyed by shredding, degaussing, etc., and documentary records are destroyed by shredding. All destruction of records must be performed by an EAP staff member.

SYSTEM MANAGER(S) AND ADDRESS:

National Employee Assistance Program Coordinator, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the System Manager listed above.

RECORD ACCESS PROCEDURES:

All requests for records may be made in writing to the Director, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534, and should be clearly marked "Privacy Act Request." In addition to a return address, requesters should provide the full name and notarized signature of the individual who is the subject of the record and is authorizing release of his/her information, the dates during which the individual was in counseling, and

any other information which may assist in identifying and locating the record. Pursuant to 28 CFR 16.41(d), an original signature on a "Certification of Identity" form (DOJ–361) may be submitted in lieu of a notarized signature. This form may be obtained from the Department of Justice website at *http://www.usdoj.gov* or by writing to the FOIA/PA Office, Bureau of Prisons, 320 First St. NW., Washington, DC 20534.

CONTESTING RECORD PROCEDURES:

All requests to contest or amend information should be directed to the Director of the Federal Bureau of Prisons at the address listed above. The request should follow the Record Access Procedures, listed above, and should state clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. The envelope should be clearly marked, "Privacy Act Request."

RECORD SOURCE CATEGORIES:

Records are generated by Bureau staff, outside sources, referral counseling and treatment programs or individuals, and the EAP client who is the subject of the record. In the case of drug abuse counseling, records also may be generated by staff of the Drug-Free Workplace Program and the Medical Review Officer.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 00–19202 Filed 7–28–00; 8:45 am]

BILLING CODE 4410–CJ–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 202–2000]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice, proposes to establish and publish a new system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a(e)(4) have been published. This system of records is entitled:

The FD–258 Fingerprint Tracking System, JUSTICE/INS–024.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment on the routine uses; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by August 30, 2000. The public, OMB and the Congress are invited to submit any comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: July 20, 2000.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/INS–024

SYSTEM NAME:

FD–258 Fingerprint Tracking System.

SYSTEM LOCATION:

Immigration and Naturalization Service (INS) Headquarters, Regional Service Centers, District Offices and sub-offices as detailed in Justice/INS–999, last published in the **Federal Register** on April 13, 1999 (64 FR 18052). In addition, this system can be accessed from the three INS Regional offices and the Application Support Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed application or petitions for benefits under the Immigration and Nationality Act, as amended and are required to submit fingerprints in order for a criminal background check to be conducted by the Federal Bureau of Investigation (FBI), and who have submitted fingerprints to or have had their fingerprints taken by INS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information that identifies individuals named above, *e.g.*, name, date of birth, and alien registration number. Records in the system also include such information as date fingerprints were sent to the FBI for processing, the date a response was received from the FBI by INS, electronic rap sheet, and a unique control number. The response from the FBI that is included in the system of records includes such information as whether the individual has an arrest record, the charges on which the individual was arrested, whether the individual was convicted, and what the sentence or fine was. The unique seven digit control number is generated by the system and is used in the adjudication process to document that an applicant has a valid FBI response.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1103, 1154(b), 1158(d), 1159, 1229b, 1254a, 1255, and 1446.

PURPOSE:

This system enables INS to determine the status of pending fingerprint submissions to the FBI and the results of the FBI check; and to account for and control the receipt and processing of fingerprints submitted to the FBI for a criminal background check.,

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

A. To any Federal agency, where appropriate, to enable such agency to make determinations regarding the submission to and response received from the FBI pertaining to an immigration benefit applicant's fingerprints in accordance with that agency's statutory responsibilities. A Federal Agency may request this information from the INS to assist in an investigation.

B. In a proceeding before a court or adjudicative body before which INS or the Department of Justice (DOJ) is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by INS or DOJ to be arguably relevant to the litigation: (1) The DOJ, or any DOJ component or subdivision thereof; (2) any DOJ employee in his or her official capacity; (3) any DOJ employee in his or her individual capacity when the DOJ has agreed to represent the employee or has authorized a private attorney to represent him or her; and (4) the United States, where INS or the DOJ determines that the litigation is likely to affect it or any of its subdivisions.

C. To an attorney or representative (as defined in 8 CFR 1.1(j)) who is acting on behalf of an individual covered by this system of records in connection with any proceeding before INS or the Executive Office for Immigration Review.

D. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

E. To a Member of Congress, or staff acting upon the Member's behalf, when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

F. To General Services Administration and National Archives and Records Administration in records management

inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored on magnetic disks and tape.

RETRIEVABILITY:

Records may be retrieved by the name or alien registration number.

SAFEGUARDS:

Most INS offices are located in buildings under security guard, and access to premises is by official identification. Offices are locked during non-duty hours. Access to this system is obtained through remote terminals which require the use of restricted passwords and a user ID.

RETENTION AND DISPOSAL:

Records are archived and stored in the database for 10 years after adjudication of a benefits-seeking application and then deleted. The information contained on tapes is downloaded into the tracking system. The tapes are erased every three months and used to transmit and/or receive data from unrelated cases.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Commissioner, Field Operations, Immigration Services Division, Immigration and Naturalization Service, 801 I Street NW, Washington, DC 20536.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the system manager.

RECORD ACCESS PROCEDURE:

Requests for access to a record from this system shall be in writing. If a request for access is made by mail the envelope and letter shall be clearly marked "Privacy Act Request." The requester shall include a description of the general subject matter and, if known, the related file number. To identify a record relating to an individual, the requester should provide his or her full name, date and place of birth, verification of identity (in accordance with 8 CFR 103.2(b)), and any other identifying information which may be of assistance in locating the record. The requester shall also provide a return address for transmitting the records to be released.

CONTESTING RECORDS PROCEDURE:

Direct all requests to contest or amend information to the FOIA/PA Officer at any INS office. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope "Privacy Act Amendment Request." The record must be identified in the same manner as described for making a request for access.

RECORD SOURCE CATEGORIES:

Information contained in this system of records is obtained from the individuals covered by the system and from the FBI.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 00–19203 Filed 7–28–00; 8:45 am]
BILLING CODE 4410–CJ–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2051–00]

Extension of Memorandum of Understanding for Fines Mitigation Under Section 273 of the Immigration and Nationality Act

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: Air and sea transportation companies (carriers) may enter into a Memorandum of Understanding (MOU) with the Immigration and Naturalization Service (Service). This MOU provides for mitigation of fines imposed under section 273 of the Immigration and Nationality Act (Act) related to transporting passengers without passports or visas. By signing the MOU, the carrier agrees to perform certain measures aimed at intercepting improperly documented aliens at foreign ports-of-embarkation. These MOUs are currently set to expire on September 30, 2000. This notice serves to extend the expiration date until September 30, 2001.

DATES: This notice is effective July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Una Brien, National Fines Office, Immigration and Naturalization Service, 1525 Wilson Blvd., Suite 425, Arlington, VA 22209, telephone (202) 305–7018.

SUPPLEMENTARY INFORMATION:

Under What Authority Can the Service Reduce Fines?

Pursuant to section 273(e) of the Act, a violation for section 273(a)(1) of the Act may be reduced, refunded, or waived in cases in which a carrier demonstrates that it screened all passengers on the vessel or aircraft in accordance with procedures prescribed by the Attorney General, or circumstances exist that the Attorney General determines would justify such reduction, refund, or waiver.

The Service published a final rule in the **Federal Register** at 63 FR 23643 (April 30, 1998) establishing procedures that carriers must undertake for the proper screening of passengers at the ports-of-embarkation to become eligible for a reduction, refund, or waiver of a fine imposed under section 273 of the Act.

The final rule provided that carriers that voluntarily signed an MOU with the Service would receive an automatic reduction, refund, or waiver of fines imposed under section 273 of the Act. By signing the MOU, the carrier agrees in writing to meet passenger screening standards stated in 8 CFR 273.3, to train employees in documentary requirements, and to pay fines and user fees promptly. The Service agrees to provide document training and information guides to carriers and to mitigate fines as appropriate.

How Does the Service Measure the Carrier's Screening Performance?

The numerical standard, or Acceptable Performance Level (APL), is calculated by adding the total number of section 273(a)(1) violations involving nonimmigrants for all carriers, divided by the total number of nonimmigrants transported by all carriers, multiplied by 1,000. Each carrier is then rated against the APL using individual Performance Levels (PL). A carrier's individual PL is calculated by applying the same formula used to calculate the APL.

Carriers that meet or exceed the APL may be eligible for automatic fines reductions if the carrier entered into an MOU with the Service.

If a carrier's PL is not at or better than the APL, the carrier may still receive an automatic fine reduction of 25 percent if it is signatory to and in compliance with the MOU.

In order to provide carriers with additional incentives to screen documents, a second reduction factor (APL2) was developed. The APL2 uses the same formula but only uses the number of violations and total passenger counts for carriers whose PL fails between 0 and the APL. These carriers will automatically receive an additional 25 percent reduction.

Why Is the Service Extending the Expiration Date for MOUs?

The Service is not contemplating any amendments to the current MOU before

September 30, 2000. In this light, an extension of all existing MOUs will benefit both the Service and the carriers by avoiding the administrative costs that would result had the Service required that a new MOU be executed for each carrier. Carriers will remain eligible for automatic fine reductions during the extended period of the MOUs validity as long as the signatory carrier is in compliance with screening standards, training requirements, and payment requirements enumerated in the MOUs.

Will the Measurements for Screening Performance Be Changed?

The measurement for screening performance set forth in the **Federal Register** at 63 FR 23643 (April 30, 1998) will continue to remain in effect. The Service will inform carriers of any plans to change the methods used to calculate a carrier's screening performance by publishing a notice in the **Federal Register**.

Can a Carrier Sign Up for the MOU After September 30, 2000?

A carrier can apply to be signatory to the MOU at any time. A carrier must meet all requirements before their MOU will be approved. Generally, a carrier must have a PL either at or better than the Service's APL and must be current in its payment of all administrative fines, liquidated damages, and user fees. If a carrier does not have a PL or does not have a PL that meets the Service's APL, the carrier must submit evidence to demonstrate that they have screening procedures in place to prevent transporting improperly documented aliens to the United States. Once an MOU is approved, violations that occurred on or after the date of MOU signing will receive the automatic reductions.

How Does a Carrier or the Service Terminate an Existing MOU?

Either party may terminate an MOU upon 30 days written notice.

Dated: July 7, 2000.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 00–19179 Filed 7–28–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Core Competency Model Project

AGENCY: National Institute of Corrections.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The project will identify the competencies needed by correctional leaders and managers at each of four organizational levels. It will define the competency, identify the relevant knowledge needed for its development, describe the behaviors that reflect the competency, identify the skills required to use and develop the competency, and suggest training strategies appropriate to the competency and the management level being addressed.

Project Objectives

Given the premise of the Core Competency Model, the work developed under the cooperative agreement will:

- Identify the competencies needed by correctional leaders and managers.
- Develop a profile of four identified management levels which can be used by correctional trainers in developing and targeting their programs; Supervisors, Managers, Senior Managers and Executives.
- Determine, list, and justify which competencies are most critical to each of the four management levels.
- Identify a knowledge base and/or the relevant theories required by the program participant to use and develop the core competency.
- Identify behaviors that reflect the core competencies at each level.
- Identify the skills required to use and develop the core competencies at each level.
- Provide a tool with which correctional training staff can revise and/or develop programs with the appropriate combination of theoretical and skill-based content.
- Provide a tool to help correctional training staff ensure any content being offered is appropriate to the management level for which it is offered.
- Provide a tool with which correctional training staff can advise practitioners regarding the programs to which they should apply to enhance their leadership and management abilities.
- Provide a tool with which correctional training staff can review the content of leadership and management programs to avoid duplication.

Scope of Work

Introduction

As the correctional field begins its work in the new millennium its leaders will be faced with significant challenges. They must continue to study and apply as appropriate the latest research in offender management and treatment; lead an ever increasingly diverse workforce; design, improve and oversee an efficient operational program; and ensure the incorporation of new technologies in a manner beneficial to their agencies. They must also provide those they lead with guidance and direction for the future. Much of this work will be accomplished through the efforts of those under their supervision. The need for capable leaders is clear.

The Core Competency Model will rest on a basic premise. Leaders and managers need the same or similar core competencies to perform their tasks. However, the actions and behaviors driven by those competencies will vary with the individuals position in the organization and the context of the situations they face. Training content should be grounded in the basic competencies, but vary with the participant's assignments and responsibilities.

Leaders and managers at all levels must have an ability to communicate effectively. But, the skills and behaviors needed will vary depending on who is receiving the communications(s) and the context of the interaction. A first line supervisor counseling a line staff officer on the appropriate use of sick time will employ different methods and behaviors than a Chief Executive Officer (CEO) responding to questions from the media. Likewise, line supervisors may employ problem solving techniques different from the strategic planning approaches employed by the agency's executives.

Background

Correctional leadership programs, including those offered by the Institute, are usually designed for correctional leaders in general, to achieve the broad goal of developing and/or improving correctional leaders. The content is often designed without any systematic consideration given to the specific skills and abilities needed by individuals at various levels of management. This can result in some unanswered questions and issues.

- Are participants applying for and being placed into programs that match their developmental level?
- Does the material challenge the participants?

• Does the content address the needs of the participants at their management level?
• Does the content an appropriate balance of theoretical and skill related material for the target audience?
• Is there duplication between programs?
• Does the content allow for the development of measurable outcomes?

The Goals

The Core Competency Model Project will serve two goals. First, the work will provide a framework with which correctional agencies can assess the efficacy of existing leadership and management programs. Correctional trainers can also apply the Model to the development of new offerings.

Design and Implementation

Ultimately, the Core Competency Model will be designed as a matrix containing definitions and descriptions of the critical core competencies, plus the following elements related to those competencies:
• The relevant knowledge base or theory.
• The behaviors "driven" by the competency for each of the identified management levels,
• The skills necessary to ensure the behaviors, and
• Suggested training or delivery strategies.

These descriptions will be supplemented with an orientation to the Model, plus more detailed narrative explanations and references, as appropriate.

Completion of Phase One

As envisioned, completion of the Core Competency Model will be a comprehensive project and too complex to be accomplished in one year. It is estimated that it will be phased over 18 months. The project will be broken into two phases. During Phase One several key project elements will be developed. The recipient will:
• Develop Managerial Profiles for each of the four identified management levels; Supervisors, Managers, Senior Managers, and Executives.

These profiles will give an overall description of the duties, tasks, responsibilities and authority of correctional practitioners at each of the four levels. Regardless of an individual's title, a correctional trainer should be able to place a practitioner into one of the four levels by requesting information about their general tasks, duties and responsibilities verbally, or by reviewing their written job description and comparing it to the profile.

• Conduct a review of key leadership and management competencies.

The completion of this activity will determine which competencies are critical to each of the four specified levels.
• Develop a format for the Core Competency Model in the form of a matrix containing the name of each competency, plus a definition for each competency.
• Indicate which of the Core Competencies are most critical to each of the four management levels.

To "test" the Model two Core Competencies must be fully developed for the Senior Management level. These two "developed" competencies will include:

The name of the core competency,
• Its definition and description,
• The identified relevant knowledge or theoretical base for the competency at the Senior Management level,
• The behaviors that reflect the competency at the Senior Management level,
• The skills needed to use and develop the competency, and
• Suggested instructional strategies and possible activities that can be used at the Senior Management level to "teach" the competency.

Implementation and Use of Phase One Work

The work that is developed during Phase One will be applied by NIC staff first to the Academy's Correctional Leadership Development (CLD) program. CLD is one of the Academy's longest running training programs and has been at the heart of its offerings. Although it has gone through many stages, it has not been comprehensively reviewed for several years and requires updating. Applying the work completed during Phase One will allow staff to "test" the Model. NIC staff will be able to:
• Determine if the Model can be applied as envisioned.
• Assess the Model's usefulness to correctional trainers as an assessment and development tool for leadership and management training.
• Establish a refined time-table for the balance of the project.

The recipient will conduct a briefing for Institute staff to acquaint them with the concept and intended uses for the Model. During this meeting staff will be able to ask questions and offer ideas and feedback.

Completion of Phase Two

As Phase One progresses the Core Competency Model structure will be monitored. Once tested and revised as necessary the Phase Two work will continue. The Core Competencies for the Senior Manager will be developed, followed by those for the Executive, the Manager, and the Supervisor. When the project is complete the work will contain:
• An introduction to the Core Competency Model, plus an orientation and instructions regarding its application and use.
• A description of each of the four management levels identified by the Institute; Supervisors, Managers, Senior Managers, and Executives. These descriptions will identify the general duties, tasks, responsibilities and authority of correctional managers and leaders in these positions respectively.
• A list of the competencies needed by correctional leaders and managers.
• A general definition and/or description of each competency.
• A list of the competencies most critical to each of the four management levels, including a brief justification for its assignment to that level.
• For each management level a list and/or description of the theoretical framework or knowledge base needed by the participant to develop their ability to integrate and use that level's critical competencies.
• A description of the behaviors that reflect the critical competencies at each management level.
• A list of the skills necessary to apply the critical competencies at each management level.
• A comprehensive list of suggested instructional strategies, training techniques, and activities for each management level.

At the conclusion of the project the recipient will provide an orientation and training in the use of the Model for the NIC staff. This should include suggestions on preparing and transferring the Model to the field.

Products and Deliverables

Upon completion of the cooperative agreement's requirements the recipient will deliver the above described work to the NIC Academy in the form of the following products.

Phase One Products

• A brief narrative review of the project to date.
• Managerial Profiles for Supervisors, Managers, Senior Managers, and Executives.
• A narrative describing the review of the existing core competency work, outlining the suggested changes and the accompanying rationale.
• The Core Competency Model format in the form of a matrix containing; the

name of each core competency and a definition and description for each competency.

• A chart indicating the four management levels, their critical Core Competencies, and a brief justification or explanation of their assignment to their particular management level. (This might be done by breaking the Matrix into four separate matrices, one for each level.)

• Two fully developed Core Competencies. These two will be selected in conjunction with the NIC Project Coordinator. These fully developed competencies will include; the general definition and/or description of the competency, a brief justification for its assignment to the Senior management level, a description of the theoretical framework or knowledge base needed by the participant to use and develop the competency, a description of the behaviors that reflect the competency, the sills necessary to use and develop the competency, and suggested training styles, instructional strategies and activities appropriate for "teaching" these competencies at the Senior management level.

Phase Two Products

• A brief narrative review of the project.

• An introduction to the Core Competency Model, plus an orientation and instructions regarding its application and use.

• The fully developed Core Competencies for each of the four management levels in the established matrix format with accompanying detailed narratives and references.

Phase Two products will incorporate any revisions indicated by the review of the Phase One work.

All work will be completed in or converted to Corel WordPerfect 8 or 9. Graphics will be developed in or converted to Corel Presentations. Two camera ready copies of the work will be presented, along with computer files on Compact Disks. Technical terms and acronyms must be fully explained and/or defined. The work must be carefully proof-read and edited to ensure readable text and comprehension.

Authority: Public Law 93–415.

Funds Available: The award will be limited to $105,000 (direct and indirect costs) and project activity must be completed within 18 months of the date of award. Funds may not be used for construction, or to acquire or build real property. This project will be a collaborative venture with the NIC Academy Division.

Deadline for Receipt of Applications: Applications must be received by 4:00 p.m. on 08/23/00. They should be addressed to: Director, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534. Hand delivered applications should be brought to 500 First Street, NW, Washington, DC 20534. The front desk will call Bobbi Tinsley at 202.307.3106, extension 0 for pick-up.

ADDRESSES: Requests for the application kit should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, N.W., Room 5007, Washington, DC 20534 or by calling 800.995.6423, ext. 159, 202.307.3106, ext. 159, or email: *jevens@bop.gov.* A copy of this announcement, application forms, and additional information may also be obtained through the NIC web site: http.//www.nicic.org (click on "What's New" and "Cooperative Agreements"). All technical and/or programmatic questions concerning this announcement should be directed to Dee Halley at 1960 Industrial Circle, Longmont, Colorado, or by calling 800.995.6429, ext. 116 or 303.682.0382 or by E-mail via <dhalley@bop.gov>.

Eligible Applicants: An eligible applicant is any public or private agency, educational institution, organization, team, or individual with the requisite skills to successfully meet the outcome objective of the project. Applicants must have a background in corrections, adult training and/or education and competency based training.

Review Considerations: Applicants received under this announcement will be subjected to an NIC 3 to 5 member Peer Review Process.

Number of Awards: One (1).

NIC Application Number: 00P14. This number should appear as a reference line in your cover letter and also in box 11 of Standard Form 424.

(Catalog of Federal Domestic Assistance Number: 16.601)

Dated: July 25, 2000.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 00–19177 Filed 7–28–00; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 20, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the office of Management and Budget (OMB) for review asnd approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Mine Safety and Health Administration (MSHA).

Title: Notification of Methane Detected in Mine Atmosphere.

Type of Review: Extension.

OMB Number: 1219–0103.

Frequency: On occasion, Weekly, and Annually.

Affected Public: Business or other for-profit.

Number of Respondents: 8.

Number of Annual Responses: 372.

Estimated Time Per Response: 0.08 minutes.

Total Burden Hours: 31.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Metal and Nonmetal mine operators are required to notify MSHA as soon as possible if any of the following events occur: (a) There is an outburst that results in 0.25 percent or more methane in the mine atmosphere; (b) there is a blowout that results in 0.25 percent or more methane in the mine atmosphere; (c) there is an ignition of methane; (d) air sample results indicate 0.25 percent or more methane in the mine atmosphere of a Subcategory I–B, I–C, II–B, V–B, or Category VI mine; If methane reaches 2.0 percent in a Category IV mine; or methane reaches 0.25 percent in the mine atmosphere of a Subcategory I–B, II–B, V–B, and VI mines, MSHA shall be notified immediately.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–19253 Filed 7–28–00; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 21, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ({202} 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ({202} 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Office of the Chief Financial Officer.

Title: Disclosure of Information to Credit Reporting Agencies; Administrative Offset, Interest, Penalties, and Administrative Costs.

OMB Number: 1225–0030.

Affected Public: Individuals or Households, Business or other for-profit; Not-for-profit institutions; Farms; Federal Government.

Frequency: On Occasion.

Cite/reference	Total respondents	*Total responses	Average time per response (hours)	Total burden hours
29 CFR 20.7	2000	2000 (×2)	1.75	7000
29 CFR 20.25	500	500 (×2)	1.75	1750
29 CFR 20.61	1000	1000 (×2)	1.75	3500
Totals	3500	3500 (×2)		12,250

*The notation "(×2) refers to the two correspondences from each debtor.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Information is collected from debtors to assist in determining whether an individual or organization is actually indebted to the Department of Labor, and if so indebted, to evaluate the individual's or organization's ability to repay the debt.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: International Price Program—U.S. Export Price Indexes.

OMB Number: 1220–0025.

Affected Public: Business or other for-profit.

Form	Total respondents	Frequency	Total responses	Average time per response (Hours)	Total burden hours
Initiation	1,700	Annually	1,700	1	1,700
BLS–3007D	3,235	Monthly/Quarterly	38,540	.5625	21,679
Totals	4,935		40,240	.58	23,379

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The International Price Program Indexes, a primary economic indicator, are used as measures of movement in international prices, indicators of inflationary trends in the economy, and sources of information used to determine U.S. monetary, fiscal, trade, and commercial policies.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: International Price Program—U.S. Import Price Indexes.

OMB Number: 1220–0026.

Affected Public: Business or other for-profit.

Form	Total respondents	Frequency	Total responses	Average time per response (Hours)	Total burden hours
Initiation	1,700	Annually	1,700	1	1,700
BLS–3007D	3,235	Monthly/Quarterly	38,540	.586	22,546
Totals	4,935		40,240	.6	24,246

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The International Price Program Indexes, a primary economic indicator, are used as measures of movement in international prices, indicators of inflationary trends in the economy, and sources of information used to determine U.S. monetary, fiscal, trade, and commercial policies. They also are used to deflate the Gross Domestic Products.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–19254 Filed 7–28–00; 8:45 am]

BILLING CODE 4510–23–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Geosciences; Committee of Visitors for the Focused Geosciences Education and Human Resource Development Activities (1755)

Date and Time: August 28–29, 2000—8:30 a.m.–5:00 p.m. each day; August 30, 2000—8:30 a.m.–12 noon

Place: Room 770, NSF, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Part-Open—(see Agenda, below)

Contact Person: Dr. Michael A. Mayhew, Program Director, Education and Human Resources Program, Division of Earth Sciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–8557.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including program evaluation, GPRA assessments, and access to privileged materials.

Agenda

Closed: August 28 from 1:00–5:00—To review the merit review processes covering funding decisions made during the immediately preceding three fiscal years of the Earth Sciences Research Programs.

Open: August 28 from 8:30–12:00—Introductions, charge and general discussion of selection process. August 29 from 8:30–5:00 & August 30 from 8:30–12 noon—To assess the results of NSF program investments in the Focused Geosciences Education and Human Resource Development Activities. This shall involve a discussion and review of results focused on NSF and grantee outputs and related outcomes achieved or realized during the preceding three fiscal years. These results may be based on NSF grants or other investments made in earlier years.

Reason for Closing: During the closed session, the Committee will be reviewing proposal actions that will include privileged intellectual property and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: July 26, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–19241 Filed 7–28–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Human Resource Development (#1199).

Date/Time: August 16, 2000; 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 380, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Roosevelt Y. Johnson, Program Director, AGEP Program, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1633.

Purpose of Meeting: To provide advice and recommendation concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate formal proposals submitted to the Alliances for Graduate Education and the Professorate (AGEP) Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 26, 2000.

Karen J. York,

Committee Management.

[FR Doc. 00–19240 Filed 7–28–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–3073]

Notice of Consideration of Amendment Request for Cushing Refinery Site, Cushing, Oklahoma and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Materials License SNM–1999 issued to Kerr-McGee Corporation (the licensee) for its Cushing Refinery site in Cushing, Oklahoma. The licensee requested, in a letter dated April 7, 2000, that NRC amend Materials License SNM–1999 to remove several "tie-down" and license

conditions. The licensee considers these conditions either redundant or no longer necessary as a result of NRC's issuance of License Amendments Nos. 10 and 11. License Amendment No. 10, issued August 23, 1999, authorized the licensee to remediate radioactive contamination. License Amendment No. 11, issued November 3, 1999, named Ms. Karen Morgan as the Cushing Refinery site Radiation Safety Officer. The licensee indicated that removal of redundant requirements would reduce potential confusion caused by these redundancies.

If the NRC approves this license amendment, the approval will be documented in an amendment to NRC license SNM–1999. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

NRC hereby provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules of 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 this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m. Federal workdays; or

2. By mail, telegram, or facsimile addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001. Attention: Rulemakings and Adjudications Staff.

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, Kerr-McGee Corporation, Kerr-McGee Center, PO Box 25861, Oklahoma City, Oklahoma, Attention: Mr. Jeff Lux, and;

2. The NRC staff, by delivery to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m. Federal workdays, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

In addition to meeting other applicable requirements of 10 CFR Part 2 of 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 that interest may be affected by the results of the proceeding, including the reasons why the requester 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 circumstance establishing that the request for a hearing is timely in accordance with § 2.1205(d).

FOR FURTHER INFORMATION: The application for amendment and supporting documentation are available for inspection at NRC's Public Electronic Reading Room on the NRC Web site *http://www.nrc.gov/NRC/ADAMS/index.html*. Questions with respect to this action should be referred to Stewart Brown, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6605. Fax.: (301) 415–5397.

Dated at Rockville, Maryland, this 24th day of July, 2000.

For the Nuclear Regulatory Commission.

Robert A. Nelson,

Acting Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–19244 Filed 7–28–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336]

Northeast Nuclear Energy Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–65 issued to Northeast Nuclear Energy Company (NNECO/the licensee) for operation of the Millstone Nuclear Power Station, Unit No. 2 (MNPS–2) located in New London County, Connecticut.

The proposed amendment would change the Technical Specification (TSs) and Bases Sections associated with the requirements for the Reactor Coolant System (RCS) loops and Shutdown Cooling (SDC) System trains during all modes of plant operation. Many of the proposed changes are associated with the format and structure of the affected TSs and will not result in any technical changes to the current requirements. The proposed format changes will result in TSs that are clear, concise, and easier for the Control Room operators to use. Some of the changes are proposed to achieve consistency with the Standard TSs for Combustion Engineering Plants in NUREG–1432, Rev. 1. The Bases for the TSs would also be revised to reflect the proposed changes.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification changes are associated with the requirements for the RCS loops and SDC trains during all modes of plant operation. These systems provide for the transportation of heat from the reactor core to a heat sink. The proposed changes will not adversely affect power operation, and will ensure that two methods of decay heat removal are available when the plant is shut down. These specifications include requirements for various equipment, based on plant conditions, and provide appropriate actions to take if the required equipment is not available. This ensures the equipment necessary to mitigate the design basis accidents is available and functioning as assumed, or plant operation is limited accordingly.

Standardizing the terminology, format, and numbering of the Technical Specifications, adding or correcting amendment numbers, changing the action statements to be consistent with the proposed changes to the LCO [limiting condition for operation], removal of extraneous information from various SRs [surveillance requirements], and transferring information from the LCO to the associated Technical Specification Bases are non-technical changes that will not affect any of the current requirements.

The operation of, and requirements for, the equipment covered by the affected Technical Specifications will remain essentially the same. In Modes 1 and 2, the proposed requirements are more restrictive in that the two RCS loops must be operable in addition to being in operation. In Modes 3 (RCS loops) and 4 (RCS loops and SDC trains), the requirements remain the same. In Mode 5, the requirements will be separated into two specifications based on the status of the RCS loops. If the RCS loops are filled, two SDC trains will be required unless both steam generators (instead of one) have sufficient inventory. RCPs [reactor coolant pumps] will no longer be required. If the RCS loops are not filled, two SDC trains will be required. These are not significant changes to the Mode 5 requirements. In Mode 6, the SDC train requirements are more restrictive since both SDC trains will be required unless the refueling cavity is filled to at least 23 feet above the reactor vessel flange.

Changes to the action statements will be made based on the proposed changes to the LCOs. If the required equipment is not operable, the proposed action requirements will require timely restoration of the equipment, or the plant will be placed in a configuration where there is no adverse impact associated with the inoperable equipment. The changes to the action statements will also address additional combinations of inoperable equipment. The allowed outage times provide a reasonable time for repairs before requiring a plant shutdown to a lower mode, as applicable. The shutdown times will allow an orderly shutdown, as applicable, to be performed. Surveillance requirements will be added or modified as appropriate based on the changes to the LCOs. This will ensure the required equipment is operable. Additional restrictions will be placed on plant operation to properly control various evolutions when the plant is shutdown. These additional restrictions (e.g., how often the RCPs and SDC pumps can be secured) provide sufficient administrative control to ensure safe operation of the plant.

The proposed changes will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents will not change. In addition, the proposed changes can not cause an accident. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Technical Specification changes will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. They do not alter the way any structure, system, or component functions and do not significantly alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. Also, the response of the plant and the operators following these accidents is unaffected by the changes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed Technical Specification changes are associated with the requirements for the RCS loops and SDC trains during all modes of plant operation. These systems provide for the transportation of heat from the reactor core to a heat sink. The specifications associated with these systems include requirements for various equipment, based on plant conditions, and provide appropriate actions to take if the required equipment is not available. This will ensure that the equipment necessary to mitigate the design basis accidents is available and functioning as assumed, or plant operation is limited accordingly.

The proposed changes will result in Technical Specifications that are clear, concise, and easier for the plant operators to use. The format, structure and technical content of the affected specifications is consistent with current industry guidance as contained in NUREG–1432, with the exception of the third note to the LCO for Technical Specification 3.9.8.1. This note, which will allow the SDC pumps to be removed from operation, will provide additional operational flexibility to perform work that is currently done during plant heatup after the SDC trains have been removed from service, and to perform work on the valves located in the common SDC suction line. However, the restrictions on what work can be performed utilizing the provisions of this note, the plant conditions that must first be established, and the required management review of the planned plant evolution will ensure plant safety is maintained.

The proposed changes to the Technical Specifications are consistent with the Millstone Unit No. 2 design basis accident analyses. This will ensure the analyses remains valid, and the consequences of the accidents are acceptable. They will provide the necessary control to ensure the required plant conditions are established and the required plant equipment is available. If the required equipment is not operable, the proposed action requirements will require timely restoration of the equipment or the plant will be placed in a configuration where there is no adverse impact associated with the inoperable equipment. The proposed allowed outage times provide a reasonable time for repairs before requiring a plant shutdown, as applicable, and reflect the low probability of an event occurring while the equipment is inoperable. The proposed shutdown times will allow an orderly shutdown, as applicable, to be performed. The proposed allowed outage times and shutdown times are consistent with times already contained in the Millstone Unit No. 2 Technical Specifications and with generic industry guidance (NUREG–1432), where applicable.

The proposed changes will have no adverse effect on plant operation or equipment important to safety. The plant response to the design basis accidents will not change and the accident mitigation equipment will continue to function as assumed in the design basis accident analyses. Therefore, there will be no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 31, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 1, 2000, as supplemented on June 1 and July 13, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 26th day of July, 2000.

For the Nuclear Regulatory Commission.

Jacob I. Zimmerman,

Project Manager, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–19247 Filed 7–28–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278]

Peco Energy Company; Peach Bottom Atomic Power Station, Units 2 and 3 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an exemption from Section III.F of Appendix R to 10 CFR Part 50 for Facility Operating Licenses Nos. DPR–44 and DPR–56, issued to PECO Energy Company (the licensee), along with other co-licensees, for operation of the Peach Bottom Atomic Power Station, Units 2 and 3, located in York County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant an exemption from the requirements of 10

CFR Part 50, Appendix R, Section III.F, "Automatic Fire Detection," to the extent that they require the installation of automatic fire detection systems in certain fire areas that contain or present an exposure fire hazard to safety-related or safe shutdown systems or components. The licensee is seeking an exemption from the requirements for an automatic fire detection system for 8 fire zones in fire area 50 (the common area between both turbine buildings), 2 fire zones within fire area 6S (a portion of the Unit 2 reactor building), and 2 fire zones within fire area 13N (a portion of the Unit 3 reactor building). Specifically, these fire zones are (1) the Condenser Bays Fire Zones 50–78W and 50–78V; (2) Equipment hatchway and adjoining equipment rooms, Fire Zone 50–78B; (3) Main Turbine Lube Oil Storage Tank Rooms, Fire Zones 50–88 and 50–89; (4) Reactor Feedwater Turbine Area Corridors, Fire Zone 50–78A; (5) Steam Jet Ejector Room, Fire Zone 50–78EE; (6) Feedwater Heater Room, Fire Zone 50–99; and (7) Reactor Water Cleanup System Equipment, Fire Zones 6S–42, 6S–5M, 13N–36, and 13N–13M.

The proposed action is in accordance with the licensee's application for exemption dated December 31, 1998, as supplemented by letters dated January 14 and April 14, 2000.

The Need for the Proposed Action

The proposed exemption from Section III.F to effectively allow the fire areas and zones, as discussed above, to not meet the provisions otherwise requiring the installation of automatic fire detection systems is needed in order to preclude a substantial hardship should plant modifications be required to be made that would not significantly increase the level of fire protection currently at Peach Bottom Units 2 and 3.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that with the proposed exemption there will be an adequate level of fire protection and the underlying purpose of Section III.F, of Appendix R, for the affected areas of the plants will be met, such that there would be no significant increase in the risk of fires at these facilities, except for Fire Zone 50–78B (Room 429) and Fire Zone 50–99 (Room 222). The fire hazard associated with Fire Zones 50–78B and 50–99 warrant some fire protection system to provide reasonable assurance of safety. The staff concludes that an automatic detection system should be provided for these Fire Zones to provide prompt notification to the control room of a fire in these Fire Zones during its incipient stage to allow a rapid response from the plant fire brigade.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Peach Bottom Units 2 and 3.

Agencies and Persons Consulted

In accordance with its stated policy, on June 2, 2000, the staff consulted with the Pennsylvania State official, Mr. Dennis Dyckman of the Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 31, 1998, as supplemented by letters dated January 14 and April 14, 2000, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 24th day of July 2000.

For the Nuclear Regulatory Commission.

Bartholomew C. Buckley, Sr.,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–19245 Filed 7–28–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Application for a License To Import Radioactive Waste

Pursuant to 10 CFR 110.70(c) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an import license. Copies of the application are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *<http://www.nrc.gov/NRC/ADAMS/index.html>* at the NRC Homepage.

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.

The information concerning the application follows.

NRC IMPORT LICENSE APPLICATION

Name of applicant Date of application Date received Application No.	Description of material			Country of origin
	Material type	Total qty.	End use	
Philotechnics, Ltd., July 6, 2000, July 7, 2000, IW010.	Depleted Uranium Class A waste.	50,000 kgs DU metal, aircraft counter-weights.	For disposal at Waste Control Specialists, L.L.C., Andrews County, TX.	United Kingdom.

Dated this 25th day of July 2000 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Deputy Director, Office of International Programs.

[FR Doc. 00–19243 Filed 7–28–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Tennessee Valley Authority (TVA, the licensee) to withdraw its June 24, 1999, application for proposed amendments to Facility Operating Licenses Nos. DPR–77 and DPR–79 for the Sequoyah Nuclear Plant, Units 1 and 2, located in Hamilton County, Tennessee.

The proposed amendments would have revised the facility technical specifications (TS) pertaining to surveillance requirements for the ice weight in the ice condenser baskets.

The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on August 11, 1999 (64 FR 43781). The Commission subsequently sent a letter to TVA, dated December 9, 1999, noting that the staff had identified a number of deficiencies during the course of their review. Although these deficiencies did not dispute the no significant hazards consideration determination published in the **Federal Register**, they did fall short of the improvements to and clarifications of the present TS envisioned by the Commission staff. By letter dated June 9, 2000, TVA withdrew the proposed change on the basis that the Ice Condenser Utility Group reevaluated the original request and determined that the initial approach taken may not necessarily provide the desired improvements.

For further details with respect to this action, see the application for amendments dated June 24, 1999, the Commission's letter dated December 9, 1999, and the licensee's letter dated June 9, 2000, which withdrew the application for license amendments. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 25th day of July 2000.

For the Nuclear Regulatory Commission.

Ronald W. Hernan,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–19246 Filed 7–28–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Amendments to Accounting for Property, Plant, and Equipment

AGENCY: Office of Management and Budget.

ACTION: Notice of document availability.

SUMMARY: This Notice indicates the availability of the sixteenth Statement of Federal Financial Accounting Standards (SFFAS), "Amendments to Accounting for Property, Plant, and Equipment." The statement was recommended by the Federal Accounting Standards Advisory Board (FASAB), approved by the Director of the Office of Management and Budget (OMB), the Comptroller General, and the Secretary of the Treasury, and adopted in its entirety by OMB on September 8, 1999. As required by the Chief Financial Officers Act of 1990, SFFAS No. 16 was reported to the Congress and a period of 45 days of continuous session of the Congress has expired.

ADDRESSES: Copies of SFFAS No. 16, "Amendments to Accounting for Property, Plant, and Equipment," may be obtained for $4.25 each from the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202–512–1800), Stock No. 041–001–00548–0.

FOR FURTHER INFORMATION CONTACT: Kim Geier (telephone: 202–395–6905), Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, N.W., Room 6025, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: Under a Memorandum of Understanding between the General Accounting Office, the Department of the Treasury, and OMB on Federal Government Accounting Standards, the Comptroller General, the Secretary of the Treasury, and the Director of OMB decide upon principles and standards after considering the recommendations of FASAB. After agreement to specific principles and standards, they are published in the **Federal Register** and distributed throughout the Federal Government.

This Notice is available on the OMB home page on the Internet which is currently located at http://www.whitehouse.gov/OMB/, under the caption "**Federal Register**."

Joshua Gotbaum,

Controller.

[FR Doc. 00–19206 Filed 7–28–00; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43063; File No. SR–OPRA–00–07]

Options Price Reporting Authority; Notice of Filing and Order Granting Temporary Effectiveness of Amendment to OPRA Plan Adopting a Capacity Allocation Plan

July 21, 2000.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on

[1] 17 CFR 240.11Aa3–2.

July 20, 2000, the Options Price Reporting Authority ("OPRA")[2] submitted to the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan"). The proposed OPRA Plan amendment would modify the current temporary capacity allocation plan for peak usage periods, which minimizes the likelihood that during this period the total number of messages generated by the OPRA participant exchanges will exceed the processor's (*i.e.*, Securities Industry Automation Corporation ("SIAC")) aggregate message handling capacity. The proposed amendment would revise the current temporary capacity allocation to account for the recent expansion of the message handling capacity of OPRA's processor. The Commission is publishing this notice and order to solicit comments from interested persons on the proposed OPRA Plan amendment and to grant temporary effectiveness to the proposed OPRA Plan amendment not to exceed 120 days.

I. Description and Purpose of the Amendment

OPRA proposes to revise and extend the temporary allocation of the message handling capacity of its processor among the participant exchanges, which currently provides for the allocation of 3,540 messages per second ("mps") and is scheduled to end on August 24, 2000. The revised capacity allocation now being proposed takes into account the recent expansion of the maximum message handling capacity of OPRA's processor to 5,000 mps. During the extension of the temporary allocation provided for in this amendment, the processor's maximum aggregate message-handling capacity will be allocated among the participants by automatically limiting the number of messages that each participant may input to the processor as follows:

American Stock Exchange:—1,320 mps
Chicago Board Options Exchange—1,715 mps
International Securities Exchange—355 mps
Pacific Exchange—875 mps
Philadelphia Stock Exchange—735 mps

The above capacity allocation would commence on July 21, 2000, or as soon thereafter as this amendment can be implemented by OPRA's processor. It would continue in effect until the earlier of (i) the time when OPRA's processor implements the next planned capacity upgrade by converting from the current T1 output network to the exclusive use of a new T3 output network (currently scheduled to take place on or about September 18, 2000), or (ii) the close of business on October 12, 2000.

OPRA has determined to treat this proposed revision and extension of its temporary capacity allocation program as an amendment to its national market system plan, and accordingly is filing the proposed amendment for Commission review and approval pursuant to paragraph (b) of Rule 11Aa3–2 under the Act.

The purpose of the proposed amendment is to revise and extend the current temporary allocation of OPRA's message handling capacity to take into account the recent expansion of the maximum message handling capacity of OPRA's processor, and to provide an allocation that will remain in effect until the next planned capacity upgrade or until the close of business on October 12, 2000, whichever is first to occur.

II. Implementation of the Plan Amendment

OPRA believes the proposed modification of the temporary capacity allocation program is necessary and appropriate to avoid delays and queues in the dissemination of options market information, which in turn helps to achieve the objectives of Section 11A(a)(1)(C)(iii),[3] including assuring the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Accordingly, OPRA requests the Commission to permit the modification of the proposed allocation program to be put into effect summarily upon publication of notice of this filing, pursuant to paragraph (c)(4) of Rule 11Aa3–2 of the Act,[4] based on a finding by the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or is otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment is consistent with the Act. In particular, the Commission is soliciting comment on whether permanent approval of the amendment is appropriate and whether, in permanently approving such amendment, the Commission should modify the proposed amendment to remain effective until a later date than that set forth in the proposed amendment[5] or such time as the Commission may adopt an allocation formula.[6] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed OPRA Plan amendment that are filed with the Commission, and all written communications relating to the proposed OPRA Plan amendment between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to File No. SR–OPRA–00–07 and should be submitted by August 21, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Plan Amendment

After careful review, the Commission finds that the proposed OPRA Plan amendment is consistent with the requirements of the Act and the rules and regulations thereunder.[7] Specifically, the Commission believes

[2] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981).

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The six exchanges that are participants to the OPRA Plan are the American Stock Exchange, the Chicago Board Options Exchange, the International Securities Exchange, the New York Stock Exchange, the Pacific Exchange, and the Philadelphia Stock Exchange.

[3] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[4] 17 CFR 240.11Aa3–2.

[5] *See* Rule 11Aa3–2(c)(2), 17 CFR 240.11Aa3–2(c)(2).

[6] The Commission has solicited comment on a proposed amendment to the OPRA Plan to adopt an objective capacity allocation formula. *See* Securities Exchange Act Release No. 42755 (May 4, 2000), 65 FR 30148 (May 10, 2000) (File No. 4–434). The Commission notes that this temporary plan could be superseded prior to its expiration date. If the OPRA participant exchanges file with the Commission a capacity allocation plan for peak usage periods that is consistent with the Act, the Commission will act to substitute that proposal for this plan.

[7] In approving this proposed OPRA Plan amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

that the proposed amendment, which allocates the limited capacity of the OPRA system among the options markets during peak usage periods, is consistent with Rule 11Aa3–2 under the Act [8] in that it will contribute to the maintenance of fair and orderly markets and remove impediments to, and perfect the mechanisms of, a national market system.

The Commission notes that the aggregate message traffic generated by the options exchanges is rapidly approaching the outside limit of, and at times surpasses, OPRA's systems capacity. OPRA estimates that its current plans to expand OPRA systems capacity will not be completed until September, 2000. Consequently, the Commission is concerned that, absent a program to allocate systems capacity among the options markets, systems queuing of options quotes may be the norm, to the detriment of all investors and other participants in the options markets. The Commission believes that the agreed-upon allocation plan is a reasonable means to account for the recent increase in message handling capacity of OPRA's processor and to address potential strains on capacity.

The Commission notes that the anticipated enhancements to the OPRA system should increase systems capacity to 8,000 mps. The Commission does not, however, believe that the enhancement will end the need for a capacity allocation [9] as the imminent move to decimalization and the dissemination of quotations with size will continue to strain OPRA systems capacity.

The Commission finds good cause to accelerate effectiveness of the proposed OPRA Plan amendment prior to the date of publication in the **Federal Register**. The Commission notes that the proposed OPRA Plan amendment is intended to mitigate potential disruption to the orderly dissemination of options market information caused by the inability of the OPRA system to handle the anticipated quote message traffic. The Commission believes that approving the amendment will provide the options exchanges and OPRA with an immediate, short-term solution to a pressing problem, while giving the Commission and the options markets additional time to evaluate, and possibly implement, other quote mitigation strategies. In addition the limited time frame of this capacity allocation program provides the Commission and the options exchanges with greater flexibility to modify the program, as necessary, to ensure the fairness of the allocation process to all of the options markets going forward. The Commission finds, therefore, that granting temporary effectiveness of the proposed OPRA Plan amendment is appropriate and consistent with Section 11A of the Act.[10]

[8] 17 CFR 240.11Aa3–2.

[9] *See supra* note 6.

[10] 15 U.S.C. 78k–1.

V. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act [11] and Rule 11Aa3–2 [12] thereunder, that the proposed OPRA Plan amendment (SR–OPRA–00–07) is effective on a temporary basis not to exceed 120 days.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–19229 Filed 7–28–00; 8:45 am]

BILLING CODE 8010–01–M

[11] 15 U.S.C. 78k–1.

[12] 17 CFR 240.11 Aa3–2.

[13] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43062; File No. SR–CHX–00–07]

Self Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Examination Requirements for Floor Clerks Who May Accept Orders From Professional Customers for Execution on the Exchange's Trading Floor

July 21, 2000.

I. Introduction

On March 17, 2000, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(10 of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4, thereunder,[2] a proposed rule change relating to the qualification requirements for Exchange floor clerks who may, among other functions, accept orders from professional customers [3] for execution on the Exchange's trading floor. The proposed rule change was published for comment in the **Federal Register** on June 12, 2000.[4] On June 30, 2000, the CHX filed Amendment No. 1 to the proposal.[5] No comments were received on the proposal. This order approves the proposed rule change, as amended.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule change defines the term "professional customer" to include a bank; trust company; insurance company; investment trust; a state or political subdivision thereof; a charitable or nonprofit education institution regulated under the laws of the United States, or any state; a pension or profit sharing plan subject to ERISA, or of any agency of the United States or of a state or political subdivision thereof; or any person (other than a natural person) who has, or who has under management, net tangible assets of at least sixteen million dollars.

II. Description of the Proposal

Under Exchange rules, a floor clerk of a qualified floor member may accept orders from professional customers for execution on the Exchange's trading floor, so long as the floor clerk has successfully completed either the General Securities Registered Representative Examination ("Series 7 Examination") or the Series 7B Examination.[6] The Exchange proposes to amend Interpretation .01(d) of CHX Article VI, Rule 3 by requiring Exchange floor clerks who may, among other functions, accept orders from professional customers for execution on the Exchange's trading floor, to successfully complete the Exchange's Floor Membership Examination [7] and either the Series 7 Examination or the Series 7A Examination.[8] The proposal

[4] Securities Exchange Act Release No. 42891 (June 1, 2000), 65 FR 36857.

[5] Letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission (June 30, 2000) ("Amendment No. 1"). In response to comments from Commission staff, the Exchange submitted Amendment No. 1 to make a grammatical correction to the language of the proposed rule. Amendment No. 1 also adds Section 6(c)(3)(B) of the Act to the Statutory basis of the proposed rule change. 15 U.S.C. 78f(c)(3)(B). Finally, Amendment No. 1 clarifies Item 8 of Form 19b–4 to reflect that the proposed rule change is based on a recent New York Stock Exchange, Inc. ("NYSE") proposal. *See* Securities Exchange Act Release No. 42092 (November 2, 1999), 64 FR 61375 (November 10, 1999) (order approving the elimination of the Series 7B Qualification Examination ("Series 7B Examination") and establishing the Series 7A Qualification Examination ("Series 7A Examination") as the appropriate qualification examination for NYSE floor clerks). This amendment is technical and therefore is not required to be published for notice and comment.

[6] The NYSE implemented the Series 7B Examination in 1994 to serve as an alternative qualification examination to the Series 7 Examination. *See* Securities Exchange Act Release No. 34334 (July 8, 1994), 59 FR 35964 (July 14, 1994).

[7] The Exchange adopted the Floor Membership Exam in 1996. *See* Securities Exchange Act Release No. 37690 (September 17, 1996), 61 FR 49803 (September 23, 1996).

[8] The NYSE implemented the Series 7A Examination in 1993 to serve as an alternative qualification exam to the Series 7 Examination. *See* Securities Exchange Act Release No. 32698 (July 29, 1993), 58 FR 41539 (August 4, 1993). The Series 7A Examination and Series 7B Examination are identical except for an additional 25 questions on the Series 7B Examination that address floor rules and policies.

would eliminate the Series 7B Examination as an alternate requirement for floor clerks. The CHX's Floor Membership Examination addresses the rules and practices of other Exchange's trading floor but has broader coverage than the Series 7B Examination.[9]

III. Discussion

The Commission finds that the Exchange's proposal is consistent with the requirements of Section 6 of the Act,[10] and particularly Sections 6(c)(3)(A) and (B)[11] thereunder. Section 6(c)(3)(A) of the Act[12] provides that a national securities exchange may deny membership to, or condition the membership of, registered broker-dealer if any natural persons associated with such broker or dealer do not meet such standards of training, experience and competence as are prescribed by the rules of the exchange.[13]

Under Section 6(c)(3)(B) of the Act,[14] a national securities exchange may bar a natural person from becoming associated with a member if the person does not meet the exchange's standards of training, experience, or competence, or if the person has engaged and there is a reasonable likelihood the person will engage again in acts or practices inconsistent with just and equitable principles of trade. Under these statutory provisions, the various national securities exchange, including the CHX, are empowered to implement rules establishing the prerequisites to qualify and approve persons associated with members to engage in securities activities.

The Commission finds that the proposed rule change is consistent with the Act because the proposed rule change will help the Exchange to ensure that floor clerks satisfy prescribed standards of training, experience, and competence. Although the proposed rule change would eliminate the Series 7B Examination for floor clerks who may accept orders from professional customers for execution on the Exchange's trading floor, the subject matter included in the Series 7B Examination is covered, in part, by the recently implemented CHX Floor Membership Examination. The Commission believes that successful completion of the Floor Membership Examination and Series 7A Examination would help to ensure that floor clerks who may accept orders from professional customers for execution on the Exchange's trading floor are sufficiently familiar with the rules and practices of the Exchange's trading floor.

Moreover, the Commission previously approved a virtually identical proposal by the NYSE.[15] The NYSE recently eliminated the Series 7B Examination and now requires its floor clerks to pass a new Trading Assistant Examination ("Series 25 Examination")[16] and either the Series 7 Examination or the Series 7A Examination before becoming eligible to accept professional orders.[17] Like the CHX's Floor Membership Examination, the NYSE's new Trading Assistant Examination contains questions relating to its floor rules and policies and, according to the NYSE, has broader coverage than the questions formerly included in the Series 7B Examination.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change, SR–CHX–00–07, as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–19230 Filed 7–28–00; 8:45 am]

BILLING CODE 8010–01–M

[9] Telephone conversation between Michael Cardin, Market Regulation Department, CHX and Susie Cho, Attorney, Division, Commission, on April 5, 2000.

[10] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(c)(3)(A) and (B).

[12] 15 U.S.C. 78d(c)(3)(A).

[13] Under Section 15(b)(8) of the Act, all registered brokers or dealers must be members of an SRO—either a securities association or a national securities exchange. 15 U.S.C. 78*o*(b)(8).

[14] 15 U.S.C. 78f(c)(3)(B).

[15] *See* Securities Exchange Act Release No. 42092 (November 2, 1999), 64 FR 61375 (November 10, 1999).

[16] *See* Securities Exchange Act Release No. 40943 (January 13, 1999), 64 FR 3330 (January 21, 1999) (order approving the Series 25 Examination).

[17] *See* Securities Exchange Act Release No. 42092 (November 2, 1999), 64 FR 61375 (November 10, 1999) (order approving the elimination of the Series 7B Examination and establishing the Series 7A Examination as the appropriate qualification examination for NYSE floor clerks).

[18] *Id.*

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43064; File No. SR–Phlx–00–55]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Amending Its Rules To Mandate Decimal Pricing Testing

July 21, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 11, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Phlx. The Phlx has designated this proposal as one concerned solely with the administration of the Phlx under Section 19(b)(3)(A)(iii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 650 (currently titled "Mandatory Participation in Year 2000 Testing")[4] to require members and member organizations to participate in computer systems tests designed to prepare for the securities industry's conversion to decimal pricing. The Exchange proposes to change the title of Phlx 650 to "Mandatory Participation in Decimalization Testing."

The text of the proposed rule change is available upon request from the Phlx or the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] Testing in connection with the Year 2000 date change has been completed and the current requirements of the rule are no longer necessary. Telephone conversion between Jurij Trypupenko, Counsel, Phlx, and Matthew Boesch, Division of Market Regulation, Commission, on July 14, 2000.

any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange, in cooperation with the Commission, other self-regulatory organizations, and the Securities Industry Association, has been working toward a successful transition to decimal pricing. Advance testing by and among the various securities industry constituencies its necessary to avoid widespread problems during the transition. The Exchange has been conducting point-to-point testing of computers and computer-related systems of "upstairs" member firms that have computer interfaces with the Exchange[5] to ascertain the compatibility of such systems with the planned conversion to decimal pricing.

The purpose of the proposed rule change is to bring the efforts of the Phlx regarding decimal pricing testing into conformity with industry-wide decimalization testing efforts and to make mandatory the point-to-point testing of computers and computer-related systems which interface with the Exchange's systems. The rule, as amended, would require members and member firms that undergo decimalization testing to provide reports of such tests to the Exchange. According to the rule, the Exchange may indicate the manner and frequency of the testing and reporting requirements.

A member or member organization that violates the rule may be subject to disciplinary action pursuant to the Exchange's rules.[6]

The rule will expire automatically once decimal pricing has been fully implemented industry-wide.

2. Statutory Basis

The Phlx believes that rule change, whose purpose is to ensure the participation of Exchange members in important testing prior to the securities industry's conversion to decimal pricing, is consistent with Section 6(b) of the Act[7] in general and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change is concerned solely with the administration of the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and subparagraph (f)(3) of Rule 19b–4 thereunder.[10] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–00–55 and should be submitted by August 21, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–19231 Filed 7–28–00; 8:45 am]

BILLING CODE 8010–01–M

[5] Member firms that have computer equipment on the trading floors of the Exchange generally are exempted from point-to-point testing because the Exchange's internal testing encompasses all on-floor equipment and interfaces.

[6] Rule 650 provides that a member or member firm can be exempted from the requirements of the rule if the member or member firm (1) cannot be accommodated in the testing schedule, (2) does not employ computers in its business, (3) has an electronic interface through a service provider that conducts successful testing with the Exchange; or for other reasons determined by the Exchange.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(3).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice #3347]

Bureau of Intelligence and Research; Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union Notice of Committee Renewal

I. *Renewal of Advisory Committee.* The Department of State has renewed the Charter of the Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union. This advisory committee makes recommendations to the Secretary of State on funding for applications submitted for the Research and Training Program on Eastern Europe and the Independent States of the Former Soviet Union (Title VIII). These applications are submitted in response to an annual, open competition among U.S. national organizations with interest and expertise administering research and training programs in the Russian, Eurasian, and East European fields. The program seeks to build and sustain U.S. expertise on these regions through support for advanced graduate training, language training, and postdoctoral research.

The committee includes representatives of the Secretaries of Defense and Education, the Librarian of Congress, and the Presidents of the American Association for the Advancement of Slavic Studies and the Association of American Universities. The Assistant Secretary for Intelligence and Research chairs the advisory committee for the Secretary of State. The committee meets at least annually to recommend grant policies and recipients.

For further information, please call: Susan Nelson, INR/RES. U.S. Department of State, (202) 736–4155.

Dated: July 20, 2000.

W. Kendall Myers,

Executive Director, Advisory Committee for the Study of Eastern, Europe and the Independent States of the Former Soviet Union, U.S. Department of State.

[FR Doc. 00–19273 Filed 7–28–00; 8:45 am]

BILLING CODE 4710–32–P

DEPARTMENT OF STATE

Bureau of Consular Affairs

[Public Notice 3375]

Registration for the Diversity Immigrant (DV–2002) Visa Program

ACTION: Notice of registration for the eighth year of the Diversity Immigrant Visa Program.

This public notice provides information on the procedures for obtaining an opportunity to apply for one of the 55,000 (maximum) immigrant visas to be made available in the Diversity Immigrant Visa (DV) category during Fiscal Year 2002. This notice is issued pursuant to 22 CFR 42.33(b)(2) which implements Sections 201(a)(3), 201(e), 203(c) and 204(a)(1)(G) of the Immigration and Nationality Act, as amended, (8 U.S.C. 1151, 1153, and 1154(a)(1)(G)).

What Are the Entry Procedures for Immigrant Visas To Be Made Available in the DV Category During Fiscal Year 2002?

Entries for the DV–2002 mail-in period must be *received* at the Kentucky Consular Center mailing address between noon (Eastern Time) on Monday, October 2, 2000 and noon (Eastern Time) on Wednesday, November 1, 2000. Entries received before or after these dates will be disqualified regardless of when they are postmarked. Entries sent to any address other than the Kentucky Consular Center address will also be disqualified.

How Are Visas Apportioned?

Visas are apportioned among six geographic regions with a greater number of visas going to regions with lower rates of immigration, and no visas going to countries sending more than 50,000 immigrants to the U.S. in the past five years. No one country can receive more than 7 percent of the diversity visas issued in any one year. For DV–2002, natives of the following are not eligible to apply:

Canada
China (mainland-born and Macau)
Colombia
Dominican Republic
El Salvador
Haiti
India
Jamaica
Mexico
Pakistan
Philippines
South Korea
United Kingdom (except Northern Ireland) and its dependent territories
Vietnam

What Are the Requirements for Applying for a Diversity Immigrant Visa for FY 2002?

Nativity

To enter, an applicant must be able to claim nativity in an eligible country, and must meet either the education or training requirement of the DV program. Nativity in most cases is determined by the applicant's place of birth. However, if a person was born in an ineligible country but his or her spouse was born in an eligible country, such person can claim the spouse's country of birth rather than his or her own provided both the applicant and spouse are issued visas and enter the U.S. simultaneously. Also, if a person was born in an ineligible country, but neither of his or her parents was born there or resided there at the time of the birth, such person may be able to claim nativity in one of the parents' country of birth.

Education or Training

To enter, an applicant must have either a high school education or its equivalent, defined in the U.S. as successful completion of a 12-year course of elementary and secondary education; or two years of work experience within the past five years in an occupation requiring at least two years of training or experience to perform. U.S. Department of Labor definitions will apply. If an applicant does not meet these requirements, he or she should not submit an entry to the DV program.

What Are the Procedures for Submitting an Entry?

Only one entry may be submitted by or for each applicant during the registration period. The applicant must personally sign the entry with his or her usual and customary signature, preferably in his or her native alphabet. The entry will be disqualified if the applicant:

- Submits more than one entry;
- Does not personally sign the entry with his or her usual and customary signature;
- Does not attach a recent photograph with his or her name printed on the back.

Completing the Entry

There is no specific format for the entry. Simply use a plain sheet of paper and type or clearly print in the English alphabet (preferably in the following order): (Failure to provide all of this information will disqualify the applicant.)

1. Full Name, with the last (surname/family) name underlined

Examples: Public, Sara Jane (or) Lopez, Juan Antonio

2. Date and Place of Birth

Date: Day, Month, Year EXAMPLE: 15 November 1961

Place: City/Town, District/County/Province, Country EXAMPLE: Munich, Bavaria, Germany

The name of the country should be that which is currently in use for the place where the applicant was born (Slovenia, rather than Yugoslavia; Kazakhstan rather than Soviet Union, for example).

3. The Applicant's Native Country, if Different from Country of Birth

If the applicant is claiming nativity in a country other than his or her place of birth, this must be clearly indicated on the entry. This information must match with what is put on the upper left corner of the entry envelope. (*See* "MAILING THE ENTRY" below.) If an applicant is claiming nativity through spouse or parent, this must be indicated on the entry. (*See* "Requirements" section for more information on this item.)

4. Name, Date and Place of Birth of the Applicant's Spouse and Children (If Any) (Failure to provide all of this information will disqualify the applicant.)

5. Full Mailing Address

This must be clear and complete, as any communications will be sent there. A telephone number is optional, but useful.

6. Photograph. Attach a recent, preferably less than 6 months old, photograph of the applicant, 1.5 inches (37 mm) square in size, with the applicant's name *printed* on the back. The photograph (not a photocopy) should be attached to the entry with clear tape—do not use staples or paperclips, which can jam the mail processing equipment.

7. Signature. The applicant must personally sign the entry, using his or her usual and customary signature.

Failure to personally sign the entry will disqualify the applicant.

Mailing the Entry

The mailing address for all entries is the same, except for the Zip (Postal) Code. DV–2002 Program, Kentucky Consular Center, Lexington, KY (Zip Code)—(see below), U.S.A.

Submit the entry by regular or air mail to the above address using the ZIP CODE for the region of the applicant's country of nativity. Entries sent by express or priority mail, fax, hand, messenger, or any means requiring receipts or special handling will not be processed.

The envelope must be between 6 and 10 inches (15 to 25 cm) long and 3½ and 4½ inches (9 to 11 cm) wide. Postcards are not acceptable, nor are envelopes inside express or oversized mail packets. In the upper left hand corner of the envelope the applicant must write his or her country of nativity, followed by the applicant's name and full return address. The applicant must provide both the country of nativity and the country of the address, even if both are the same. Failure to provide this information will disqualify the entry. The mailing address for all entries is the same except for the Zip (Postal) Code.

The Zip (Postal) Codes are:

AFRICA—41901
ASIA—41902
EUROPE—41903
SOUTH AMERICA/CENTRAL AMERICA/CARIBBEAN—41904
OCEANIA—41905
NORTH AMERICA—41906

How are the regions divided?

AFRICA:

ZIP CODE: 41901 (includes all countries on the African continent and adjacent islands):

ALGERIA
ANGOLA
BENIN
BOTSWANA
BURKINA FASO
BURUNDI
CAMEROON
CAPE VERDE
CENTRAL AFRICAN REPUBLIC
CHAD
COMOROS
CONGO
CONGO, DEMOCRATIC REPUBLIC OF THE
COTE D'IVOIRE (IVORY COAST)
DJIBOUTI
EGYPT
EQUATORIAL GUINEA
ERITREA
ETHIOPIA
GABON
GAMBIA, THE
GHANA
GUINEA
GUINEA-BISSAU
KENYA
LESOTHO
LIBERIA
LIBYA
MADAGASCAR
MALAWI
MALI
MAURITANIA
MAURITIUS
MOROCCO
MOZAMBIQUE
NAMIBIA
NIGER
NIGERIA
RWANDA
SAO TOME & PRINCIPE
SENEGAL
SEYCHELLES
SIERRA LEONE
SOMALIA
SOUTH AFRICA
SUDAN
SWAZILAND
TANZANIA
TOGO
TUNISIA
UGANDA
ZAMBIA
ZIMBABWE

ASIA:

ZIP CODE: 41902 (extends from Israel to the northern Pacific islands, and includes Indonesia):

AFGHANISTAN
BAHRAIN
BANGLADESH
BHUTAN
BRUNEI
BURMA
CHINA-TAIWAN BORN ONLY
CAMBODIA
HONG KONG SPECIAL ADMINISTRATIVE REGION
INDONESIA
IRAN
IRAQ
ISRAEL
JAPAN
JORDAN
KUWAIT
LAOS
LEBANON
MALAYSIA
MALDIVES
MONGOLIA
NEPAL
NORTH KOREA
OMAN
QATAR
SAUDI ARABIA
SINGAPORE
SRI LANKA
SYRIA
THAILAND
UNITED ARAB EMIRATES
YEMEN

NB: In Asia CHINA-(mainland born, including Macau), India, Pakistan, Philippines, South Korea, and Vietnam do not qualify for this year's diversity program. [Hong Kong S.A.R. and Taiwan do qualify.]

EUROPE:

ZIP CODE: 41903 (Extends from Greenland to Russia, and includes all countries of the former USSR)

ALBANIA
ANDORRA
ARMENIA
AUSTRIA
AZERBAIJAN
BELARUS
BELGIUM
BOSNIA & HERZEGOVINA
BULGARIA
CROATIA
CYPRUS
CZECH REPUBLIC
DENMARK (including components and dependent areas overseas)
ESTONIA
FINLAND
FRANCE (including components and dependent areas overseas)
GEORGIA
GERMANY
GREECE
HUNGARY
ICELAND
IRELAND
ITALY
KAZAKHSTAN
KYRGYZSTAN
LATVIA
LIECHTENSTEIN
LITHUANIA
LUXEMBOURG
MACEDONIA, THE FORMER YUGOSLAV REPUBLIC OF
MALTA
MOLDOVA
MONACO
MONTENEGRO
NETHERLANDS (including components and dependent areas overseas)
NORTHERN IRELAND
NORWAY
POLAND
PORTUGAL
ROMANIA
RUSSIA
SAN MARINO
SERBIA
SLOVAKIA
SLOVENIA
SPAIN
SWEDEN
SWITZERLAND
TAJIKISTAN
TURKEY
TURKMENISTAN
UKRAINE

UZBEKISTAN
VATICAN CITY

NB: In Europe Great Britain, including the following dependent areas: Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, St. Helena, Turks and Caicos Islands do not qualify for this year's Diversity Program. Note that for purposes of the Diversity Program only, Northern Ireland is treated separately; Northern Ireland does qualify and is listed among the qualifying areas.

SOUTH AMERICA/CENTRAL AMERICA/CARIBBEAN:

ZIP CODE: 41904 (extends from Central America (Guatemala) and the Caribbean nations to Chile.)

ANTIGUA & BARBUDA
ARGENTINA
BARBADOS
BELIZE
BOLIVIA
BRAZIL
CHILE
COSTA RICA
CUBA
DOMINICA
ECUADOR
GRENADA
GUATEMALA
GUYANA
HONDURAS
NICARAGUA
PANAMA
PARAGUAY
PERU
SAINT KITTS & NEVIS
SAINT LUCIA
SAINT VINCENT & THE GRENADINES
SURINAME
TRINIDAD AND TOBAGO
URUGUAY
VENEZUELA

NB: In South America Colombia, Dominican Republic, El Salvador, Haiti, Jamaica, and Mexico *do not qualify* for this year's Diversity Program.

OCEANIA:

ZIP CODE: 41905 (includes Australia, New Zealand, Papua New Guinea and all countries and islands of the South Pacific):

AUSTRALIA (including components and dependent areas overseas)
FIJI
KIRIBATI
MARSHALL ISLANDS
MICRONESIA, FEDERATED STATES OF
NAURU
NEW ZEALAND (including components and dependent areas overseas)
PALAU
PAPUA NEW GUINEA
SOLOMON ISLANDS
TONGA
TUVALU
VANUATU
WESTERN SAMOA

NORTH AMERICA:

ZIP CODE: 41906 (includes the Bahamas):

BAHAMAS, THE

NB: In North America, Canada *does not qualify* for this year's Diversity Program.

IMPORTANT NOTICE: Applicants must meet all eligibility requirements under the U.S. law in order to be issued visas.

Processing of applications and issuance of diversity visas to successful applicants and their eligible family members MUST occur by September 30, 2002. Under no circumstances can Diversity Visas be issued or adjustments approved after this date. Family members may not obtain diversity visas to follow to join the applicant in the U.S. after this date.

There is no initial fee, other than postage, required to enter the DV–2002 program. The use of an outside intermediary or assistance to prepare a DV–2002 entry is entirely at the applicant's discretion. Qualified entries received directly from applicants or through intermediaries have equal chances of being selected by computer. There is no advantage to mailing early, or mailing from any particular place. Every application received during the mail-in period will have an equal random chance of being selected within its region. However, more than one application per person will disqualify the person from registration.

How are winners selected?

Applicants will be selected at random by computer from among all qualified entries.

Notifying Winners

Only successful entrants will be notified. They will be notified by mail between May through July of 2001 at the address listed on their entry. Winners will also be sent instructions on how to apply for an immigrant visa, including information on the fee for immigrant visas and a separate visa lottery surcharge. Successful entrants must complete the immigrant visa application process and meet all eligibility requirements under U.S. law to be issued a visa. Persons not selected will NOT be notified. U.S. embassies and consulates will not be able to provide a list of successful applicants. Spouses and unmarried children of successful applicants under 21 may also apply for visas to accompany or follow to join the principal applicant. DV 2002 visas will be issued between October 1, 2001 and September 30, 2002.

Being selected as a winner in the DV Lottery does not automatically guarantee being issued a visa even if the applicant is qualified, because the number of entries selected and registered is greater than the number of immigrant visas available. Those selected will, therefore, need to complete and file their immigrant visa applications quickly. Once all the diversity visas have been issued or on September 30, 2002, whichever is sooner, the DV Program for Fiscal Year 2002 will end.

Obtaining Instructions on Entering the DV Lottery

Interested persons may call (202) 331–7199, which describes the various means to obtain further details on entering the DV–2002 program. Applicants overseas may contact the nearest U.S. embassy or consulate for instructions on the DV lottery. DV information is also available in the *Visa Bulletin* on the Internet at *http://travel.state.gov* or via the Consular Affairs automated fax at (202) 647–3000 (code 1550). Calls to the automated fax service must be made from a fax machine using the receiver or voice option of the caller's fax equipment.

Dated: July 26, 2000.

Mary A. Ryan,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 00–19363 Filed 7–28–00; 8:45 am]
BILLING CODE 4710–06–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending July 14, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–2000–7625.
Date Filed: July 10, 2000.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 ME 0083 dated 27 June 2000
Within Middle East Resolutions r1–r16
Minutes—PTC2 ME 0082 dated 23 June 2000
Tables—PTC2 ME Fares 0029 dated 30 June 2000
Intended effective date: 1 January 2001

Docket Number: OST–2000–7626.
Date Filed: July 10, 2000.
Parties: Members of the International Air Transport Association.
Subject:
CTC COMP 0289 dated 2 June 2000
Worldwide Area Resolutions, Standard Revalidating
Resolutions 002
Intended effective date: 1 October 2000

Docket Number: OST–2000–7632.
Date Filed: July 11, 2000.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 USA–EUR 0098 dated 20 June 2000 and
PTC12 USA–EUR 0104 dated 14 July 2000
Mail Vote 080—TC12 North Atlantic USA-Austria, Belgium, Germany, Italy, Netherlands,
Scandinavia, Switzerland
Minutes—PTC12 USA–EUR 0101 dated 23 June 2000
Tables—PTC12 USA–EUR Fares 0046 dated 14 July 2000
Intended effective date: 1 November 2000

Docket Number: OST–2000–7647.
Date Filed: July 13, 2000.
Parties: Members of the International Air Transport Association.
Subject:
PAC/Reso/408 dated June 30, 2000
Expedited Reso 860 r–1
Intended effective date: August 1, 2000

Andrea M. Jenkins,
Federal Register Liaison.
[FR Doc. 00–19237 Filed 7–28–00; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending July 21, 2000

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2000–7668.
Date Filed: July 19, 2000.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 9, 2000.
Description: Application of Boston-Maine Airways Corp., d/b/a Pan Am Services ("BMAC"), pursuant to 49 U.S.C. Section 41102 and Subpart B, applies for a Certificate of Public Convenience and Necessity authorizing BMAC to engage in interstate scheduled service operations.

Andrea M. Jenkins,
Federal Register Liaison.
[FR Doc. 00–19238 Filed 7–28–00; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2000–7221]

Information Collection Under Review by the Office of Management and Budget (OMB): OMB Control Numbers 2115–0578, 2115–0592, 2115–0625, 2115–0563, 2115–0542, 2115–0135, 2115–0624, and 2115–0106

AGENCY: Coast Guard, DOT.
ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded eight Information Collection Reports (ICRs) abstracted below to OMB for review and comment. Our ICRs describe the information that we seek to collect from the public. Review and comment by OMB ensure that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before August 30, 2000.

ADDRESSES: Please send comments to both: (1) the Docket Management System (DMS), U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street S.W., Washington, DC 20590–0001, and (2) the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), 725 17th Street N.W., Washington, DC 20503, to the attention of the Desk Officer for the USCG.

Copies of the complete ICRs are available for inspection and copying in public docket USCG 2000–7221 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov;* and for inspection from the Commandant (G–SII–2), U.S. Coast Guard, room 6106, 2100 Second Street S.W., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9330, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Regulatory History

This request constitutes the 30-day notice required by OMB. The Coast Guard has already published [65 FR 20508 (April 17, 2000)] the 60-day notice required by OMB. That request elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the Department's estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Numbers of all ICRs addressed. Comments to DMS must contain the docket number of this request, USCG 2000–7221. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Requests

1. *Title:* Small Passenger Vessels—46 CFR subchapters K and T.
OMB Control Number: 2115–0578.
Type of Request: Extension of currently approved collection.
Affected Public: Owners and operators of small passenger vessels.
Form(s): CG–841, CG–854, CG–948, CG–949, CG–3752, CG–5256.
Abstract: The reporting and recordkeeping requirements are necessary for the proper administration and enforcement of the program on safety of commercial vessels as it affects

small passenger vessels. The requirements affect small passenger vessels (under 100 gross tons) that carry more than 6 passengers.

Annual Estimated Burden Hours: The estimated burden is 436,173 hours a year.

2. *Title:* Offshore Supply Vessels—46 CFR Subchapter L.

OMB Control Number: 2115–0592.

Type of Request: Revision of a currently approved collection.

Affected Public: Owners and operators of vessels.

Forms: N/A.

Abstract: The requirements for posting and marking aboard OSVs are necessary to instruct those aboard of what to do in an emergency. The recordkeeping requirements verify compliance with regulations without CG presence to witness routine matters.

Annual Estimated Burden Hours: The estimated burden is 5,931 hours a year.

Frequency: On occasion.

3. *Title:* Customer Satisfaction Survey.

OMB Control Number: 2115–0625.

Type of Request: Extension of currently approved collection.

Affected Public: Recreational boaters, commercial mariners, industry groups, State and local governments.

Form(s): N/A.

Abstract: Putting people first means ensuring that the Federal Government provides the highest-quality service possible to the American people. Executive Order 12862 requires that all executive departments and agencies providing significant services directly to the public seek to meet established standards of customer service and—

• Identify the customers who are, or should be, served by the agency; and

• Survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.

4. Title: Nondestructive Testing of Certain Cargo Tanks on Unmanned Barges.

OMB Control Number: 2115–0563.

Type of Request: Extension of currently approved collection.

Affected Public: Owners of tank barges.

Form(s): N/A.

Abstract: The Coast Guard uses the results of nondestructive testing to evaluate the suitability of older pressure-vessel-type cargo tanks of unmanned barges to remain in service. Once every ten years it subjects such a tank, on an unmanned barge, 30 years old or older to nondestructive testing.

Annual Estimated Burden Hours: The estimated burden is 84.5 hours a year.

5. Title: Station Bills for Manned Outer Continental Shelf Facilities.

OMB Control Number: 2115–0542.

Type of Request: Extension of currently approved collection.

Affected Public: Operators of facilities on the Outer Continental Shelf (OCS).

Form(s): N/A.

Abstract: Station Bills aboard manned facilities on the OCS are necessary to promote safety of life on these facilities. They are an efficient means for disseminating information to all persons on these facilities regarding their duties, duty stations, and signals used during emergencies and drills.

Annual Estimated Burden Hours: The estimated burden is 526 hours a year.

6. Title: Display of Fire Control Plans for Vessels.

OMB Control Number: 2115–0135.

Type of Request: Extension of currently approved collection.

Affected Public: Owners and Operators of vessels.

Form(s): N/A.

Abstract: This information collection is for the posting or display of specific plans on certain categories of commercial vessels. The availability of these plans aids firefighters and damage-control efforts in response to emergencies.

Annual Estimated Burden Hours: The estimated burden is 798 hours a year.

7. Title: Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1995 Amendments.

OMB Control Number: 2115–0624.

Type of Request: Extension of currently approved collection.

Affected Public: Owners and operators of vessels, training institutions, and mariners.

Form(s): N/A.

Abstract: This information is necessary to ensure compliance with the international requirements of the STCW Convention, and to maintain an acceptable level of quality in activities associated with training and assessment of merchant mariners.

Annual Estimated Burden Hours: The estimated burden is 18,331 hours a year.

8. Title: Plan Approval and Records for Foreign Vessels Carrying Oil in Bulk.

OMB Control Number: 2115–0106.

Type of Request: Extension of currently approved collection.

Affected Public: Owners and operators of vessels.

Form(s): N/A.

Abstract: The Coast Guard reviews plans and records to determine whether foreign tank vessels comply with applicable standards of design and construction.

Annual Estimated Burden Hours: The estimated burden is 65 hours a year.

Dated: July 20, 2000.

Daniel F. Sheehan,

Director of Information and Technology.

[FR Doc. 00–19218 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2000–7689]

Acceptance by the Coast Guard of ASME's 1998 Boiler and Pressure-Vessel Code With 1999 Addenda

AGENCY: Coast Guard, DOT.

ACTION: Notice of policy.

SUMMARY: The Coast Guard announces its acceptance of the American Society of Mechanical Engineers' (ASME's) 1998 Boiler and Pressure-Vessel Code with 1999 Addenda. Although the revised allowable stresses employ a lower design margin for the tensile strength of the material than ASME's 1989 Boiler and Pressure-Vessel Code with 1989 Addenda, the lower margin is acceptable because of better quality control in materials production. This acceptance should reduce costs to industry with no loss of safety to the public.

DATES: Comments to the docket for this notice must reach the Docket Management Facility on or before September 29, 2000.

ADDRESSES: You may submit your written comments and related material to the docket [USCG 2000–7689] by only one of the following methods:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand to room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) By electronic means through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this notice. Comments and documents, as indicated in this notice, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through

Friday, except Federal holidays. You may electronically access the public docket for this notice on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Mr. Wayne Lundy or LT Ryan D. Manning, Systems Engineering Division (G–MSE–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, telephone 202–267–2206, fax 202–267–4816. For questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate by submitting comments and related material. If you do so, please include your name and address, identify the docket number [USCG 2000–7689], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES,** but please submit your comments and material by only one means. If you submit them by mail or hand, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Background and Purpose

46 CFR part 52 incorporates by reference Section I of ASME's 1989 Boiler and Pressure-Vessel Code with 1989 Addenda. Likewise, 46 CFR part 54 incorporates by reference Division 1 of Section VIII of the same Code and Addenda. ASME publishes the Code every three years, and an Addendum every year, to reflect new industry standards, technological advances, and product improvements. If any edition of this Code published after 1989 or any Addendum published after then contains standards that you prefer to use instead of those already incorporated by reference, then you may apply for a waiver from Commandant (G–MSE) as referenced in 46 CFR 50.20–30. The Coast Guard proposes to update these incorporations by reference to let manufacturers use the 1998 Code with 1999 Addenda for construction of new boilers and pressure vessels.

The 1998 Code with 1999 Addenda reduces the design margins allowable for construction of new boilers and pressure vessels. The allowable stresses decrease from a margin of 4:1 to one of 3.5:1. Quality control in materials production has improved enough to make this lower margin acceptable. The lower margin in turn necessitates a decrease in requirements for the hydrostatic and pneumatic testing of pressure vessels to 1.3 times the maximum allowable working pressure (MAWP) and 1.1 times the MAWP, respectively. The requirement for the hydrostatic testing of power boilers, nevertheless, remains at 1.5 times the MAWP; however, at no time during the testing may any part of the boiler be subjected to a general primary membrane stress greater than 90 percent of its yield strength (0.2 percent offset) at the testing temperature.

We are working on a separate rule to update 46 CFR parts 52 and 54, and to incorporate by reference ASME's 1998 Boiler and Pressure-Vessel Code with 1999 Addenda. Until we do, though, the 1989 Code with 1989 Addenda remains the edition incorporated in both parts. If you choose to use the 1998 Code, you must comply with it and its 1999 Addenda in their entirety. You must meet all of the requirements and specifications set out in 46 CFR Tables 52.01–1(A) and 54.01–1(A), even if you use the 1998 Code. But, in either case, the design margins for independent type-C tank vessels and process pressure vessels described in 46 CFR part 154.450 must continue to satisfy the 1989 Code with 1989 Addenda.

Dated: July 24, 2000.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 00–19281 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–7670]

Commercial Fishing Industry Vessel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Commercial Fishing Industry Vessel Advisory Committee (CFIVAC) will meet to discuss various issues relating to commercial fishing industry safety. The meetings are open to the public.

DATES: CFIVAC will meet on Tuesday, August 22, 2000, from 7:30 a.m. to 5:00 p.m and Wednesday on August 23, 2000 from 7:30 a.m. to 5:00 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 August 14, 2000. Requests to have a copy of your material distributed to each member of the committee or subcommittee should reach Coast Guard on or before August 14, 2000.

ADDRESSES: The CFIVAC meeting will be held in Room 2415, U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington DC. Written material and requests to make oral presentations should be sent to Lieutenant Jennifer Williams, Commandant (G–MOC–3), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This notice is available on the Internet http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Captain Jon Sarubbi, Executive Director of CFIVAC, or Lieutenant Jennifer Williams, Assistant to the Executive Director, telephone (202) 267–0507.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meetings on August 22, 2000

Action Plan summary and Regional Listening Session Results—Summarize elements of the Commercial Fishing Vessel Safety Action Plan (CFVSAP) that were presented during seven Regional Listening Sessions held around the nation and present feedback submitted by the public on the CFVSAP consisting of verbal and written comments to the Coast Guard, as well as survey results.

Recommendations for new commercial fishing vessel safety initiatives—Present Coast Guard recommendations for certain new commercial fishing vessel safety initiatives developed after the consideration of Regional Listening Session results and existing commercial fishing industry data was analyzed. Receive input from Advisory Committee on proposed recommendations and new initiatives.

Agenda of Meetings of CFIVAC on August 23, 2000

(1) *Subcommittee on Data and Analysis*—Subcommittee members to identify fishing vessel industry numerator and denominator data, recommend revision to existing data collection, and recommend changes to CG Form 2692.

(2) *Subcommittee on Regionalization*—Subcommittee

members to identify fishing vessel industry safety issues that should be addressed with a regional/local focus.

(3) *Subcommittee on Training requirements*—Subcommittee members to identify what training standards should be applied to the fishing vessel industry.

(4) *Subcommittee on Examination requirements*—Subcommittee members to recommend details and or requirements for a mandatory dockside safety examination program for the commercial fishing vessel industry.

Procedural

Both meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chairs' discretion, members of the public may make oral presentations during the meetings, please notify the Executive Director no later than August 14, 2000. Written material for distribution at a meeting should reach the Coast Guard no later than August 8, 2000. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the to the Executive Director no later than August 7, 2000.

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: July 24, 2000.

Joseph J. Angelo,

Assistant Commandant for Marine Safety and Environmental Protection, Acting.

[FR Doc. 00–19222 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Blacklands Railroad Company

[Waiver Petition Docket No. FRA–2000–7255]

The Blacklands Railroad Company seeks a permanent waiver of compliance for two locomotives from the requirements of the Safety Glazing Standards, 49 CFR part 223, which requires certified glazing in all locomotive windows, except those locomotives used in yard service. The railroad indicates that the locomotives, MAGMA #2 and MAGMA #3, are Alco RS–3 type locomotives built in 1952. They state that both locomotives are equipped with auto type safety glazing. The locomotives are used between Greenville, Commerce, and Sulphur Springs, Texas, in switching service at speeds that do not exceed 15 mph.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2000–7255) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, D.C. on July 25, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–19236 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Charlotte Southern Railroad Company

[Waiver Petition Docket Number FRA–2000–6878]

The Adrian & Blissfield Rail Road Company of Madison Heights, Michigan, has petitioned on behalf of Charlotte Southern Railroad Company for a permanent waiver of compliance for one locomotive from the requirements of the Safety Glazing Standards, 49 CFR part 223, which requires certified glazing in all locomotive windows, except those locomotives used in yard service. The railroad indicates that the locomotive is used in switching service over 3.22 miles at a speed not to exceed 10 mph and is equipped with auto type safety glazing.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2000–6878) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for

inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, D.C. on July 25, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–19235 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Detroit Connecting Railroad Company

[Waiver Petition Docket Number FRA–2000–6877]

The Adrian & Blissfield Rail Road Company of Madison Heights, Michigan, has petitioned on behalf of Detroit Connecting Railroad Company for a permanent waiver of compliance for one locomotive from the requirements of the Safety Glazing Standards, 49 CFR part 223, which requires certified glazing in all locomotive windows, except those locomotives used in yard service. The railroad indicates that the locomotive is used in switching service over 2.29 miles at a speed not to exceed 10 mph and is equipped with auto type safety glazing.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2000–6877) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, D.C. on July 25, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–19234 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Lapeer Industrial Railroad Company

[Waiver Petition Docket Number FRA–2000–6876]

The Adrian & Blissfield Rail Road Company of Madison Heights, Michigan, has petitioned on behalf of Lapeer Industrial Railroad Company for a permanent waiver of compliance for two locomotives from the requirements of the Safety Glazing Standards, 49 CFR part 223, which requires certified glazing in all locomotive windows, except those locomotives used in yard service. The railroad indicates that the locomotives are used in switching service over 2.22 miles at a speed not to exceed 10 mph and are equipped with auto type safety glazing.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2000–6876) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, D.C. on July 25, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–19233 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Cooperative Agreement To Advance Occupant Protection Technology In Passenger Vehicles

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Announcement of Discretionary Cooperative Agreement to Advance Occupant Protection Technology in Passenger Vehicles.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a discretionary cooperative agreement to advance occupant protection technology in passenger vehicles. NHTSA solicits applications from for-profit organizations (small or large), non-profit organizations and educational institutions. NHTSA's objective is to develop and evaluate new technologies and methodologies which have the potential for improving the crashworthiness of passenger vehicles and protecting their occupants. NHTSA seeks to establish a collaborative research effort between NHTSA and a qualified research organization to meet the above objective.

DATES: Applications must be received at the office designated below on or before September 14, 2000.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN. : Joseph Comella, 400 Seventh Street SW., Room 5301, Washington DC 20590. All applications submitted must include a reference to NHTSA Program Number NRD–01–0–07301.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Joseph Comella, Office of Contracts and Procurement, at 202–366–9568 (E-mail jcomella@nhtsa.dot.gov). Programmatic questions should be directed to Ms. Lori Summers, Crashworthiness Research, NHTSA, Room 6226 (NRD–11), 400 Seventh Street S.W. Washington, DC 20590, (202) 366–6734 (E-mail: lsummers@nhtsa.dot.gov). Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

SUPPLEMENTARY INFORMATION:

Background

Each year in the United States, more than 40,000 deaths and millions of injuries occur as the direct result of motor vehicle traffic crashes. As part of its mission to alleviate this toll, the National Highway Traffic Safety Administration vigorously conducts an extensive research program to develop and evaluate new technologies and methodologies which have the potential for improving the crashworthiness of passenger vehicles and protecting their occupants. NHTSA is conducting crashworthiness research in the area of developing new or enhanced injury countermeasures.

Objective and Purpose

The proposed cooperative research agreement program seeks to establish collaborative research efforts between NHTSA and a qualified research organization to study advanced methodologies for occupant protection in passenger vehicle crashes. The collaboration will include problem definition, sharing of scientific and technical data, joint research and the development of new methodologies and technologies for occupant crash protection. Research areas could include, but are not limited to, the following:

—Advanced frontal occupant restraints.
—Advanced air bag inflator and/or air bag inflation methodologies.
—Adaptive air bag systems to tailor bag deployment over the expected range of crash severities, occupant sizes, occupant ages, occupant positioning, etc.
—Advanced occupant seating systems.
—Ejection mitigation technologies.
—Intrusion resistance countermeasures.
—Coupling of air bag inflation with anticipatory crash sensing technologies.
—Improved vehicle crash sensing methodologies.

The above list of potential programs constitutes only a sampling of the potential research areas. Applicants are encouraged to select from these research areas and other areas which are believed to provide the potential for practical improvement over current occupant crash protection and are most amenable to their special skills and experience.

The program shall include a maximum of three phases including the following: (1) Preliminary studies identifying the system performance improvement desired, an estimate of additional production costs related to the improvement, the benefits to be appreciated from such improvement, and the approximate magnitude of national injuries and fatalities now occurring due to the absence of the improvement. (2) Prototype development and establishment of reliable production costs. (3) Prototype demonstration. The duration of each phase will vary according to current state-of-the-art, and in some instances, phases may overlap.

NHTSA Involvement

NHTSA will be involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide one professional staff person to be designated as the Contracting Officer's Technical Representative (COTR), to participate in the planning and management of the cooperative agreement and coordinate activities between the cooperative agreement participant organization and NHTSA.

2. Make available information and technical assistance from government sources, within available resources and as determined appropriate by the COTR.

3. Provide liaison with other government agencies and organizations, as appropriate.

4. Stimulate the exchange of ideas, problems, and solutions among cooperative agreement recipients who agree to such sharing, and if appropriate, NHTSA contractors and other interested parties; and

5. Share nonproprietary information developed at Government expense with the scientific and industrial community.

Availability of Funds and Period of Support

The Cooperative Agreements may be awarded for a total period of support of up to four years. It is currently intended that no single award as a result of this notice shall exceed $150,000 per year.

The agency anticipates awarding multiple cooperative agreements for a base period of 12 months. NHTSA may choose to extend the period of performance under this agreement for three additional 12 month periods subject to availability of funds. If NHTSA elects to extend the period of performance, it will notify the recipient within 50 days prior to the expiration of this agreement. Funds allocated for these cooperative agreements are not intended to cover all of the costs that will be incurred in the process of completing the project. Applicants should demonstrate a commitment of financial or in-kind resources to support the proposed project.

Eligibility Requirements

In order to be eligible to participate in this cooperative agreement program, an applicant must be a for-profit organization (small or large), a non-profit organization, or an educational institution. Consortiums of organizations from any of the above categories may apply. Regardless of the type of organization applying for Federal assistance, no fee or profit will be allowed.

Application Procedure

Each applicant must submit one original and two copies of its application package to: Office of Contracts and Procurement (NAD–30), NHTSA, 400 Seventh Street, SW., Room 5301, Washington, D.C. 20590. An additional three copies will facilitate the review process, but are not required. Applications are due no later than 45 days after the appearance of the announcement in the **Federal Register**. Only complete application packages received by the due date will be considered. The applicant shall specifically identify any information in the application which is to be treated as proprietary, in accordance with the procedures of 49 CFR 512 Confidential Business Information. Applications must include a reference to NHTSA program number NRD–01–0–07301. The proposal shall not exceed 35 pages, not including budget proposal, letters of endorsement or support, and resumes.

Application Contents

The application package must be submitted with a Standard Form 424, Application for Federal Assistance,

including 424A, Budget Information—Nonconstruction Program, and 424B Assurances—Nonconstruction Programs, with the required information filled in and the certified assurances included. The OMB Standard Forms SF–424, SF–424A, and SF424B may be downloaded directly from the OMB Internet web site, http://www.whitehouse.gov/OMB/grants/index.html. While the Form 424–A deals with budget information, and Section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed costs. A supplemental sheet should be provided which presents a detailed breakdown of the proposed costs (direct labor, including labor categories, level of effort and rate; direct material, including itemized equipment; travel and transportation, including projected trips and number of people traveling; subcontracts with similar cost detail, if known; and overhead costs) as well as any costs which the applicant proposes to contribute in support of this effort. The budget should detail cost for each year of the proposed project. Also, the application shall include a program narrative statement which contains the following:

1. A description of the research to be pursued which addresses:

a. The objectives, goals, and anticipated outcomes of the proposed research effort;

b. The method or methods that will be used;

c. The source of crash and injury statistics to be used;

d. The vehicle occupant protection population and crash modes to be addressed;

e. The project's estimated benefits, *e.g.*, amount of lives saved or injuries reduced, potential for timely development, reduction in vehicle crashes, etc.

2. An organizational plan detailing a plan of action for accomplishing the proposed work. The plan should include a time line of projected activities and milestones. The proposed program director and other key personnel should be identified for participation in the proposed research effort, including a description of their qualifications and their organizational responsibilities.

3. A description of the test facilities and equipment currently available or to be obtained for use in the conduct of the proposed research and development effort. Also, where human subjects are proposed, a description of the policy and plan for protection of the rights and welfare of human subjects to meet the requirements of NHTSA Order 700 series.

4. A description of the applicant's previous experience or on-going research program that is related to this proposed research effort.

5. A detailed schedule and budget for the proposed research effort, including any cost-sharing contribution proposed by the applicant as well as any additional financial commitments made by other sources.

6. A statement of any technical assistance which the applicant may require of NHTSA in order to successfully complete the proposed program.

Application Review Process and Evaluation Criteria

Initially, all applications will be screened to ensure that they meet the eligibility requirements and to ensure that applications contain all information required by the Application Contents of this Notice. Each complete application from an eligible recipient will then be evaluated by an Evaluation Committee. Factors one and two are most important, then the factors are listed in descending order. The applications will be evaluated using the following criteria:

1. The applicant's understanding of the purpose and unique problems represented by the research objectives of this cooperative agreement program as evidenced in the description of its proposed research and development effort. Specific attention will be placed upon the applicant's stated proposed development and demonstration effort.

2. The potential of the proposed research effort accomplishments to make a timely and an innovative and/or significant contribution to occupant protection technology knowledge as it may be applied to saving lives and reducing injuries resulting from motor vehicle crashes. The potential of the project to save lives, reduce injuries, and result in timely development and implementation by vehicle manufacturers will be evaluated.

3. The technical and financial merit of the proposed research effort, including the feasibility of the approach, practicability, planned methodology, and anticipated results. Financial merit will be estimated by the cost of the cooperative agreement to be borne by NHTSA and the in-kind contribution provided by the applicant as compared to the anticipated benefits to vehicle crash occupants.

4. The adequacy of test facilities and equipment identified to accomplish the proposed research.

5. The adequacy of the organizational plan for accomplishing the proposed research effort, including the qualifications and experience of the research team, the various disciplines represented, and the relative level of effort proposed for professional, technical, and support staff.

Terms and Conditions of the Award

1. The protection of the rights and welfare of human subjects in NHTSA-sponsored experiments is established in NHTSA Orders 700–1 and 700–3. Any recipient must satisfy the requirements and guidelines of these NHTSA Orders 700 series prior to any actual testing or research involving human subjects.

2. Prior to award, the recipient must comply with the certification requirements of 49 CFR Part 29—Department of Transportation Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

3. During the effective period of the cooperative agreement, the agreement shall be subject to NHTSA's General Provisions for Assistance Agreements; the cost principles of OMB Circular A–21, A–122, or FAR 31.2, as applicable to the recipient, and the requirements of 49 CFR Part 29 and Certificate Regarding Lobbying 49 CFR 20. Each agreement with a non-profit organization or an educational institution shall also be subject to the general administrative requirements of 49 CFR Part 19.

4. The cooperative agreement will include the provisions of Federal Acquisition Regulation (FAR) Part 52 contract clause 52.227–11 Patent Rights Retention by the Contractor (short form).

5. Reporting Requirements

a. Written Research Reports

The recipient shall submit bimonthly research reports suitable for public dissemination which shall be due 15 days after the reporting period, and a final research report within 45 days after completion of the research effort. An original and three copies of each of these research reports shall be submitted to the COTR.

b. Oral Briefings

The recipient shall conduct semiannual oral presentations of research results for the COTR and other interested NHTSA personnel. These presentations will be conducted at the NHTSA Office of Vehicle Safety Research, Washington D.C. An original and three copies shall be submitted to the COTR.

c. Data Reports

Dynamic and other data measured in research, development, and prototype evaluation and demonstration tests will be provided by the recipient within 3 weeks after the data is obtained, in the format of a data package as described below. The recipient may be relieved of the data package report requirement for certain activities by agreement from the COTR.

A data package consists of high speed film, paper test report, and magnetic tape complying with the NHTSA Data Tape Reference Guide. The NHTSA's Crashworthiness Division maintains a Vehicle Crash Test and a Component Data Base which it provides upon request to the public.

To facilitate the input of data as well as the exchange of information, the recipient must provide the magnetic tape in the format specified in the "NHTSA Data Tape Reference Guide". A copy of this document may be obtained from the programmatic information contact or on the NHTSA website: *www.nhtsa.dot.gov.*

Issued on: July 25, 2000.

Raymond P. Owings,

Associate Administrator for Research and Development.

[FR Doc. 00–19239 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket NHTSA–99–5087]

Safety Performance Standards Program Meeting.

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of NHTSA Rulemaking Status Meeting.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's vehicle regulatory program.

DATES: The Agency's regular, quarterly public meeting relating to its vehicle regulatory program will be held on Thursday, September 14, 2000, beginning at 9:45 a.m. and ending at approximately 12:00 p.m. at the Tysons Westpark Hotel in McLean, VA. Questions relating to the vehicle regulatory program must be submitted in writing with a diskette (Wordperfect) by Wednesday, August 23, 2000, to the address shown below or by e-mail. If sufficient time is available, questions received after August 23, may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the questions(s) to be answered. A consolidated list of the questions submitted by August 23, 2000, and the issues to be discussed, will be posted on NHTSA's web site (www.nhtsa.dot.gov) by Monday, September 11, 2000, and also will be available at the meeting. The agency will hold a second public meeting on September 14, devoted exclusively to a presentation or research and development programs. This meeting will begin at 1:30 p.m. and end at approximately 5:00 p.m. This meeting is described more fully in a separate announcement.

The next NHTSA Public Meeting will take place on Thursday, December 14, 2000, at the Best Western Gateway International Hotel, Romulus, Michigan 48174.

ADDRESSES: Questions for the September 14, NHTSA Rulemaking Status Meeting, relating to the agency's vehicle regulatory program, should be submitted to Delia Lopez, NPS–01, National Highway Traffic Safety Administration, Room 5401, 400 Seventh Street, SW., Washington, DC 20590, Fax Number 202–366–4329, e-mail dlopez@nhtsa.dot.gov. The meeting will be held at Tysons Westpark Hotel, 8401 Westpark Drive, McLean, VA.

FOR FURTHER INFORMATION CONTACT: Delia Lopez, (202) 366–1810.

SUPPLEMENTARY INFORMATION: NHTSA holds a regular, quarterly meeting to answer questions from the public and the regulated industries regarding the agency's vehicle regulatory program. Questions on aspects of the agency's research and development activities that related directly to ongoing regulatory actions should be submitted, as in the past, to the agency's Safety Performance Standards Office. The purpose of this meeting is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. Transcripts of these meetings will be available for public inspection in the DOT Docket in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at ten cents per page, (length has varied from 80 to 150 pages) upon request to DOT Docket, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. The DOT Docket is open to the public from 10:00 a.m. to 5:00 p.m. The transcript may also be accessed electronically at *http://dms.dot.gov,* at docket NHTSA–99–5087. Questions to be answered at the quarterly meeting should be organized by categories to help us process the questions into an agenda form more efficiently. Sample format:

I. Rulemaking

A. Crash avoidance
B. Crashworthiness
C. Other Rulemakings

II. Consumer Information

III. Miscellaneous

NHTSA will provide auxiliary aids to participants as necessary. Any person desiring assistance of "auxiliary aids" (*e.g.*, sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, brailled materials, or large print materials and/or a magnifying device), please contact Delia Lopez on (202) 366–1810, by COB Monday, September 11, 2000.

Issued: July 18, 2000.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 00–19172 Filed 7–28–00; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8582–CR

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8582–CR, Passive Activity Credit Limitations.

DATES: Written comments should be received on or before September 29, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack,

(202) 622–3179, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Passive Activity Credit Limitations.

OMB Number: 1545–1034.

Form Number: 8582–CR.

Abstract: Under Internal Revenue Code section 469, credits from passive activities, to the extent they do not exceed the tax attributable to net passive income, are not allowed. Form 8582–CR is used to figure the passive activity credit allowed and the amount of credit to be reported on the tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 900,000.

Estimated Time Per Respondent: 5 hr., 49 min.

Estimated Total Annual Burden Hours: 5,229,450.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 20, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–19178 Filed 7–28–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Pacific-Northwest District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Pacific-Northwest Citizen Advocacy Panel will be held in Bend, Oregon.

DATES: The meeting will be held Friday, August 11, 2000 and Saturday, August 12, 2000.

FOR FURTHER INFORMATION CONTACT: Judi Nicholas at 1–888–912–1227 or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel will be held Friday, August 11, 2000, 8:30 a.m. to 4:30 p.m. at the Cascade Natural Gas Office, 334 NE Hawthorne Ave, Bend, Oregon 97701 and Saturday, August 12, 2000, 9 a.m. to Noon at the Riverhouse, 3075 N. Highway 97, Bend, Oregon 97701. The public is invited to make oral comments. Individual comments will be limited to 10 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write Judi Nicholas, CAP Office, 915 2nd Avenue, Room 442, Seattle, WA 98174. Due to limited conference space, notification of intent to attend the meeting must be made with Judi Nicholas. Ms. Nicholas can be reached at 1–888–912–1227 or 206–220–6096.

The Agenda will include the following: various IRS issue updates.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: July 24, 2000.

M. Cathy VanHorn,

Director, CAP, Communications & Liaison.

[FR Doc. 00–19173 Filed 7–28–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Brooklyn District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Wednesday August 9, 2000.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Wednesday August 9, 2000, 6:00 p.m. to 9:00 p.m. at the Internal Revenue Service Brooklyn Building located at 625 Fulton Street, Brooklyn, NY 11201.

For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 8:30 p.m. to 9:00 p.m. on Wednesday August 9, 2000. Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201.

The Agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: July 24, 2000.

M. Cathy VanHorn,

Director, CAP, Communications & Liaison.

[FR Doc. 00–19174 Filed 7–28–00; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,
July 31, 2000

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 411, 413, and 489
Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 411, 413, and 489

[HCFA–1112–F]

RIN 0938–AJ93

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update

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

ACTION: Final rule.

SUMMARY: This final rule sets forth updates to the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs), for fiscal year 2001. Annual updates to the PPS rates are required by section 1888(e) of the Social Security Act, as amended by the Medicare, Medicaid and State Child Health Insurance Program Balanced Budget Refinement Act of 1999, related to Medicare payments and consolidated billing for SNFs. In addition, this rule sets forth certain conforming revisions to the regulations that are necessary in order to implement amendments made to the Act by section 103 of the Medicare, Medicaid and State Child Health Insurance Program Balanced Budget Refinement Act of 1999.

EFFECTIVE DATE: These regulations are effective on October 1, 2000.

FOR FURTHER INFORMATION CONTACT:

Dana Burley, (410) 786–4547 or Sheila Lambowitz, (410) 786–7605 (for information related to the case-mix classification methodology).

John Davis, (410) 786–0008 (for information related to the Wage Index).

Bill Ullman, (410) 786–5667 (for information related to consolidated billing).

Steve Raitzyk, (410) 786–4599 (for information related to the facility-specific transition rates).

Bill Ullman, (410) 786–5667 or Susan Burris (410) 786–6655 (for general information).

SUPPLEMENTARY INFORMATION:

Copies

To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Please specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

To assist readers in referencing sections contained in this document, we are providing the following table of contents.

Table of Contents

In addition, because of the many terms to which we refer by abbreviation in this rule, we are listing these abbreviations and their corresponding terms in alphabetical order below:

ADL Activity of Daily Living
BBA Balanced Budget Act of 1997, P.L. 105–33
BBRA Medicare, Medicaid and SCHIP Balanced Budget Refinement Act of 1999, P.L. 106–113, Appendix F
BLS (U.S.) Bureau of Labor Statistics
CPI Consumer Price Index
HCFA Health Care Financing Administration
HCPCS HCFA Common Procedure Coding System
IFC Interim Final Rule with Comments
MDS Minimum Data Set
MSA Metropolitan Statistical Area
PPI Producer Price Index
PPS Prospective Payment System
PRM Provider Reimbursement Manual
RUG–III Resource Utilization Groups, version III
SCHIP State Child Health Insurance Program
SNF Skilled Nursing Facility

I. Background

On April 10, 2000, we published in the **Federal Register** (65 FR 19188), a proposed rule that set forth updates to the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs), for fiscal year (FY) 2001. Furthermore, it specifically proposed changes to the SNF PPS case-mix methodology. Annual updates to the PPS rates are required by section 1888(e) of the Social Security Act (the Act), as amended by the Medicare, Medicaid and State Child Health Insurance Program Balanced Budget Refinement Act of 1999, related to Medicare payments and consolidated billing for SNFs. In addition, the rule proposed certain conforming revisions to the regulations necessary in order to implement amendments made to the Act by section 103 of the Medicare, Medicaid and State Child Health Insurance Program Balanced Budget Refinement Act of 1999 (BBRA), Public Law 106–113, Appendix F.

A. Current System for Payment of Skilled Nursing Facility Services Under Part A of the Medicare Program

Section 4432 of the Balanced Budget Act of 1997 (BBA) (Public Law 105–33) mandated the implementation of a per diem PPS for SNFs, covering all costs (routine, ancillary, and capital) of covered SNF services furnished to beneficiaries under Part A of the Medicare program, effective for cost reporting periods beginning on or after July 1, 1998. We are updating the per

diem payment rates for SNFs, for FY 2001. Major elements of the SNF PPS include:

• *Rates*: Per diem Federal rates were established for urban and rural areas using allowable costs from FY 1995 cost reports. These rates also included an estimate of the cost of services that, before July 1, 1998, had been paid under Part B but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. Rates are case-mix adjusted using a classification system (Resource Utilization Groups, version III (RUG–III)) based on beneficiary assessments (using the Minimum Data Set (MDS) 2.0). In addition, the Federal rates are adjusted by the hospital wage index to account for geographic variation in wages. Further, the rates are adjusted annually using an SNF market basket index.

• *Transition*: The SNF PPS includes a 3-year, phased transition that blends a facility-specific payment rate with the Federal case-mix adjusted rate. For each cost reporting period after a facility migrates to the new system, the facility-specific portion of the blend decreases and the Federal portion increases, in 25 percent increments. For most facilities, the facility-specific rate is based on allowable costs from FY 1995. As discussed later in this final rule, section 102 of the BBRA authorized facilities to elect to bypass the transition to be paid at the full Federal rate.

• *Coverage*: The PPS statute did not change Medicare's fundamental requirements for SNF coverage. However, because RUG–III classification is based, in part, on the beneficiary's need for skilled nursing care and therapy, we have attempted where possible to coordinate claims review procedures with the outputs of beneficiary assessment and RUG–III classifying activities.

• *Consolidated Billing*: The statute includes a billing provision that requires a SNF to submit consolidated Medicare bills for its beneficiaries for virtually all services that are covered under either Part A or Part B. The statute excludes a small list of services (primarily those of physicians and certain other types of practitioners). As discussed later in this final rule, section 103 of the BBRA has identified certain additional services for exclusion, effective April 1, 2000.

B. Requirements of the Balanced Budget Act of 1997 for Updating the Prospective Payment System for Skilled Nursing Facilities

Section 1888(e)(4)(H) of the Act requires that we publish in the **Federal Register:**

1. The unadjusted Federal per diem rates to be applied to days of covered SNF services furnished during the FY.

2. The case-mix classification system to be applied with respect to these services during the FY.

3. The factors to be applied in making the area wage adjustment with respect to these services.

In addition, in the July 30, 1999 final rule (64 FR 41670), we indicated that we would announce any changes to the guidelines for Medicare level of care determinations related to Part A SNF services or to the RUG–III classifications.

Along with a number of other revisions and refinements discussed later in this preamble, this final rule provides the annual updates to the Federal rates, as mandated by the Medicare statute.

C. The Medicare, Medicaid and State Child Health Insurance Program (SCHIP) Balanced Budget Refinement Act of 1999 (BBRA)

As a result of enactment of the BBRA, there are several new provisions that result in adjustments to the PPS for SNFs. The following provisions were described in the proposed rule that we published on April 10, 2000 (65 FR 19188), and are discussed further in section III. of this preamble, to the extent that we received public comments concerning them:

• Section 101 provides for a temporary, 20 percent increase in the per diem adjusted payment rates for 15 specified RUG–III groups (SE3, SE2, SE1, SSC, SSB, SSA, CC2, CC1, CB2, CB1, CA2, CA1, RHC, RMC, and RMB). This legislation provides that the 20 percent increase takes effect with SNF services that are furnished on or after April 1, 2000, and continues until the later of October 1, 2000, or implementation by the Secretary of a refined RUG system. Thus, the 20 percent increase serves as a temporary, interim adjustment to the payment rates and RUG–III classification system as published in the final rule of July 30, 1999, and will continue until implementation of the case-mix refinements described in the legislation. As discussed in Section III., we are not implementing such case-mix refinements in this final rule. Therefore, the 20 percent increase for the specified RUG–III groups will remain in effect during FY 2001. Section 101 also includes an across-the-board increase in the adjusted Federal per diem payment rates by 4 percent each year for FYs 2001 and 2002, exclusive of the 20 percent increase.

• Section 102 authorizes SNFs that would otherwise be subject to the three-year, phased transition from facility-specific to Federal rates to elect instead to make an immediate transition to the full Federal rate.

• Effective April 1, 2000, section 103 excludes from the SNF PPS bundle and the consolidated billing requirement certain types of ambulance services, certain customized prosthetic devices, and certain services involving chemotherapy and its administration; beginning with FY 2001, this section also requires a corresponding proportional reduction in Part A SNF payments.

• Section 104 provides for a Part B add-on for facilities participating in the Multistate Nursing Home Case-Mix and Quality (NHCMQ) Demonstration Project.

• Section 105 provides for a 50 percent Federal, 50 percent facility-specific payment rate for those SNFs that serve certain specialized patient populations.

• Section 155 provides that PPS payment to certain SNF providers located in Baldwin or Mobile County, Alabama, are based on 100 percent of their facility specific rates for cost reporting periods that begin in FY 2000 or FY 2001.

We included further information on these provisions in Program Memorandums A–99–53 and A–99–61 (December 1999), and Program Memorandum A–00–18 (March 2000).

D. Skilled Nursing Facility Prospective Payment—General Overview

The Medicare SNF PPS was implemented for cost reporting periods beginning on or after July 1, 1998. Under the PPS, SNFs are paid through prospective, case-mix adjusted per diem payment rates applicable to all covered SNF services. These payment rates cover all the costs of furnishing covered skilled nursing services (that is, routine, ancillary, and capital-related costs) other than costs associated with approved educational activities. Covered SNF services include posthospital SNF services for which benefits are provided under Part A and all items and services that, before July 1, 1998, had been paid under Part B (other than physician and certain other services specifically excluded under the BBA) but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. (A complete discussion of these provisions appears in the May 12, 1998 interim final rule (63 FR 26252)).

1. Payment Provisions—Federal Rate

The statute sets forth a fairly prescriptive methodology for calculating the amount of payment under the SNF PPS. The PPS utilizes per diem Federal payment rates based on mean SNF costs in a base year updated for inflation to the first effective period of the PPS. We developed the Federal payment rates using allowable costs from hospital-based and freestanding SNF cost reports for reporting periods beginning in FY 1995. The data used in developing the Federal rates also incorporate an estimate of the amounts that would be payable under Part B for covered SNF services to individuals who were receiving Part A covered services in an SNF.

In developing the rates for the initial period, we updated costs to the first effective year of PPS (15-month period beginning July 1, 1998) using a SNF market basket index, and standardized for facility differences in case-mix and for geographic variations in wages. Providers that received "new provider" exemptions from the routine cost limits were excluded from the database used to compute the Federal payment rates. In addition, costs related to payments for exceptions to the routine cost limits were excluded from the database used to compute the Federal rates. In accordance with the formula prescribed in the BBA, we set the Federal rates at a level equal to the weighted mean of freestanding costs plus 50 percent of the difference between the freestanding mean and weighted mean of all SNF costs (hospital-based and freestanding) combined. We compute and apply separately the payment rates for facilities located in urban and rural areas. In addition, we adjust the portion of the Federal rate attributable to wage related costs by a wage index.

The Federal rate also incorporates adjustments to account for facility case-mix using a classification system that accounts for the relative resource utilization of different patient types. This classification system, RUG–III, utilizes beneficiary assessment data (from the Minimum Data Set or MDS) completed by SNFs to assign beneficiaries into one of 44 groups. The May 12, 1998 interim final rule (63 FR 26252) has a complete and detailed description of the RUG–III classification system. The BBA requires us to publish the SNF PPS case-mix classification methodology applicable for the next Federal FY before August 1 of each year. In the proposed rule, we discussed options for refining the existing RUG–III classification system. Further discussion of this issue appears in Section III. A. of this rule.

The Federal rates reflected in this rule update the rates in the July 30, 1999 update notice (64 FR 41684) by a factor equal to the SNF market basket index minus 1 percentage point. According to section 1888(e)(4)(E)(ii) of the Act, for FYs 2001 and 2002, we will update the rate by adjusting the current rates by the SNF market basket change minus 1 percentage point. For subsequent FYs, we will adjust the rates by the applicable SNF market basket change.

2. Payment Provisions—Transition Period

Beginning with a provider's first cost reporting period beginning on or after July 1, 1998, there is a transition period covering three cost reporting periods. During the transition period, SNFs receive a payment rate comprising a blend between the Federal rate and a facility-specific rate based on each facility's FY 1995 cost report. Under section 1888(e)(2)(E)(ii) of the Act, SNFs that received their first payment from Medicare on or after October 1, 1995 receive payment according to the Federal rates only.

For SNFs subject to transition, the composition of the blended rate varies depending on the year of transition. For the first cost reporting period beginning on or after July 1, 1998, we make payment based on 75 percent of the facility-specific rate and 25 percent of the Federal rate. In the next cost reporting period, the rate consists of 50 percent of the facility-specific rate and 50 percent of the Federal rate. In the following cost reporting period, the rate consists of 25 percent of the facility-specific rate and 75 percent of the Federal rate. For all subsequent cost reporting periods, we base payments entirely on the Federal rates.

As noted elsewhere in this regulation, in accordance with section 102 of the BBRA, SNFs that would otherwise be subject to the statutory three-year, phased transition from facility-specific to Federal rates, may elect to bypass the transition and go directly to the full Federal rate. This amendment applies to elections made on or after December 15, 1999, except that no election will be effective for a cost reporting period beginning before January 1, 2000; an election is effective for a cost reporting period beginning no earlier than 30 days before the date of the election.

3. Payment Provisions—Facility-Specific Rate

For most facilities, we compute the facility-specific payment rate utilized for the transition using the allowable costs of SNF services for cost reporting periods beginning in FY 1995 (cost reporting periods beginning on or after October 1, 1994 and before October 1, 1995). Included in the facility-specific per diem rate is an estimate of the amount that would be payable under Part B for covered SNF services furnished during FY 1995 to those beneficiaries in the facility who were receiving Part A covered services. The facility-specific rate, in contrast to the Federal rates, includes amounts paid to SNFs for exceptions to the routine cost limits. In addition, we also take into account "new provider" exemptions from the routine cost limits, but only to the extent that routine costs do not exceed 150 percent of the routine cost limit.

We update the facility-specific rate for each cost reporting period after 1995 by a factor equal to the SNF market basket percentage increase minus 1 percentage point. In each subsequent year, we will update it by the applicable SNF market basket increase.

II. Provisions of the Proposed Rule

The proposed rule that we published in the **Federal Register** (65 FR 19188, April 10, 2000) included proposed FY 2001 updates to the Federal payment rates used under the SNF PPS. In accordance with section 1888(e)(4)(E)(ii)(II) of the Act, the proposed updates reflected the SNF market basket percentage change for that fiscal year minus 1 percentage point. Also, in order to facilitate the incorporation of proposed refinements into the case-mix classification system (see discussion in Section III. A. of this final rule), we created a separate component of the payment rates specifically to account for non-therapy ancillary costs (which have been included within the overall nursing case-mix component of the payment rates). In addition, the proposed rule described our methodology for adjusting the Federal rates in accordance with section 103 of the BBRA, in order to reflect that provision's exclusion of certain additional items and services from the SNF PPS and consolidated billing. Further, we provided for a 4 percent increase in the adjusted Federal rate, in accordance with section 101 of the BBRA. We also included a discussion of the rights of SNFs to appeal their payment rates under the PPS (65 FR 19192). In addition, we proposed to make certain refinements in the case-mix classification system, in accordance with section 101 of the BBRA (see discussion in Section III. A. of this final rule).

In addition to discussing these general issues in the proposed rule, we also proposed to make the following specific revisions to the existing text of the regulations:

- In § 411.15, paragraph (p)(2)(vii) would be revised to exclude from consolidated billing those ambulance services that are furnished to an SNF resident in conjunction with dialysis services that are covered under Part B.
- In § 411.15, paragraph (p)(2) would also be revised to list the additional services that section 103 of the BBRA has excluded from consolidated billing.
- In § 411.15, paragraph (p)(3)(iv), the phrase "within 24 consecutive hours" would be revised to read "by midnight of the day of departure".
- In § 489.20, paragraph (s) would be revised to list the additional services that the BBRA has excluded from consolidated billing, and a conforming change would be made in § 489.21(h).
- In § 489.20, paragraph (s)(7) would be revised to exclude from consolidated billing those ambulance services that are furnished to an SNF resident in conjunction with dialysis services that are covered under Part B.
- Section 489.20(s)(11) and § 411.15(p)(2)(xi), would be revised to reflect editorial revisions in the paragraphs concerning the transportation costs of electrocardiogram equipment.

More detailed information on each of these issues can be found in the discussion contained in the following section of this final rule.

III. Analysis of and Responses to Public Comments

In response to the publication of the proposed rule on April 10, 2000, we received approximately 750 comments. The majority consisted of form letters, in which we received multiple copies of an identically-worded letter that had been signed and submitted by different individuals. Furthermore, we received over 30 comments from various trade associations and other major organizations. Comments originated from nursing homes and other providers, suppliers and practitioners (both individually, and through their respective trade associations), nursing home resident advocacy groups, health care consulting firms, and private citizens. While the comments fell into several broad areas, by far the largest number involved the refinements that we proposed to make in the PPS case-mix classification system, in accordance with section 101 of the BBRA.

A. Case-Mix Refinements

The proposed rule discussed options for refinements to the RUG-III system, described ongoing research and analyses, shared the initial results that we proposed be incorporated into the Medicare PPS system effective October 1, 2000, and solicited comments from all interested parties.

1. Potential Case-Mix Refinements Described in the Proposed Rule

Comment: We received numerous comments on the potential refinements, the supporting data, and the analyses planned to validate the data. Commenters were concerned first about our ability to complete the analyses on a timely basis, and then on how we would use the additional analyses in setting the FY 2001 rates. They also expressed concerns that the proposed refinements might not adequately address the problems that they perceived with current PPS payment levels.

Response: In the proposed rule (65 FR 19202), we indicated that we believed our preliminary research findings to be valid, but we also noted that

> * * * it is certainly possible that additional testing will identify new issues or suggest alternative refinements to those presented here. We remain open to suggestions during the comment period and will carefully evaluate the validation analyses before proceeding to final rulemaking.

We conducted the validation analyses discussed in the proposed rule to identify the actual distribution of the Medicare population, to determine any cost or acuity differences associated with short stay beneficiaries, and to validate the predictive power of the unweighted and weighted models in identifying variations in ancillary costs using national data from a current period (for example, after the implementation of the SNF PPS). We identified several important variations in the volume and distribution of beneficiaries and ancillary services costs using the 1999 national data which appear to have affected the performance of the index models described in the proposed rule.

In examining the 1999 data, it is apparent that the introduction of the PPS and consolidated billing provisions for covered Part A SNF stays has caused changes in facility practice patterns and billing, although some of this change may be the effect of using national data. In part, these variations may be related to changes in facility practices regarding the use of pharmaceuticals and in the way respiratory therapy services are provided to Medicare beneficiaries. For example, respiratory therapy (RT) was a significant portion of the non-therapy ancillary services in the pre-PPS data base used to develop the refinement models. This component of cost provided a significant contribution to the predictive power of the index models presented in the proposed rule. However, mean RT costs decreased from $16.04 based on a re-analysis of the six State sample to $5.46 in the 1999 national data base (or a 66 percent decrease). We believe that the decrease may be a result of both more prudent use of the services (RT has been a target of OIG studies in utilization and pricing) and the incentives created by the PPS (for example, the use of nurses to provide RT care). On the other hand, average drug costs increased from $29.93 based on a re-analysis of the six State sample to $92.38 in 1999 national data base. Therefore, when applying the non-therapy ancillary index indicators to the national PPS data, we found the models were less effective in predicting ancillary cost variations than when applied to the earlier research data.

As stated in the proposed rule, we were committed to validating the research results before proceeding to a refinement which required such a large expansion of the RUG–III classification system and impact on the delivery of SNF care. Since our latest validation analyses do not confirm the effectiveness of index models in the current PPS environment, we are not proceeding with implementation of the RUG refinements discussed in the proposed rule. Therefore, for FY 2001, we will be maintaining the existing 44-group RUG–III configuration. Consequently, we will also maintain the 20 percent add-on to the Federal rates for the 15 selected RUG-III groups, in accordance with section 101 of BBRA.

The inability to validate the specific non-therapy ancillary index models described in the proposed rule does not preclude us from further efforts to improve the payment system's ability to allocate payments based on expected ancillary use. However, additional research will be needed to identify variables that will be effective predictors in the PPS environment. Now that we have developed a large national database of claims and MDS records from 1999, we plan to continue research on the development of a non-therapy ancillary index, as well as to investigate other potential refinement approaches. In continuing this research, we will carefully consider the comments we received, and use these comments to assist us in exploring potential solutions.

Finally, as indicated in the April 10, 2000, proposed rule, both non-therapy ancillary index models were designed in conjunction with an addition to the RUG–III hierarchy; for example, 14 combined Extensive Services/ Rehabilitation groups. While this approach may warrant further exploration, we are not adopting it at this time. The validation analyses looked at the impact of both components of the proposed refinements: the expansion of the RUG–III groups and the creation of a non-therapy ancillary index. The combined predictive power of both components was approximately 3 percent. Measured separately, the added predictive power of either component would be negligible. The benefit of expanding the number of RUG–III groups would be too small to justify the added complexity of the RUG–III system. We will continue to work to develop ways to address the needs of those beneficiaries who require an unusually heavy combination of clinical care, rehabilitation services, and ancillary utilization, without creating perverse incentives that could negatively affect the quality of care for this vulnerable segment of the beneficiary population.

2. Clinical Issues

Comment: One commenter raised an issue involving certain restrictions placed by SNF administrators on staff's provision of therapies. The commenter reported that SNFs frequently constrain the amount of therapy therapists are permitted to provide the beneficiaries in particular facilities. Specifically, the commenter stated that therapists have been instructed by SNFs to limit therapy minutes to the minimum required for the medium RUG–III groups.

Response: In view of this comment, in addition to other anecdotal evidence, we believe it is appropriate to reiterate some key points of Medicare policy. As we previously stated in the final rule of July 30, 1999 (64 FR 41662), the number of minutes per week that are used as qualifiers for classification into the rehabilitation RUG–III groups "are minimums and are not to be used as upper limits for service provision." Facilities with patterns of therapy service provided at the minimum levels may be targeted for medical review and other audit activities. Arbitrary decisions by facility administrative staff to override the professional decision-making regarding which types and how much therapy service are needed by, and will be provided to, the individual beneficiary are inconsistent with our requirements for individual evaluations by a licensed professional therapist, care plan development that involves the physician and the professional therapist, and the strict rules we have promulgated regarding supervision of therapy service provision when service is provided by someone other than the licensed professional.

Further, the Medicare requirements for participation (at section 1819(b) of the Act) require SNFs to provide the services necessary to attain each resident's highest level of physical functioning. Any facility level policy that obstructs this goal is in direct conflict with Medicare policy.

In addition, because we are not implementing the RUG–III refinements as proposed, we are concerned about some of the payment incentives associated with the 20 percent add-ons for 15 of the RUG–III groups. We are especialiy concerned about the effect on provider behavior that could result from the incentive provided by the add-on for such groups as those in the extensive services category, and for three of the rehabilitation RUG–III groups. For example, the additional payment for the RHC, RMC, and RMB groups results in higher payment for these groups than for some other, higher-level rehabilitation groups. We want to make clear that although this may create a fiscal incentive to provide less service in order to receive a higher rate of payment, we expect that facilities will continue to provide therapy at the levels most appropriate for each individual beneficiary.

However, we realize that this is a powerful incentive and, therefore, are working on ways to monitor the inappropriate denial of services to beneficiaries in facilities' attempts to achieve higher payment. We are exploring our monitoring options and strategies to detect and deter inappropriate practices in this area, and will be able to present more specific information about our plans at our fall fiscal intermediary and provider training sessions. Monitoring activities will include our use of MDS data linked to SNF bills (which allows us to identify patterns and trends of SNF use and RUG–III group distributions), the SNF PPS Quality Medical Review Pilot and Data Analysis Peer Review Organization (which will specifically focus on the impact of the PPS in terms of quality of care and the potential for underutilization), and survey reports. At the facility level, we would certainly expect that any significant shift in beneficiary RUG–III classifications (for example, all beneficiaries being classified into the rehabilitation groups that have the 20 percent add-on), would result in closer monitoring and possible intervention.

Comment: We received a few comments regarding the clinical items used as indicators for the non-therapy ancillary index. The commenters suggested additional MDS items that they believe should be used to trigger additional payment.

Response: The clinical items used as indicators for the non-therapy ancillary indices, in the models discussed in the proposed rule are based on the data analyses performed to create the models. We did not undertake the research with any preconceived expectations or preferences as to the variables we believed would be most predictive of non-therapy ancillary cost. Rather, we looked to the data itself to identify the MDS items that were predictive of costs. We did not make decisions about the inclusion of these items and the values accepted for them unless the decision could be supported by the data analyses. As we continue to perform data analyses to identify the best way to recognize non-therapy ancillary costs, we will take into consideration the suggestions offered during the comment period. We plan to reexamine, using national data, which MDS items are predictive of non-therapy ancillary costs.

3. Medical Review and Fiscal Intermediary Issues

Comment: Many comments suggested that implementation of the refinements should be accompanied by HCFA-sponsored provider training. The reasons given for the additional training request are the expectation that the refinements will require software changes as well as some other operational changes. A few also suggested that clinical staff in particular, needed additional training because the refined RUG–III groups would necessitate changes in assessing, coding and documenting clinical decisions.

Response: Although we are not going forward with the proposed refinements, we do intend to proceed with our plans for provider and fiscal intermediary training, in order to ensure that they have the most current information available on medical review procedures, claims processing requirements, and other aspects of the SNF PPS. We have already made plans for the provision of both "train-the-trainer" sessions for the fiscal intermediaries and for other HCFA-sponsored provider training to present updates on all aspects of the SNF PPS. We believe that having a full understanding of the payment and classification systems will help

providers achieve their highest levels of performance.

4. Section U of the Minimum Data Set

Comment: We received a few comments expressing disappointment at our decision not to collect medication data using Section U of the minimum data set (MDS). These commenters suggested that we are losing an opportunity to collect very important information about the medications being offered to Medicare beneficiaries. They point out the importance of this data collection from both quality of care and payment perspectives. We also received a comment applauding our decision not to collect the medication data, which stated that the MDS should be streamlined rather than expanded.

Response: We appreciate the commenters' concerns but, as stated in the proposed rule, we cannot collect the medication data beginning in October 2000, as we had planned. However, we are continuing our evaluation and will take all of the comments into consideration in that process.

B. Update of Payment Rates Under the Prospective Payment System for Skilled Nursing Facilities

1. Federal Prospective Payment System

This final rule sets forth a schedule of Federal prospective payment rates applicable to Medicare Part A SNF services beginning October 1, 2000. The schedule incorporates per diem Federal rates that provide Part A payment for all costs of services furnished to a beneficiary in an SNF during a Medicare-covered stay. Tables 1 and 2 reflect the updated components of the unadjusted Federal rates.

TABLE 1.—UNADJUSTED FEDERAL RATE PER DIEM

[Urban]

Rate component	Nursing—Case-mix	Therapy—Case-mix	Therapy—Non-case mix	Non-case-mix
Per Diem Amount	$114.38	$86.16	$11.35	$58.38

TABLE 2.—UNADJUSTED FEDERAL RATE PER DIEM

[Rural]

Rate component	Nursing—Case-mix	Therapy—Case-mix	Therapy—Non-case mix	Non-case-mix
Per Diem Amount	$109.29	$99.34	$12.13	$59.45

2. Case-Mix Adjustment

As noted earlier in this final rule, we are not proceeding with the implemenation of the RUG refinements discussed in the proposed rule. Accordingly, the payment rates set forth in this final rule reflect the continued use of the 44-group RUG-III classification system discussed in the May 12, 1998 interim final rule (63 FR 26252). The case-mix adjusted payment rates are listed separately for urban and rural SNFs in Tables 3 and 4, with the corresponding case-mix index values.

TABLE 3.—CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDICES

RUG IV category	Nursing index	Therapy index	Nursing component	Therapy component	Therapy non-case-mix component	Non-case-mix component	Total rate
RUC	1.30	2.25	$148.69	$193.86		$58.38	$400.93
RUB	0.95	2.25	108.66	193.86		58.38	360.90
RUA	0.78	2.25	89.22	193.86		58.38	341.46
RVC	1.13	1.41	129.25	121.49		58.38	309.12
RVB	1.04	1.41	118.96	121.49		58.38	298.83
RVA	0.81	1.41	92.65	121.49		58.38	272.52
RHC	1.26	0.94	144.12	80.99		58.38	283.49
RHB	1.06	0.94	121.24	80.99		58.38	260.61
RHA	0.87	0.94	99.51	80.99		58.38	238.88
RMC	1.35	0.77	154.41	66.34		58.38	279.13
RMB	1.09	0.77	124.67	66.34		58.38	249.39
RMA	0.96	0.77	109.80	66.34		58.38	234.52
RLB	1.11	0.43	126.96	37.05		58.38	222.39
RLA	0.80	0.43	91.50	37.05		58.38	186.93
SE3	1.70		194.45		$11.35	58.38	264.18
SE2	1.39		158.99		11.35	58.38	228.72
SE1	1.17		133.82		11.35	58.38	203.55
SSC	1.13		129.25		11.35	58.38	198.98
SSB	1.05		120.10		11.35	58.38	189.83
SSA	1.01		115.52		11.35	58.38	185.25
CC2	1.12		128.11		11.35	58.38	197.84
CC1	0.99		113.24		11.35	58.38	182.97
CB2	0.91		104.09		11.35	58.38	173.82

TABLE 3.—CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDICES—Continued

RUG IV category	Nursing index	Therapy index	Nursing component	Therapy component	Therapy non-case-mix component	Non-case-mix component	Total rate
CB1	0.84		96.08		11.35	58.38	165.81
CA2	0.83		94.94		11.35	58.38	164.67
CA1	0.75		85.79		11.35	58.38	155.52
IB2	0.69		78.92		11.35	58.38	148.65
IB1	0.67		76.63		11.35	58.38	146.36
IA2	0.57		65.20		11.35	58.38	134.93
IA1	0.53		60.62		11.35	58.38	130.35
BB2	0.68		77.78		11.35	58.38	147.51
BB1	0.65		74.35		11.35	58.38	144.08
BA2	0.56		64.05		11.35	58.38	133.78
BA1	0.48		54.90		11.35	58.38	124.63
PE2	0.79		90.36		11.35	58.38	160.09
PE1	0.77		88.07		11.35	58.38	157.80
PD2	0.72		82.35		11.35	58.38	152.08
PD1	0.70		80.07		11.35	58.38	149.80
PC2	0.65		74.35		11.35	58.38	144.08
PC1	0.64		73.20		11.35	58.38	142.93
PB2	0.51		58.33		11.35	58.38	128.06
PB1	0.50		57.19		11.35	58.38	126.92
PA2	0.49		56.05		11.35	58.38	125.78
PA1	0.46		52.61		11.35	58.38	122.34

TABLE 4.—CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDICES

[Rural]

RUG IV category	Nursing index	Therapy index	Nursing component	Therapy component	Therapy non-case-mix component	Non-case-mix component	Total rate
RUC	1.30	2.25	$142.08	$223.52		$59.45	$425.05
RUB	0.95	2.25	103.83	223.52		59.45	386.80
RUA	0.78	2.25	85.25	223.52		59.45	368.22
RVC	1.13	1.41	123.50	140.07		59.45	323.02
RVB	1.04	1.41	113.66	140.07		59.45	313.18
RVA	0.81	1.41	88.52	140.07		59.45	288.04
RHC	1.26	0.94	137.71	93.38		59.45	290.54
RHB	1.06	0.94	115.85	93.38		59.45	268.68
RHA	0.87	0.94	95.08	93.38		59.45	247.91
RMC	1.35	0.77	147.54	76.49		59.45	283.48
RMB	1.09	0.77	119.13	76.49		59.45	255.07
RMA	0.96	0.77	104.92	76.49		59.45	240.86
RLB	1.11	0.43	121.31	42.72		59.45	223.48
RLA	0.80	0.43	87.43	42.72		59.45	189.60
SE3	1.70		185.79		12.13	59.45	257.37
SE2	1.39		151.91		12.13	59.45	223.49
SE1	1.17		127.87		12.13	59.45	199.45
SSC	1.13		123.50		12.13	59.45	195.08
SSB	1.05		114.75		12.13	59.45	186.33
SSA	1.01		110.38		12.13	59.45	181.96
CC2	1.12		122.40		12.13	59.45	193.98
CC1	0.99		108.20		12.13	59.45	179.78
CB2	0.91		99.45		12.13	59.45	171.03
CB1	0.84		91.80		12.13	59.45	163.38
CA2	0.83		90.71		12.13	59.45	162.29
CA1	0.75		81.97		12.13	59.45	153.55
IB2	0.69		75.41		12.13	59.45	146.99
IB1	0.67		73.22		12.13	59.45	144.80
IA2	0.57		62.30		12.13	59.45	133.88
IA1	0.53		57.92		12.13	59.45	129.50
BB2	0.68		74.32		12.13	59.45	145.90
BB1	0.65		71.04		12.13	59.45	142.62
BA2	0.56		61.20		12.13	59.45	132.78
BA1	0.48		52.46		12.13	59.45	124.04
PE2	0.79		86.34		12.13	59.45	157.92
PE1	0.77		84.15		12.13	59.45	155.73
PD2	0.72		78.69		12.13	59.45	150.27
PD1	0.70		76.50		12.13	59.45	148.08

TABLE 4.—CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDICES—Continued

[Rural]

RUG IV category	Nursing index	Therapy index	Nursing component	Therapy component	Therapy non-case-mix component	Non-case-mix component	Total rate
PC2	0.65		71.04		12.13	59.45	142.62
PC1	0.64		69.95		12.13	59.45	141.53
PB2	0.51		55.74		12.13	59.45	127.32
PB1	0.50		54.65		12.13	59.45	126.23
PA2	0.49		53.55		12.13	59.45	125.13
PA1	0.46		50.27		12.13	59.45	121.85

C. Wage Index Adjustment to Federal Rates

Section 1888(e)(4)(G)(ii) of the Act requires that we provide for adjustments to the Federal rates to account for differences in area wage levels using an "appropriate" wage index as determined by the Secretary. It is our intent to evaluate a wage index based specifically on SNF data once it becomes available. The SNF wage data are currently being collected and evaluated to determine if we can utilize them in the future. If a wage index based on SNF data is developed, we will publish it for comment. However, in the interim, many commenters urged us to incorporate the latest wage data available. We continue to believe that, until a wage index based on SNF wage data is collected and analyzed, the hospital wage index's wage data provide the best available measure of comparable wages that should be paid by SNFs. Since hospitals and SNFs compete in the same labor market area, we believe that the use of this index's wage data results in an appropriate adjustment to the labor portion of SNF costs based on an "appropriate" wage index, as required under section 1888(e) of the Act.

The computation of the wage index is similar to past years in that we incorporate the latest data and methodology used to construct the hospital wage index (see the discussion in the May 12, 1998 interim final rule (63 FR 26274)). The wage index adjustment is applied to the labor-related portion of the Federal rate, which is 77.870 percent of the total rate. Tables 5 and 6 below shows the Federal rates by labor-related and non-labor-related components.

TABLE 5.—CASE-MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT

RUGs IV category	Labor-related	Non-labor-related	Total federal rate
RUC	$312.20	$88.73	$400.93
RUB	281.03	79.87	360.90
RUA	265.89	75.57	341.46
RVC	240.71	68.41	309.12
RVB	232.70	66.13	298.83
RVA	212.21	60.31	272.52
RHC	220.75	62.74	283.49
RHB	202.94	57.67	260.61
RHA	186.02	52.86	238.88
RMC	217.36	61.77	279.13
RMB	194.20	55.19	249.39
RMA	182.62	51.90	234.52
RLB	173.18	49.21	222.39
RLA	145.56	41.37	186.93
SE3	205.72	58.46	264.18
SE2	178.10	50.62	228.72
SE1	158.50	45.05	203.55
SSC	154.95	44.03	198.98
SSB	147.82	42.01	189.83
SSA	144.25	41.00	185.25
CC2	154.06	43.78	197.84
CC1	142.48	40.49	182.97
CB2	135.35	38.47	173.82
CB1	129.12	36.69	165.81
CA2	128.23	36.44	164.67
CA1	121.10	34.42	155.52
IB2	115.75	32.90	148.65
IB1	113.97	32.39	146.36
IA2	105.07	29.86	134.93
IA1	101.50	28.85	130.35
BB2	114.87	32.64	147.51
BB1	112.20	31.88	144.08
BA2	104.17	29.61	133.78
BA1	97.05	27.58	124.63
PE2	124.66	35.43	160.09
PE1	122.88	34.92	157.80

TABLE 5.—CASE-MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

RUGs IV category	Labor-related	Non-labor-related	Total federal rate
PD2	118.42	33.66	152.08
PD1	116.65	33.15	149.80
PC2	112.20	31.88	144.08
PC1	111.30	31.63	142.93
PB2	99.72	28.34	128.06
PB1	98.83	28.09	126.92
PA2	97.94	27.84	125.78
PA1	95.27	27.07	122.34

TABLE 6.—CASE-MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT

RUGs IV category	Labor-related	Non-labor-related	Total federal rate
RUC	$330.99	$94.06	$425.05
RUB	301.20	85.60	386.80
RUA	286.73	81.49	368.22
RVC	251.54	71.48	323.02
RVB	243.87	69.31	313.18
RVA	224.30	63.74	288.04
RHC	226.24	64.30	290.54
RHB	209.22	59.46	268.68
RHA	193.05	54.86	247.91
RMC	220.75	62.73	283.48
RMB	198.62	56.45	255.07
RMA	187.56	53.30	240.86
RLB	174.02	49.46	223.48
RLA	147.64	41.96	189.60
SE3	200.41	56.96	257.37
SE2	174.03	49.46	223.49
SE1	155.31	44.14	199.45
SSC	151.91	43.17	195.08
SSB	145.10	41.23	186.33
SSA	141.69	40.27	181.96
CC2	151.05	42.93	193.98
CC1	139.99	39.79	179.78
CB2	133.18	37.85	171.03
CB1	127.22	36.16	163.38
CA2	126.38	35.91	162.29
CA1	119.57	33.98	153.55
IB2	114.46	32.53	146.99
IB1	112.76	32.04	144.80
IA2	104.25	29.63	133.88
IA1	100.84	28.66	129.50
BB2	113.61	32.29	145.90
BB1	111.06	31.56	142.62
BA2	103.40	29.38	132.78
BA1	96.59	27.45	124.04
PE2	122.97	34.95	157.92
PE1	121.27	34.46	155.73
PD2	117.02	33.25	150.27
PD1	115.31	32.77	148.08
PC2	111.06	31.56	142.62
PC1	110.21	31.32	141.53
PB2	99.14	28.18	127.32
PB1	98.30	27.93	126.23
PA2	97.44	27.69	125.13
PA1	94.88	26.97	121.85

As discussed above and in the proposed rule, until an appropriate wage index based specifically on SNF data is available, we will use the latest available hospital wage index data in making annual updates to the payment rates. In making these annual updates, section 1888(e)(4)(G)(ii) of the Act requires that the application of this wage index be made in a manner that does not result in aggregate payments that are greater or less than would otherwise be made in the absence of the wage adjustment. In this third PPS year (Federal rates effective October 1, 2000), we are updating the wage index applicable to SNF payments using the most recent hospital wage data and applying an adjustment to fulfill the budget neutrality requirement. This requirement will be met by multiplying

each of the per diem rate components by the ratio of the volume weighted mean wage adjustment factor (using the wage index from the previous year) to the volume weighted mean wage adjustment factor, using the wage index for the FY beginning October 1, 2000. The same volume weights are used in both the numerator and denominator and will be derived from 1997 Medicare Provider Analysis and Review File (MedPar) data. The wage adjustment factor used in this calculation is defined as the labor share of the rate component multiplied by the wage index plus the non-labor share. The budget neutrality factor for FY 2001 is 0.99909, which is multiplied by each of the Federal rate components.

Comment: We received one comment suggesting that the differences in the rural and urban wage indexes exacerbate rural access problems. The commenter indicates that the loss of adequate indirect and overhead reimbursement has taken away the incentive for ancillary providers to travel long distances, particularly to rural SNFs.

Response: The wage index used to adjust the SNF payment rate is currently based upon the wage and hourly data derived directly from the hospital cost report and, therefore, reflects the relative wage difference between a rural and urban area. In addition, the wages are adjusted to account for overhead allocated to excluded areas that are carved out of the computation. We do not believe that using the wage index to adjust payments to SNFs will affect access to care in rural SNFs.

Comment: We received several comments concerning the use of the hospital wage index to adjust payments for SNFs. Several of these commenters suggested that the hospital wage index does not adequately reflect the wages paid in the SNF setting. They argued that this is compounded by the fact that the SNF along with other areas are carved out or excluded from the computation of the hospital wage index. These commenters strongly suggested that we move quickly to a SNF-specific wage index. We also received other comments suggesting that we only implement a SNF-specific wage index if the data is significantly better, in order to justify the efforts involved in collecting and cleaning up the data.

Response: We are currently reviewing the data collected on the SNF cost reports to evaluate the possibility of developing a SNF-specific wage index. We are developing edits and screens on the data to evaluate the reasonableness and accuracy of the data. A full year's worth of data under the PPS will not be available until late fall 2000. We will review the data and consider the reasonableness of a SNF specific wage index. We hope to be able to provide detailed information on a SNF-specific wage index in our next proposed rule.

However, until that time, we continue to believe that the hospital wage data are an appropriate measure to adjust for area differences in wage rates. The statute provides that the Secretary use an "appropriate" wage index. We believe that the use of hospital wage data is appropriate because the relative difference between labor markets for hospitals and SNFs does not vary significantly, as they compete in the same labor market area.

Comment: One commenter suggested that we update the wage index every six months to attract the best nursing staff to nursing homes.

Response: We are not adopting this suggestion, because we do not believe that revising the wage index every six months would achieve the goal that the commenter seeks.

For any RUG–III group, to compute a wage-adjusted Federal payment rate, the labor-related portion of the payment rate is multiplied by the SNF's appropriate wage index factor listed in Table 7. The product of that calculation is added to the corresponding non-labor-related component. The resulting amount is the Federal rate applicable to a beneficiary in that RUG–III group for that SNF.

TABLE 7.—WAGE INDEX FOR URBAN AREAS

Urban area (Constituent Counties or County Equivalenis)	Wage Index
0040 Abilene, TX	0.8240
Taylor, TX	
0060 Aguadilla, PR	0.4391
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9736
Portage, OH	
Summit, OH	
0120 Albany, GA	0.9933
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8549
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.9136
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.8151
Rapides, LA	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent Counties or County Equivalents)	Wage Index
0240 Allentown-Bethlehem-Easton, PA	1.0040
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.9346
Blair, PA	
0320 Amarillo, TX	0.8715
Potter, TX	
Randall, TX	
0380 Anchorage, AK	1.2793
Anchorage, AK	
0440 Ann Arbor, MI	1.1254
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston, AL	0.8284
Calhoun, AL	
0460 Appleton-Oshkosh-Neenah, WI	0.9052
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR	0.4525
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9516
Buncombe, NC	
Madison, NC	
0500 Athens, GA	0.9739
Clarke, GA	
Madison, GA	
Oconee, GA	
0520 Atlanta, GA	1.0096
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic City-Cape May, NJ	1.1182
Atlantic City, NJ	
Cape May, NJ	
0580 Auburn-Opelika, AL	0.8106
Lee, AL	
0600 Augusta-Aiken, GA–SC	0.9160
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX	0.9577
Bastrop, TX	
Caldwell, TX	
Hays, TX	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent Counties or County Equivalents)	Wage Index
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA	0.9678
Kern, CA	
0720 Baltimore, MD	0.9365
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
0733 Bangor, ME	0.9561
Penobscot, ME	
0743 Barnstable-Yarmouth, MA	1.3839
Barnstable, MA	
0760 Baton Rouge, LA	0.8842
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8744
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.1439
Whatcom, WA	
0870 Benton Harbor, MI	0.8671
Berrien, MI	
0875 Bergen-Passaic, NJ	1.1848
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.9585
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.8236
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.8690
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.8452
Blount, AL	
Jefferson, AL	
St. Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.7705
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.8733
Monroe, IN	
1040 Bloomington-Normal, IL	0.9095
McLean, IL	
1080 Boise City, ID	0.9006
Ada, ID	
Canyon, ID	
1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	1.1160
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	
1125 Boulder-Longmont, CO	0.9731
Boulder, CO	
1145 Brazoria, TX	0.8658
Brazoria, TX	
1150 Bremerton, WA	1.0975
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	0.8722
Cameron, TX	
1260 Bryan-College Station, TX	0.8237
Brazos, TX	
1280 Buffalo-Niagara Falls, NY	0.9580
Erie, NY	
Niagara, NY	
1303 Burlington, VT	1.0735
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4562
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.8584
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.8724
Natrona, WY	
1360 Cedar Rapids, IA	0.8736
Linn, IA	
1400 Champaign-Urbana, IL	0.9198
Champaign, IL	
1440 Charleston-North Charleston, SC	0.9038
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.9240
Kanawha, WV	
Putnam, WV	
1520 Charlotte-Gastonia-Rock Hill, NC–SC	0.9407
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Stanly, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	1.0789
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN–GA	0.9833
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY	0.8308
Laramie, WY	
1600 Chicago, IL	1.1146
Cook, IL	
De Kalb, IL	
Du Page, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 Chico-Paradise, CA	0.9918
Butte, CA	
1640 Cincinnati, OH–KY–IN	0.9415
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN–KY	0.8204
Christian, KY	
Montgomery, TN	
1680 Cleveland-Lorain-Elyria, OH	0.9597
Ashtabula, OH	
Geauga, OH	
Cuyahoga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9697
El Paso, CO	
1740 Columbia, MO	0.8961
Boone, MO	
1760 Columbia, SC	0.9554
Lexington, SC	
Richland, SC	
1800 Columbus, GA–AL	0.8568
Russell, AL	
Chattanoochee, GA	
Harris, GA	
Muscogee, GA	
1840 Columbus, OH	0.9619
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8726
Nueces, TX	
San Patricio, TX	
1890 Corvallis, OR	1.1326
Benton, OR	
1900 Cumberland, MD–WV	0.8369
Allegany, MD	
Mineral, WV	
1920 Dallas, TX	0.9913
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	
1950 Danville, VA	0.8589

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent Counties or County Equivalents)	Wage Index
Danville City, VA	
Pittsylvania, VA	
1960 Davenport-Moline-Rock Island, IA–IL	0.8898
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9442
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.9200
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.8534
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL	0.8125
Macon, IL	
2080 Denver, CO	1.0181
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.9118
Dallas, IA	
Polk, IA	
Warren, IA	
2160 Detroit, MI	1.0510
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St. Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.7943
Dale, AL	
Houston, AL	
2190 Dover, DE	1.0078
Kent, DE	
2200 Dubuque, IA	0.8746
Dubuque, IA	
2240 Duluth-Superior, MN–WI	1.0032
St. Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0249
Dutchess, NY	
2290 Eau Claire, WI	0.8790
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	0.9346
El Paso, TX	
2330 Elkhart-Goshen, IN	0.9145
Elkhart, IN	
2335 Elmira, NY	0.8546
Chemung, NY	
2340 Enid, OK	0.8610
Garfield, OK	
2360 Erie, PA	0.8985
Erie, PA	
2400 Eugene-Springfield, OR	1.0965
Lane, OR	
2440 Evansville-Henderson, IN–KY	0.8173
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2520 Fargo-Moorhead, ND–MN	0.8749
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.8655
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.7910
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ–UT	1.0686
Coconino, AZ	
Kane, UT	
2640 Flint, MI	1.1205
Genesee, MI	
2650 Florence, AL	0.7616
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8777
Florence, SC	
2670 Fort Collins-Loveland, CO	1.0647
Larimer, CO	
2680 Ft. Lauderdale, FL	1.0121
Broward, FL	
2700 Fort Myers-Cape Coral, FL	0.9247
Lee, FL	
2710 Fort Pierce-Port St. Lucie, FL	0.9538
Martin, FL	
St. Lucie, FL	
2720 Fort Smith, AR–OK	0.8052
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.9607
Okaloosa, FL	
2760 Fort Wayne, IN	0.8665
Adams, IN	
Allen, IN	
De Kalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 Fort Worth-Arlington, TX	0.9527
Hood, TX	
Johnson, TX	
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	1.0104
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8423
Etowah, AL	
2900 Gainesville, FL	1.0074
Alachua, FL	
2920 Galveston-Texas City, TX	0.9918
Galveston, TX	
2960 Gary, IN	0.9454
Lake, IN	
Porter, IN	
2975 Glens Falls, NY	0.8361
Warren, NY	
Washington, NY	
2980 Goldsboro, NC	0.8423
Wayne, NC	
2985 Grand Forks, ND–MN	0.8816
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.9109
Mesa, CO.	
3000 Grand Rapids-Muskegon-Holland, MI	1.0248
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.9065
Cascade, MT	
3060 Greeley, CO	0.9814
Weld, CO	
3080 Green Bay, WI	0.9225
Brown, WI	
3120 Greensboro-Winston-Salem-High Point, NC	0.9131
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9384
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.9003
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.9409
Washington, MD	
3200 Hamilton-Middletown, OH	0.9061
Butler, OH	
3240 Harrisburg-Lebanon-Carlisle, PA	0.9386
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 Hartford, CT	1.1373
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 Hattiesburg, MS	0.7490
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.9008
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1863
Honolulu, HI	
3350 Houma, LA	0.8086
Lafourche, LA	
Terrebonne, LA	
3360 Houston, TX	0.9732
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent Counties or County Equivalents)	Wage Index
3400 Huntington-Ashland, WV–KY–OH	0.9876
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.8932
Limestone, AL	
Madison, AL	
3480 Indianapolis, IN	0.9787
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	0.9657
Johnson, IA	
3520 Jackson, MI	0.9134
Jackson, MI	
3560 Jackson, MS	0.8812
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.8796
Chester, TN	
Madison, TN	
3600 Jacksonville, FL	0.9208
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
3605 Jacksonville, NC	0.7777
Onslow, NC	
3610 Jamestown, NY	0.7818
Chautaqua, NY	
3620 Janesville-Beloit, WI	0.9585
Rock, WI	
3640 Jersey City, NJ	1.1502
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN–VA	0.8272
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA	0.8846
Cambria, PA	
Somerset, PA	
3700 Jonesboro, AR	0.7832
Craighead, AR	
3710 Joplin, MO	0.8148
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battlecreek, MI	1.0453
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL	0.9902
Kankakee, IL	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent Counties or County Equivalents)	Wage Index
3760 Kansas City, KS–MO	0.9498
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
3800 Kenosha, WI	0.9611
Kenosha, WI	
3810 Killeen-Temple, TX	1.0119
Bell, TX	
Coryell, TX	
3840 Knoxville, TN	0.8340
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.9518
Howard, IN	
Tipton, IN	
3870 La Crosse, WI–MN	0.9211
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.8490
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.8834
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.7399
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.9239
Polk, FL	
4000 Lancaster, PA	0.9259
Lancaster, PA	
4040 Lansing-East Lansing, MI	0.9934
Clinton, MI	
Eaton, MI	
Ingham, MI	
4080 Laredo, TX	0.8168
Webb, TX	
4100 Las Cruces, NM	0.8658
Dona Ana, NM	
4120 Las Vegas, NV–AZ	1.0796
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.8190
Douglas, KS	
4200 Lawton, OK	0.8996
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9036
Androscoggin, ME	
4280 Lexington, KY	0.8866
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Madison, KY	
Scott, KY	
Woodford, KY	
4320 Lima, OH	0.9320
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	0.9626
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.8906
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.8922
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 Los Angeles-Long Beach, CA	1.1996
Los Angeles, CA	
4520 Louisville, KY–IN	0.9350
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.8838
Lubbock, TX	
4640 Lynchburg, VA	0.8867
Amherst, VA	
Bedford City, VA	
Bedford, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.8974
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	1.0271
Dane, WI	
4800 Mansfield, OH	0.8690
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4589
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.8566
Hidalgo, TX	
4890 Medford-Ashland, OR	1.0344
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	0.9688
Brevard, Fl	
4920 Memphis, TN–AR–MS	0.8723
Crittenden, AR	
De Soto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA	0.9646
Merced, CA	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent Counties or County Equivalents)	Wage Index
5000 Miami, FL	1.0059
Dade, FL	
5015 Middlesex-Somerset-Hunterdon, NJ	1.1075
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
5080 Milwaukee-Waukesha, WI	0.9767
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
5120 Minneapolis-St Paul, MN–WI	1.1017
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Sherburne, MN	
Washington, MN	
Wright, MN	
Pierce, WI	
St. Croix, WI	
5140 Missoula, MT	0.9274
Missoula, MT	
5160 Mobile, AL	0.8163
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.0396
Stanislaus, CA	
5190 Monmouth-Ocean, NJ	1 1278
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.8396
Ouachita, LA	
5240 Montgomery, AL	0.7653
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	1.0969
Delaware, IN	
5330 Myrtle Beach, SC	0.8440
Horry, SC	
5345 Naples, FL	0.9661
Collier, FL	
5360 Nashville, TN	0.9490
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 Nassau-Suffolk, NY	1.3932
Nassau, NY	
Suffolk, NY	
5483 New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2297
Fairfield, CT	
New Haven, CT	
5523 New London-Norwich, CT	1.2063
New London, CT	
5560 New Orleans, LA	0.9295
Jefferson, LA	
Orleans, LA	
Plaquemines, LA	
St. Bernard, LA	
St. Charles, LA	
St. James, LA	
St. John The Baptist, LA	
St. Tammany, LA	
5600 New York, NY	1.4651
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
5640 Newark, NJ	1.1837
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Warren, NJ	
5660 Newburgh, NY–PA	1.0847
Orange, NY	
Pike, PA	
5720 Norfolk-Virginia Beach-Newport News, VA–NC	0.8412
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	
James City, VA	
Mathews, VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson City, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City VA	
Williamsburg City, VA	
York, VA	
5775 Oakland, CA	1.4983
Alameda, CA	
Contra Costa, CA 5790 Ocala, FL	0.9243
Marion, FL	
5800 Odessa-Midland, TX	0.9205
Ector, TX	
Midland, TX	
5880 Oklahoma City, OK	0.8822
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.0677
Thurston, WA	
5920 Omaha, NE–IA	0.9572
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 Orange County, CA	1.1467
Orange, CA	
5960 Orlando, FL	0.9610
Lake, FL	
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY	0.8159
Daviess, KY	
6015 Panama City, FL	0.9010
Bay, FL	
6020 Parkersburg-Marietta, WV–OH	0.8274
Washington, OH	
Wood, WV	
6080 Pensacola, FL	0.8176
Escambia, FL	
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8645
Peoria, IL	
Tazewell, IL	
Woodford, IL	
6160 Philadelphia, PA–NJ	1.0937
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
6200 Phoenix-Mesa, AZ	0.9669
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7791
Jefferson, AR	
6280 Pittsburgh, PA	0.9741
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA	1.0288
Berkshire, MA	
6340 Pocatello, ID	0.9076
Bannock, ID	
6360 Ponce, PR	0.5006
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9748
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 Portland-Vancouver, OR–WA	1.0910
Clackamas, OR	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick-Pawtucket, RI	1.0864
Bristol, RI	
Kent, RI	
Newport, RI	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent Counties or County Equivalents)	Wage Index
Providence, RI	
Washington, RI	
6520 Provo-Orem, UT	1.0029
Utah, UT	
6560 Pueblo, CO	0.8815
Pueblo, CO	
6580 Punta Gorda, FL	0.9613
Charlotte, FL	
6600 Racine, WI	0.9246
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC	0.9646
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	
Orange, NC	
Wake, NC	
6660 Rapid City, SD	0.8865
Pennington, SD	
6680 Reading, PA	0.9152
Berks, PA	
6690 Redding, CA	1.1664
Shasta, CA	
6720 Reno, NV	1.0550
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	1.1460
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9617
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
6780 Riverside-San Bernardino, CA	1.1239
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8750
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.1315
Olmsted, MN	
6840 Rochester, NY	0.9182
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.8819
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.8849
Edgecombe, NC	
Nash, NC	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent Counties or County Equivalents)	Wage Index
6920 Sacramento, CA	1.1950
El Dorado, CA	
Placer, CA	
Sacramento, CA	
6960 Saginaw-Bay City-Midland, MI	0.9575
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St. Cloud, MN	1.0016
Benton, MN	
Stearns, MN	
7000 St. Joseph, MO	0.9071
Andrews, MO	
Buchanan, MO	
7040 St. Louis, MO–IL	0.9049
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Warren, MO	
Sullivan City, MO	
7080 Salem, OR	1.0189
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.4502
Monterey, CA	
7160 Salt Lake City-Ogden, UT	0.9807
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.8083
Tom Green, TX	
7240 San Antonio, TX	0.8580
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 San Diego, CA	1.1784
San Diego, CA	
7360 San Francisco, CA	1.4156
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 San Jose, CA	1.3652
Santa Clara, CA	
7440 San Juan-Bayamon, PR	0.4690
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent Counties or County Equivalents)	Wage Index
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.0673
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0597
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.4040
Santa Cruz, CA	
7490 Santa Fe, NM	1.0537
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.2646
Sonoma, CA	
7510 Sarasota-Bradenton, FL	0.9809
Manatee, FL	
Sarasota, FL	
7520 Savannah, GA	0.9697
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton—Wilkes-Barre—Hazleton, PA	0.8421
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 Seattle-Bellevue-Everett, WA	1.0996
Island, WA	
King, WA	
Snohomish, WA	
7610 Sharon, PA	0.7928
Mercer, PA	
7620 Sheboygan, WI	0.8379
Sheboygan, WI	
7640 Sherman-Denison, TX	0.8694
Grayson, TX	
7680 Shreveport-Bossier City, LA	0.8750
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA–NE	0.8473
Woodbury, IA	
Dakota, NE	
7760 Sioux Falls, SD	0.8790
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	1.0000
St. Joseph, IN	
7840 Spokane, WA	1.0513
Spokane, WA	
7880 Springfield, IL	0.8685
Menard, IL	
Sangamon, IL	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent Counties or County Equivalents)	Wage Index
7920 Springfield, MO	0.8488
Christian, MO	
Greene, MO	
Webster, MO	
8003 Springfield, MA	1.0637
Hampden, MA	
Hampshire, MA	
8050 State College, PA	0.9038
Centre, PA	
8080 Steubenville-Weirton, OH–WV	0.8548
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.0629
San Joaquin, CA	
8140 Sumter, SC	0.8271
Sumter, SC	
8160 Syracuse, NY	0.9549
Cayuga, NY	
Madison, NY	
Onondaga, NY	
Oswego, NY	
8200 Tacoma, WA	1.1564
Pierce, WA	
8240 Tallahassee, FL	0.8545
Gadsden, FL	
Leon, FL	
8280 Tampa-St. Petersburg-Clearwater, FL	0.8982
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 Terre Haute, IN	0.8304
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana, AR-Texarkana, TX	0.8363
Miller, AR	
Bowie, TX	
8400 Toledo, OH	0.9832
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.9117
Shawnee, KS	
8480 Trenton, NJ	1.0137
Mercer, NJ	
8520 Tucson, AZ	0.8794
Pima, AZ	
8560 Tulsa, OK	0.8454
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.8064
Tuscaloosa, AL	
8640 Tyler, TX	0.9404
Smith, TX	
8680 Utica-Rome, NY	0.8560
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.2847
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.1030
Ventura, CA	
8750 Victoria, TX	0.8154
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	1.0501
Cumberland, NJ	
8780 Visalia-Tulare-Porterville, CA	0.9551
Tulare, CA	
8800 Waco, TX	0.8314
McLennan, TX	
8840 Washington, DC–MD–VA–WV	1.0755
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpepper, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8404
Black Hawk, IA	
8940 Wausau, WI	0.9418
Marathon, WI	
8960 West Palm Beach-Boca Raton, FL	0.9682
Palm Beach, FL	
9000 Wheeling, OH–WV	0.7733
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9544
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.7668
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8392
Lycoming, PA	
9160 Wilmington-Newark, DE–MD	1.1191
New Castle, DE	
Cecil, MD	
9200 Wilmington, NC	0.9402
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA	0.9907
Yakima, WA	
9270 Yolo, CA	1.0199
Yolo, CA	
9280 York, PA	0.9264
York, PA	
9320 Youngstown-Warren, OH	0.9543
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0706
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	0.9529
Yuma, AZ	

TABLE 8.—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.7489
Alaska	1.2392
Arizona	0.8317
Arkansas	0.7445
California	0.9861
Colorado	0.8968
Connecticut	1.1715
Delaware	0.9074
Florida	0.8919
Georgia	0.8329
Guam	0.9611
Hawaii	1.1059
Idaho	0.8678
Illinois	0.8160
Indiana	0.8602
Iowa	0.8030
Kansas	0.7605
Kentucky	0.7931
Louisiana	0.7668
Maine	0.8766
Maryland	0.8651
Massachusetts	1.1204
Michigan	0.8987
Minnesota	0.8881
Mississippi	0.7491
Missouri	0.7698
Montana	0.8688
Nebraska	0.8109
Nevada	0.9232
New Hampshire	0.9845
New Jersey [1]	.....
New Mexico	0.8497
New York	0.8499
North Carolina	0.8445
North Dakota	0.7716
Ohio	0.8670
Oklahoma	0.7491
Oregon	1.0132
Pennsylvania	0.8578
Puerto Rico	0.4264
Rhode Island [1]	.....
South Carolina	0.8370
South Dakota	0.7570
Tennessee	0.7838
Texas	0.7502
Utah	0.9037
Vermont	0.9274
Virginia	0.8189
Virgin Islands	0.6306
Washington	1.0434

TABLE 8.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
West Virginia	0.8231
Wisconsin	0.8880
Wyoming	0.8817

[1] All counties within the State are classified urban.

D. Updates to the Federal Rates

In accordance with section 1888(e)(4)(E) of the Act, the proposed payment rates listed here have been updated by the SNF market basket minus 1 percentage point, which equals 2.161 percent. For each succeeding FY, we will publish the rates in the **Federal Register** before August 1 of the year preceding the affected Federal FY.

For the current FY (FY 2001), and for FY 2002, section 1888(e)(4)(E)(ii) of the Act requires the rates to be increased by a factor equal to the SNF market index change minus 1 percentage point. For subsequent FYs, this section requires the rates to be increased by the applicable SNF market basket index increase.

E. Relationship of RUG–III Classification System to Existing Skilled Nursing Facility Level-of-Care Criteria

Regulations at § 413.345 provide that the information included in each update of the Federal payment rates in the **Federal Register** will include the designation of those specific RUGs under the classification system that represent the required SNF level of care, as provided in § 409.30. In the proposed rule (65 FR 19228), we proposed to designate the following RUG–III classifications for this purpose: All groups within the proposed new Rehabilitation and Extensive category; all groups within the Ultra High Rehabilitation category; all groups within the Very High Rehabilitation category; all groups within the Medium Rehabilitation category; all groups within the Low Rehabilitation category; all groups within the Extensive Services category; and, all groups within the Clinically Complex category.

Comment: A few commenters raised issues regarding specific aspects of the process for making SNF level of care determinations. One commenter recommended that the level of care presumption in existing regulations at § 409.30 (which extends through the assessment reference date (ARD) for the initial 5-day, Medicare-required assessment) be expanded to extend through the ARD for the 30-day assessment. This commenter also favored revising the regulations to allow for using a beneficiary's assignment to one of the designated RUG–III groups in lieu of following the physician certification and recertification procedures described in § 424.20. Another commenter suggested that requiring individual level of care determinations for those beneficiaries who are assigned to one of the "lower 18" RUG–III groups (that is, to a RUG–III group that is not designated for purposes of the administrative presumption) creates a barrier to care for beneficiaries with dementing diseases. However, by far the majority of comments in this area observed that the High Rehabilitation and Special Care categories, which had been included in the most recent update notice (64 FR 41696, July 30, 1999), were missing from the list in the proposed rule, and urged their restoration.

Response: We believe that the suggestion for expanding the administrative presumption's timeframe to encompass the 30-day assessment is inconsistent with the underlying rationale for this presumption. In the preamble to the final rule that was published on July 30, 1999 (64 FR 41666–67), we noted that the Medicare SNF benefit is a "posthospital" benefit, and

> * * * that SNF residents tend to be relatively unstable and require fairly intensive skilled care during the period immediately following admission from the prior hospitalization, but that this tendency typically diminishes as they get further on in the SNF stay * * *. [This] means, in effect, that the basis for making any type of presumption with regard to coverage would tend to become progressively less conclusive as a resident moves farther into the SNF stay, and would be at its most conclusive at the very outset of the stay, during the period immediately following the resident's admission from the prior hospitalization.

Further, the requirement for an initial physician certification and periodic recertification as to level of care is mandated by the law itself (at section 1814(a)(2)(B) of the Act) and, thus, cannot be eliminated administratively. We also note that the implementing regulations at § 424.20(a)(1)(ii) already allow, at the option of the physician, for the required initial certification to be completed simply by confirming that the beneficiary has been correctly assigned to one of the designated RUG–III groups, as provided in § 409.30.

In the preamble to the interim final rule that was published on May 12, 1998 (63 FR 26283), we provided that beneficiaries assigned to one of the upper 26 RUG–III groups would be automatically classified as meeting the SNF level of care definition under the administrative presumption, "* * * while those beneficiaries assigned to any of the lower 18 groups are not automatically classified as either meeting or not meeting the definition, but instead receive an individual level of care determination using the existing administrative criteria." This presumption recognized the strong likelihood that beneficiaries assigned to one of the upper 26 groups during the immediate posthospital period would actually require a covered level of care, which would be significantly less likely for those beneficiaries assigned to one of the lower 18 groups. However, we do not share the view of the commenter who characterized as a barrier to coverage the policy of providing for an individual level of care determination when a beneficiary is assigned to one of the lower 18 groups. To the contrary, we chose this particular approach—rather than a policy of summarily deeming all of the lower 18 groups to be noncovered—precisely in order to ensure coverage under the SNF PPS for individual beneficiaries within those groups who would have met the previous administrative criteria for determining a SNF level of care. This policy also helps ensure that any beneficiary who does, in fact, require a covered level of care will actually be able to receive coverage, without regard to the beneficiary's particular diagnosis.

Finally, we note that the omission of the High Rehabilitation and Special Care categories from the designation list that appeared in the proposed rule was inadvertent, and we concur with the recommendation of the commenters who urged that these categories be restored to the list. Further, as discussed elsewhere in this final rule, we have decided not to adopt the case-mix refinements (including the creation of a new Rehabilitation and Extensive category) that we had previously proposed. Accordingly, we hereby designate the upper 26 RUG–III groups for purposes of the administrative presumption described in § 409.30, as follows: all groups within the Ultra High Rehabilitation category; all groups within the Very High Rehabilitation category; all groups within the High Rehabilitation category; all groups within the Medium Rehabilitation category; all groups within the Low Rehabilitation category; all groups within the Extensive Services category; all groups within the Special Care category; and, all groups within the Clinically Complex category.

F. Three-Year Transition Period

Under sections 1888(e)(1) and (2) of the Act, during a facility's first three cost reporting periods that begin on or after July 1, 1998 (that is, the transition period), the facility's PPS rate will be equal to the sum of a percentage of an adjusted facility-specific per diem rate and a percentage of the adjusted Federal per diem rate. After the transition period, the PPS rate will equal the adjusted Federal per diem rate. The transition period payment method will not apply to SNFs that first received Medicare payments (interim or otherwise) on or after October 1, 1995 under present or previous ownership, or to those facilities choosing to bypass the transition in accordance with section 102 of the BBRA; these facilities will be paid based on 100 percent of the Federal rate.

The facility-specific per diem rate is the sum of the facility's total allowable Part A Medicare costs and an estimate of the amounts that would be payable under Part B for covered SNF services for cost reporting periods beginning in FY 1995 (base year). The base year cost report used to compute the facility-specific per diem rate in the transition period may be settled (either tentative or final) or as-submitted for Medicare payment purposes. Under section 1888(e)(3) of the Act, any adjustments to the base year cost report made as a result of settlement or other action by the fiscal intermediary, including cost limit exceptions and exemptions, or results of an appeal, will result in a revision to the facility-specific per diem rate. The instructions for calculating the facility-specific per diem rate are described in detail in the May 12, 1998 interim final rule. In order to implement section 104 of the BBRA, for providers that received payment under the RUG–III demonstration during a cost reporting period that began in calendar year 1997, we will determine their facility-specific per diem rate using the methodology described below.

It is possible that some providers participated in the demonstration but did not have a cost reporting period that began in calendar year 1997. For those providers, we will determine their facility-specific per diem rate by using the calculations outlined in the May 12, 1998 **Federal Register** interim final rule (63 FR 26251, section III. (A)(1)(a), (b), or (c)). As with the facility-specific per diem applicable to other providers, the allowable costs will be subject to change based on the settlement of the cost report used to determine the total payment under the demonstration. In addition, we derive a special market basket inflation factor, which is 1.105788, to adjust the 1997 costs to the midpoint of the rate setting period (October 1, 2000 to September 30, 2001.)

Step 1—Determine the aggregate payment during the cost reporting period that began in calendar year 1997—RUG–III payment plus routine capital costs plus ancillary costs (other than occupational therapy, physical therapy, and speech pathology).

Step 2—Divide the amount in Step 1 by the applicable total inpatient days for the cost reporting period.

Step 3—Adjust the amount in Step 2 by 1.105788 (inflation factor).

Step 4—Add the amount determined in Step 3 to the appropriate Part B add-on amount determined according to Program Memorandum transmittal no. A–99–53 (December 1999).

The amount in Step 4 is the facility-specific rate that is applicable for the facility's first cost reporting period beginning on or after October 1, 2000.

1. Computation of the Skilled Nursing Facility Prospective Payment System Rate During the Transition

For the first three cost reporting periods beginning on or after July 1, 1998 (the transition period), an SNF's payment under the PPS is the sum of a percentage of the facility-specific per diem rate and a percentage of the adjusted Federal per diem rate. Under section 1888(e)(2)(C) of the Act, for the first cost reporting period in the transition period, the SNF payment will be the sum of 75 percent of the facility-specific per diem rate and 25 percent of the Federal per diem rate. For the second cost reporting period, the SNF payment will be the sum of 50 percent of the facility-specific per diem rate and 50 percent of the Federal per diem rate. For the third cost reporting period, the SNF payment will be the sum of 25 percent of the facility-specific per diem rate and 75 percent of the Federal per diem rate. For all subsequent cost reporting periods beginning after the transition period, the SNF payment will be equal to 100 percent of the Federal per diem rate. An example is given below computing the SNF PPS rate and SNF payment.

Example of computation of adjusted PPS rates and SNF payment: Using the XYZ SNF described in Table 9, the following shows the adjustments made to the facility-specific per diem rate and the Federal per diem rate to compute the provider's actual per diem PPS payment in the transition period. XYZ's 12-month cost reporting period begins October 1, 2000. (This is the provider's third cost reporting period under the transition.)

Step 1

Compute:	
Facility-specific per diem rate	$570.00
Market Basket Adjustment (Table 10.B)	× 1.14457
Adjusted facility-specific rate	$652.40

Step 2

Compute Federal per diem rate:

TABLE 9.—SNF XYZ FROM ABOVE IS LOCATED IN STATE COLLEGE, PA WITH A WAGE INDEX OF 0.9038

RUG group	Labor portion*	Wage index	Adjusted labor	Nonlabor portion*	Adjusted rate	Percent adjustment	Medicare Days	Payment
RVC	$240.71	0.9038	$217.55	$68.41	$285.96	**$297.40	50	$14,870
SSC	154.95	0.9038	140.04	44.03	184.07	***228.25	50	11,413
Total							100	26,283

*From Table 5.
**Reflects a 4 percent adjustment.
***Reflects a 24 percent adjustment.

Step 3

Apply transition period percentages:	
Facility-specific per diem rate $652.40 × 100 days =	$65,240
Times transition percentage (25 percent)	.25
Actual facility-specific PPS payment	$16,310
Federal PPS payment	$26,283
Times transition percentage (75 percent)	.75
Actual Federal PPS payment	$19,712

Step 4

Compute total PPS payment:	
XYZ's total PPS payment ($16,310 + $19,712)	$36,022

G. The Skilled Nursing Facility Market Basket Index

Section 1888(e)(5)(A) of the Act requires the Secretary to establish an SNF market basket index (input price index) that reflects changes over time in the prices of an appropriate mix of goods and services included in the SNF PPS. The proposed rule incorporated the latest estimates of the SNF market basket index at that time. This rule incorporates updated projections based on the latest available projections as of this point in time. Accordingly, we have developed a SNF market basket index that encompasses the most commonly used cost categories for SNF routine services, ancillary services, and capital-related expenses. In the May 12, 1998 **Federal Register**, we included a complete discussion on rebasing the SNF market basket to FY 1992, and revising the index to include capital and ancillary costs. There are 21 separate cost categories and respective price proxies. These cost categories were illustrated in Tables 4.A, 4.B, and Appendix A, found in the May 12, 1998 **Federal Register**.

Each year we calculate a revised labor-related share based on the relative importance of labor-related cost categories in the input price index. Table 10.A summarizes the updated labor-related share for FY 2001.

TABLE 10.A.—FY 2001 LABOR-RELATED SHARE

Cost category	FY 2000 relative importance*	FY 2001 relative importance
Wages and Salaries	56.647	56.734
Employee Benefits	12.321	12.654
Nonmedical Professional Fees	1.959	1.957
Labor-intensive Services	3.738	3.719
Capital-related	2.880	2.807
Total	77.545	77.870

The forecasted rates of growth used to compute the projected SNF market basket percentages, described in the next section, are shown in Table 10.B, and the 12-month cost reporting period facility specific rate update factors are shown in Table 10C.

TABLE 10.B.—SKILLED NURSING FACILITY TOTAL COST MARKET BASKET, FORECASTED CHANGE, 1997–2002

Fiscal years beginning October 1	Skilled nursing facility total cost market basket
October 1996, FY 1997	2.4
October 1997, FY 1998	2.7
October 1998, FY 1999	3.0
October 1999, FY 2000	3.6
October 2000, FY 2001	3.2
October 2001, FY 2002	3.2
Forecasted Average: 2000–2002	3.3

Source: Standard & Poor's DRI HCC, 2nd QTR 2000; @USSIM/TRENDLONG0500@CISSIM/TRENDLONG0500. Released by HCFA, OACT, National Health Statistics Group.

Use of the Skilled Nursing Facility Market Basket Percentage: Section 1888(e)(5)(B) of the Act defines the SNF market basket percentage as the percentage change in the SNF market basket index, described in the previous section, from the midpoint of the prior FY (or period) to the midpoint of the current FY (or other period) involved. The facility-specific portion and Federal portion of the SNF PPS rates addressed in the proposed rule were based on cost reporting periods beginning in the base year, Federal FY 1995. For the Federal rates, the percentage increases in the SNF market basket index will be used to compute the update factors occurring between the midpoint of FY 2000 and the midpoint of FY 2001. We used the Standard & Poor's DRI CC, 2nd quarter 2000 historical and forecasted percentage increases of the revised and rebased SNF market basket index for routine, ancillary, and capital-related expenses, to compute the update factors. Finally, we used the update factors to adjust the base year costs for computing the facility-specific portion and Federal portion of the SNF PPS rates.

Comment: A number of commenters expressed concern with the SNF market basket. The commenters asserted that the market basket index used for updating the PPS rates does not reflect Medicare SNF care costs accurately. They added that we have the authority to address this issue through modifications to the market basket index. The comments included: trending forward the 1995 data to 1997 significantly understates the actual increase observed over this period; the market basket index is based on 1992 data that do not reflect the dynamic changes in the health care system that occurred between 1992 and 1997; the market basket labor inputs significantly understate the actual increases in labor costs for Medicare SNFs; and the one percentage point reduction to the market basket should be restored.

Response: A number of the provisions that were the subjects of the commenters' concerns are specifically mandated by the law itself. Section 1888(e)(4)(A) of the Act requires the use of 1995 costs as a base. Section 1888(e)(5)(A) of the Act specifically provides for the establishment of an SNF market basket, while section 1888(e)(4)(E) of the Act requires that the SNF PPS rates be updated annually using that index. Furthermore, for the current FY 2001, and for FY 2002, section 1888(e)(4)(E)(ii)(II) of the Act requires that the rates be increased by a factor equal to the SNF market basket index change minus 1 percentage point. For subsequent fiscal years, section 1888(e)(4)(E)(i)(III) of the Act requires the rates to be increased by the applicable SNF market basket index increase.

The statute at section 1888(e)(5)(A) specifies that the market basket should reflect "changes over time in the prices of an appropriate mix of goods and services included in covered SNF services". The SNF market basket index meets this statutory requirement. The SNF market basket captures the pure price change of inputs such as labor,

capital, etc., used to provide SNF services. While several commenters pointed to the large growth in per diem SNF costs between 1995 and 1998 (as indicated on SNF cost report data) as evidence that the SNF market basket was inaccurate, we wish to emphasize that we do not consider reported historical per diem SNF costs an appropriate benchmark for determining its accuracy. The SNF market basket index, like the market basket indices used for other Medicare payment systems, measures pure price changes of inputs associated with the efficient delivery of care. It should not reflect changes in historical reported SNF costs associated with inefficient care or medically unnecessary services. Suggestions that it should are antithetical to the very notion of a PPS. It should also not reflect changes in non-price factors, such as adding staff or purchasing additional supplies. In any event, the statute provides that, once the initial PPS rates have been established, the unadjusted payment rates for a given year are calculated by applying an update to the rates for the previous year; the statute does not provide for a complete recalculation of the rates by applying a revised market basket methodology retroactively to 1995.

It is also important to note that the statute itself sets forth a fairly prescriptive methodology for calculating and updating the initial per diem payments established under the SNF PPS in 1998. The statute requires the use of an FY 1995 base year to calculate the Federal rates, and the statute specifies the amount of the updates to the base year costs (market basket minus one). It further reduces the base year cost pool by eliminating the costs associated with atypical services exceptions and exemptions (under § 413.30 of the regulations), and sets the base payments at just above the freestanding mean. The current SNF PPS per diem payment rates reflect the methodology prescribed by statute, an intended consequence of which was the accumulation of budgetary savings. Thus, concerns regarding the level of funding associated with the base payment rates may actually have more to do with the statutory formula for establishing the payments than the market basket used to update them.

With regard to the weights used to allocate many of the price proxies within the market basket, these are based on 1992 data because these are the latest complete data available from the Bureau of the Census and the Bureau of Economic Analysis. When more recent data become available, we will review the data and determine whether to rebase the market basket index to a more recent year. However, previous experience has shown that there is very little impact in the overall percent change in the market basket index when it is rebased. This was shown in the May 12, 1998 **Federal Register** (63 FR 26292), when the SNF market basket index was last rebased to a 1992 base from a 1977 base.

All of the price proxies used in the calculation of the SNF market basket are based on the latest data released by their respective data sources. Therefore, the price proxies capture all of the dynamic price change which occurred or is expected to occur in any given period.

In response to the specific comment concerning the labor portion of the market basket, the labor input proxies used in the SNF market basket are based the Employment Cost Index, a proven national survey of wages, salaries, and benefits for nursing home and personal care facilities, published by the BLS. These measures are based on a fixed skill mix of workers and do not reflect changes in skill mix. They measure only actual changes in the wages of workers and not shifts in wage costs caused by a shift in the skill mix of workers used. This makes it the preferred proxy to use, since it measures only pure price changes and not changes caused by other factors.

As has always been our policy, we will continue to monitor and respond to any changes in the market for SNF services that affect the SNF market basket index. When data from the first fiscal year after full implementation of the SNF PPS become available, we plan to review the SNF market basket index to ensure that it accurately and appropriately captures all price changes faced by SNFs in providing services. This review includes updating weights used in allocating the price proxies within the market basket, as well as ensuring that our price proxies reflect market trends. For example, we monitor the proxy for prescription drugs to make sure that it reflects the price changes associated with both new and older medications.

Finally, HCFA and MedPAC recognize that the SNF input price index developed by HCFA is only one component of the change in SNF cost per day. The index is designed to capture only the pure price change of inputs used to produce a constant quantity and quality of care in a SNF. This is consistent with the definition as it is used by HCFA and MedPAC in the existing payment methodologies for SNFs, hospitals, home health agencies, and other settings.

Other factors in addition to input prices help determine the overall change in costs per day. These factors include changes in case-mix, intensity, and productivity. Under the inpatient hospital PPS, HCFA and MedPAC use an update framework to account for these other factors and to make annual recommendations to Congress on the magnitude of the update. HCFA and MedPAC are both exploring the possibility of developing a SNF PPS update framework to make similar annual recommendations to Congress. As part of this update framework, we would address non-market basket factors such as intensity, productivity, and changes in site of service. This would allow us to maintain the integrity (and stability) of the market basket by keeping it separate and distinct from these other factors.

It is very important to note that the non-market basket factors can be negative as well as positive. As SNFs move from a cost-based system to a fixed price PPS, there are likely to be substantial decreases in cost per unit of service. Increases in productivity, changes in site of service, elimination of ineffective practice patterns, and renegotiation to lower price contracts for inputs are some of the behavioral changes which result in negative factors.

1. Facility-Specific Rate Update Factor

Under section 1888(e)(3)(D)(i) of the Act, for the facility-specific portion of the SNF PPS rate, we will update a facility's base year costs up to the corresponding cost reporting period beginning October 1, 2000, and ending September 30, 2001, by the SNF market basket percentage. We took the following steps to develop the 12-month cost reporting period facility-specific rate update factors shown in Table 10.C.

TABLE 10.C.—UPDATE FACTORS [1] FOR FACILITY-SPECIFIC PORTION OF THE SNF PPS RATES—ADJUST TO 12-MONTH COST REPORTING PERIODS BEGINNING ON OR AFTER OCTOBER 1, 2000 AND BEFORE OCTOBER 1, 2001 FROM COST REPORTING PERIODS BEGINNING IN FY 1995

[Base year]

If 12-month cost reporting period in initial period begins:	Adjust from 12-month cost reporting period in base year that begins:	Using update factor of:
October 1, 2000	October 1, 1994	1.14457
November 1, 2000	November 1, 1994	1.14475
December 1, 2000	December 1, 1994	1.14494
January 1, 2001	January 1, 1995	1.14522
February 1, 2001	February 1, 1995	1.14567
March 1, 2001	March 1, 1995	1.14630
April 1, 2001	April 1, 1995	1.14693
May 1, 2001	May 1, 1995	1.14739
June 1, 2001	June 1, 1995	1.14768
July 1, 2001	July 1, 1995	1.14797
August 1, 2001	August 1, 1995	1.14843
September 1, 2001	September 1, 1995	1.14905

[1] Source: Standard & Poor's DRI HCC, 2nd QTR 2000; @USSIM/TRENDLONG0500@CISSIM/TRENDLONG0500.

For the facility rate, we developed factors to inflate data from cost reporting periods beginning October 1, 1994, through September 30, 1995, to the corresponding cost reporting period beginning in FY 2001. According to section 1888(e)(3)(D) of the Act, the years through FY 1999 were inflated at a rate of market basket minus 1 percentage point, while FY 2000 and FY 2001 are to be inflated at the full market basket rate of increase.

2. Federal Rate Update Factor

To update each facility's costs up to the common period, we:

A. Determined the total growth from the average market basket level for the period of October 1, 1999, through September 30, 2000, to the average market basket level for the period of October 1, 2000, through September 30, 2001.

B. Calculated the rate of growth between the midpoints of the two periods.

C. Calculated the annual average rate of growth for number 2, above.

D. Subtracted 1 percentage point from this annual average rate of growth.

E. Using the annual average minus 1 percentage point rate of growth, determined the cumulative growth between the midpoints of the two periods specified above.

This revised update factor was used to compute the Federal portion of the SNF PPS rate shown in Tables 1 and 2.

H. Consolidated Billing

The consolidated billing requirement places with the SNF itself the Medicare billing responsibility for virtually all of the services that an SNF resident receives. The original SNF PPS legislation in the BBA identified several service categories that were excluded from the SNF consolidated billing requirement, as well as from the bundled Part A payment made under the SNF PPS itself. As noted in the proposed rule, section 103(a) of the BBRA amended section 1888(e)(2)(A) of the Act, effective with services furnished on or after April 1, 2000, to exclude certain additional types of services from the consolidated billing requirement, thus allowing these services to be billed separately to Part B. We listed these excluded services, by HCPCS code, in Program Memorandum AB–00–18 (March 2000). Section 103(b) of the BBRA also amended section 1888(e)(4)(G) of the Act to provide for a corresponding proportional reduction in Part A SNF payments, beginning with FY 2001.

Comment: In addition to identifying certain individual services (within a number of broader service categories) for exclusion from the consolidated billing requirement, section 103 of the BBRA also gives the Secretary the authority to designate additional services within each of those categories for exclusion from this requirement. A number of commenters recommended that we exercise this authority to designate a variety of additional services for exclusion, such as modified barium swallow, stress tests, hyperbaric oxygen treatment, doppler studies, nuclear medicine, orthotic devices, gastrointestinal procedures performed in endoscopy rooms, and outpatient surgery performed in hospital treatment rooms or ambulatory surgical centers. Alternatively, some commenters suggested that we could accomplish this result by adding these services to the existing exclusion list (in regulations at § 411.15(p)(3)(iii)) for certain high-intensity outpatient hospital services. Others expressed the view that this latter authority should not be limited to only those services that actually require the intensity of a hospital setting, but rather, should also encompass services furnished in other, nonhospital settings as well. As an example, they cited magnetic resonance imaging (MRIs) furnished in freestanding imaging centers, which may be cheaper and more accessible in certain particular localities than those furnished by hospitals.

Response: The BBRA's discretionary authority applies only to identifying additional excluded services *within* the particular categories that are specified in the legislation itself (that is, chemotherapy and its administration; radioisotope services; and, customized prosthetic devices) and not to other services that fall outside of those particular categories. Further, we are not exercising this discretionary authority at the present time, because we believe that the particular HCPCS codes identified in the BBRA represent the service exclusions within the specified categories that are appropriate under current circumstances. We note that language in the BBRA conference agreement requests the GAO to conduct a review of the appropriateness of the particular HCPCS codes that this legislation has designated for exclusion from consolidated billing. As we indicated in the proposed rule, we will carefully consider the GAO's findings when they become available, in order to determine whether further refinements in the codes identified on the exclusion list might be warranted.

Moreover, we believe that the comments advocating broader exclusions, beyond the particular services identified in the BBRA, may reflect a misunderstanding of the overall objective of the consolidated billing provision. We do not view the identification of new service categories for exclusion from this provision in terms of a process of continual expansion to encompass an ever-broadening array of excluded services. As we noted in the May 12, 1998 interim final rule (63 FR 26297), the fundamental purpose of the consolidated billing provision is "* * * to make the SNF itself responsible for billing Medicare for essentially all of its residents' services, other than those identified in a small number of narrow and specifically delimited exclusions." This is consistent with the type of discretionary authority that the BBRA provided, which we regard as essentially affording the flexibility to revise the list of excluded codes in response to changes of major significance that may occur over time (for example, the development of new medical technologies or other advances in the state of medical practice).

Finally, regarding the comment on MRIs, we noted in the May 1998, interim final rule (63 FR 26298) that the exclusion of certain outpatient hospital services (in regulations at § 411.15(p)(3)(iii)) is targeted specifically at those services "* * * that, under commonly accepted standards of medical practice, lie *exclusively* within the purview of hospitals * * *" (emphasis added); that is, services which generally require the intensity of the hospital setting in order to be furnished safely and effectively. Thus, to the extent that advances in medical practice over time may make it feasible to perform such a service more widely in a less intensive, nonhospital setting, this would not argue in favor of unbundling the nonhospital performance of the service, but rather, of considering whether to rebundle the service entirely back to the SNF.

Comment: A number of commenters noted that the BBRA has now excluded from consolidated billing those ambulance services that are furnished in conjunction with dialysis services, and asked that we extend this exclusion to apply as well to those ambulance services furnished in conjunction with the other newly excluded service categories identified in the BBRA (chemotherapy, radioisotope, etc.). Some suggested that we could accomplish this by administratively expanding the existing exclusion of certain high-intensity outpatient hospital services (in regulations at § 411.15(p)(3)(iii)) to encompass these newly excluded services (which would, in turn, result in excluding the associated ambulance services as well). Another argued that since many ambulance services have already been excluded from consolidated billing, it would be less complicated from an administrative standpoint simply to establish a categorical exclusion for all ambulance services.

Response: We note that, prior to the BBRA's exclusion of dialysis-related ambulance services from consolidated billing, we received a number of similar recommendations to designate the statutorily-excluded category of dialysis services as also being one of the excluded outpatient hospital services under § 411.15(p)(3)(iii), as a means of permitting the associated ambulance transportation to be excluded as well. In response, we noted in the preamble to the July 30, 1999 final rule (64 FR 41673) that such a recommendation reflects

> * * * a misunderstanding of the underlying purpose of the outpatient hospital exclusion. This exclusion from consolidated billing does not serve as a mechanism for unbundling ambulance services per se. The * * * unbundling of ambulance services associated with * * * excluded outpatient hospital services occurs simply because the bundling of ambulance services is itself tied to a beneficiary's status as an SNF "resident" for consolidated billing purposes, which is suspended by the receipt of these excluded types of outpatient hospital services.

Further, while the statute itself excludes a number of service categories from the consolidated billing requirement—including services of physicians and certain other practitioners that are defined as being entirely outside the scope of the Part A SNF benefit (see sections 1861(h)(7) and 1861(b)(4) of the Act)—the receipt of such services offsite does not have the effect of ending a beneficiary's status as an SNF "resident" for consolidated billing purposes and, consequently, does not result in unbundling the associated ambulance transportation. Thus, unbundling the ambulance transportation that is associated with the statutorily-excluded types of chemotherapy services, radioisotope services, and customized prosthetic devices would require legislation to amend the law itself, like that which Congress enacted in section 103(a)(2) of the BBRA with respect to dialysis-related ambulance services. Similarly, establishing a categorical exclusion of all ambulance services whatsoever would also require legislation to amend the law.

Comment: A number of commenters raised issues regarding so-called "Part B" consolidated billing, in connection with services furnished to those beneficiaries in the SNF who are not in a covered Part A stay. (As we noted in the proposed rule, implementation of this aspect of consolidated billing has been delayed as a result of higher-priority systems renovations that had to be completed timely in order to achieve Year 2000 (Y2K) compliance.) Most of these commenters recommended extending the timeframe for implementation of Part B consolidated billing until after implementation of the PPS case-mix refinements set forth in the proposed rule, and a few even suggested reconsidering whether to implement this aspect of consolidated billing at all. One commenter suggested that bills for those types of items that are currently submitted to the Durable Medical Equipment Regional Carriers (DMERCs) should continue to be submitted to them under Part B consolidated billing, since the DMERCs have acquired specialized expertise in this area. Another recommended that HCFA should impose limitations on the amounts that suppliers can charge SNFs for Part B services.

Response: Since the law provides that consolidated billing applies to services furnished to a SNF "resident" (regardless of whether Medicare covers a particular resident's stay), we do not have the discretion simply to decline to implement this aspect of the provision. As we indicated in the July 30, 1999 final rule (64 FR 41671), once we have determined the specific implementation timeframe for this aspect of consolidated billing, we will provide at least 90 days' advance notice in the **Federal Register**. However, specific operational instructions (such as those describing the details of particular billing procedures) are beyond the scope of this final rule, and will be addressed instead in HCFA program issuances. With regard to the suggestion that we limit the amount a supplier can charge a SNF for its services, we note that the Medicare transaction for a service that is subject to consolidated billing is the one that takes place between the Medicare program and the SNF itself. As we pointed out in the July 1999 final rule (64 FR 41677), a SNF's relationship with its supplier under consolidated billing is essentially a private contractual matter, and the specific terms of the supplier's payment by the SNF must be arrived at through direct negotiations between the two parties themselves.

Comment: Under the current regulations at § 411.15(p)(3)(iv), a beneficiary's status as a SNF "resident"

(for consolidated billing purposes) generally ends at the point of departure from the SNF. However, if the beneficiary returns to that or another SNF within 24 hours of departure, the beneficiary's status as a "resident" of the SNF from which he or she departed would continue during the absence, along with that SNF's consolidated billing responsibilities. As we noted in the proposed rule, since consolidated billing is currently in effect only for those SNF stays that are covered by Part A and paid by the PPS, this means in actual practice that such a beneficiary remains a SNF "resident" after leaving the SNF only if he or she then returns to the SNF by midnight. (This is because, under longstanding Medicare policy, a beneficiary generally must be present in the SNF at midnight of a given day in order for that day to be considered a Part A day.) We then proposed to revise the regulations to adopt this "midnight rule" in place of the current "24-hour rule," which would essentially extend the policy currently in effect under Part A consolidated billing to apply to Part B consolidated billing as well. The commenters overwhelmingly supported this proposal, indicating that the resulting uniformity in policy would reduce the potential for confusion and billing errors. One commenter, while supporting the idea of following a uniform policy for both aspects of consolidated billing, suggested that the policy should be the "24-hour rule" that currently appears in the regulations rather than the "midnight rule." The commenter cited, as a reason for taking this position, a concern over whether Part A payment under the SNF PPS recognizes those services that are furnished on the day of a beneficiary's discharge from the SNF, but before the actual moment of departure.

Response: As recommended by the majority of commenters, we are revising the regulations to adopt the "midnight rule." Thus, a beneficiary's status as a SNF "resident" for consolidated billing purposes ends upon departure, unless the beneficiary returns to that or another SNF by midnight of the day of departure. (As we explained in the proposed rule, a patient "day" begins at 12:01 A.M. and ends the following midnight, so that the phrase "midnight of the day of departure" refers to the midnight that immediately follows the actual moment of departure, rather than to the midnight that immediately precedes it.) With regard to the concern expressed by one commenter about services that are furnished on the day of (but before the actual moment of) discharge, we note that the SNF PPS does, in fact, recognize such services, as discussed below. Even though the day of discharge from a covered SNF stay is not itself a covered Part A day, under the pre-PPS (reasonable cost) SNF payment methodology, ancillary services furnished on that day but before the actual moment of departure were covered, included on the SNF's cost report, and reflected in final cost settlement. Accordingly, the cost of such services has been built into the SNF PPS base. This makes the PPS per diem amount somewhat higher than it would otherwise have been for all of the preceding SNF days that Part A *does* cover, even though the day of discharge itself is not a covered Part A day. Further, with regard to room and board, although the Medicare program uses a midnight-to-midnight approach as a convention for counting inpatient days, the routine costs for the covered day that immediately precedes the date of discharge would include (much like a hotel bill) the accommodations for that entire night.

Comment: In excluding the additional services from consolidated billing and the SNF PPS (and, thus, qualifying them for separate payment under Part B), section 103 of the BBRA also mandated a corresponding proportional reduction in Part A SNF payments, beginning with FY 2001. We described our methodology for making this adjustment in the proposed rule (65 FR 19202), and indicated that we expected the amount of the adjustment to be minimal. However, due to the complexity of the process and the amount of time involved in completing it, we added that we would publish the actual adjusted rates themselves prospectively in the final rule. One commenter requested us to share the methodology that we actually used in making this adjustment. Another argued that the reduction in Part A payment essentially cancels out the fiscal relief provided by allowing the newly-excluded services to be billed to Part B.

Response: Regarding our adjustment methodology, we have computed a reduction of 5 cents ($0.05) in the unadjusted urban and rural rates, using the identical data as used to establish the Part B add-on for a sample of approximately 1,500 SNFs from the 1995 base period. By matching the excluded codes specified in section 103 of the BBRA to the Part B bills, we identified an amount equal to a reduction of $0.05 in the Federal rate. While the amount of the reduction reflects those excluded codes that we were specifically able to identify, there may be additional excluded services that were not captured, since certain of these services were billed differently in 1995 than now, in a manner that may not have utilized the codes by which they were specified in the BBRA. We are, therefore, continuing to examine the billing practices in the PPS base year, and may revise our estimate of this reduction in the future to capture additional elements of allowable charges, as appropriate. Regarding the comment that characterized this adjustment as canceling out the fiscal relief that was otherwise provided by this section of the BBRA, we note that the reduction in Part A payment rates is specifically required by that same section of the law, in order to prevent the Medicare program from paying twice (once under Part A, and again under Part B) for the same service. Further, we believe that this comment may reflect a misunderstanding of the overall effect of this provision's fiscal relief. As amended by section 103(b) of the BBRA, section 1888(e)(4)(G)(iii) of the Act provides that the adjustment is to be made in such a way that the *aggregate* reduction in Part A payments is estimated to equal the *aggregate* increase in Part B payments attributable to the exclusion. Further, we note that the particular services were excluded in recognition that SNFs could experience "* * * high-cost, low probability events that could have devastating financial impacts because their costs far exceed" an individual SNF's PPS payment (H.R. Conf. Rep. No. 106–479 at 854). Thus, the actual result of this provision's mandatory Part A payment reduction is to take the expense of the excluded items (which could be financially devastating to an individual SNF that actually incurs it, if borne solely by that particular facility) and effectively redistribute it over the entire universe of providers. In much the same way that an insurance pool reduces the degree of financial risk to an individual member of the pool in the event of a catastrophic loss, effectively spreading the expense of the excluded items over such a large provider population helps minimize the potential financial liability that any individual provider might otherwise incur.

I. Appeal Rights

In the proposed rule, we discussed the appeal rights of SNFs to appeal their payment rates under SNF PPS. We received no comments on this discussion.

J. Impact Analysis of the Proposed Rule

As required by Executive Order 12866, the Unfunded Mandates Reform Act of 1995 (UMRA, Public Law 104–4),

and the Regulatory Flexibility Act (RFA, Public Law 96–354), the proposed rule included a Regulatory Impact Statement, on which we received comments. (A regulatory impact analysis for this final rule appears in Section VI. below.)

Comment: Several commenters alleged that there is a large variance between the projections for FY 2001, including the 20 percent add-on, and the most recent actual SNF program expenditure data. Some added that the Congressional Budget Office (CBO) baseline spending estimates differ from HCFA's. They noted that changes in rates due to inflation updates and statutory amendments do not necessarily account for the variance between FY 1999 and FY 2001. The commenters requested clarification of our projections and fiscal impacts, including any assumptions about volume growth or behavioral changes in response to payment changes.

Response: We have, in the past, included a behavioral offset in estimates required by legislation; however, we do not include them in estimating the effects of regulations merely for purposes of routinely updating the rates. The calculation of $1 billion for the 20 percent add-on assumes a baseline for FY 2001 of $15.3 billion. Our estimate of the days covered by the 20 percent add-on is 43 percent and our estimate of the Federal portion of payments is 85 percent. We note that CBO's baseline spending estimates differ from HCFA's due to different assumptions about SNF utilization patterns. Further, since the time we did these estimates, we have in fact reduced our own baseline estimate for FY 2001 to $14.4 billion, which still yields $1 billion in the calculation. However, we have since revised our estimate to reflect the latest available SNF data, as indicated in the impact analysis for this final rule (see section VI., below).

Comment: There were a number of comments expressing concern over the financial viability of providers. In particular, commenters were concerned with the number of nursing home chains that have filed for bankruptcy nationwide.

Response: We are aware of the challenges that certain providers have faced in moving from a payment system that was based on reasonable costs to a PPS, which uses mean-based prices. One of the intended consequences of the BBA was an overall reduction in SNF payments. However, we do not agree that the changes introduced by the SNF PPS are the exclusive—or even the primary—cause of their current financial difficulties. We believe that many of these financial constraints are directly attributable to business decisions on the part of the providers themselves. For example, a GAO review ("Skilled Nursing Facilities: Medicare Payment Changes Require Provider Adjustments but Maintain Access," GAO/HEHS–00–23, December 1999) of two of the largest publicly held chains found that the financial position of both firms suffered from high capital-related costs; substantial, non-recurring expenses and write-offs; and reduced demand for ancillary services related to several of the other BBA provisions. In fact, in one of these chains, SNF operations themselves remained profitable after the introduction of the SNF PPS. This scenario is consistent with reports of other chains experiencing financial difficulties. In addition, media reports cite rapid expansion into other lines of business, high capital costs, and inadequate cost controls as other factors influencing current financial status within the SNF industry.

IV. Provisions of the Final Regulations

The provisions of this final rule restate the provisions of the April 10, 2000, proposed rule as discussed previously and a minor technical correction of a cross-reference in parts 413 and 489. Following is a highlight of the changes made:

- In § 411.15, paragraph (p)(2)(vii) is revised to exclude from consolidated billing those ambulance services that are furnished to a SNF resident in conjunction with dialysis services that are covered under Part B.
- In § 411.15, paragraph (p)(2) is also revised to list the additional services that section 103 of the BBRA has excluded from consolidated billing.
- In § 411.15, paragraph (p)(3)(iv), the phrase "within 24 consecutive hours" is revised to read "by midnight of the day of departure".
- In § 413.1, paragraph (b), the phrase "paragraphs (c) through (f) of this section" is revised to read "paragraphs (c) through (h) of this section", in order to reflect previous revisions to this section that provide for prospective payment to SNFs (63 FR 26309, May 12, 1998) and home health agencies (65 FR 41211, July 3, 2000).
- In § 489.20, paragraph (s) is revised to list the additional services that the BBRA has excluded from consolidated billing, and a conforming change is made at § 489.21(h) regarding a cross-reference to this list.
- In § 489.20, paragraph (s)(7) is revised to exclude from consolidated billing those ambulance services that are furnished to a SNF resident in conjunction with dialysis services that are covered under Part B.
- Sections 489.20(s)(11) and 411.15(p)(2)(xi) are revised to reflect editorial revisions in the paragraphs concerning the transportation costs of electrocardiogram equipment.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Regulatory Impact Analysis

We have examined the impact of this rule as required by Executive Order (EO) 12866, the Unfunded Mandates Reform Act (UMRA) (Public Law 104–4), the Regulatory Flexibility Act (RFA) (Public Law 96–354), and the Federalism Executive Order (EO) 13132.

Executive Order 12866 directs agencies to assess costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This final rule is a major rule as defined in Title 5, United States Code, section 804(2), because we estimate its impact will be to increase the payments to SNFs by approximately $3.1 billion in FY 2001. The update set forth in this final rule applies to payments in FY 2001. Accordingly, the analysis that follows describes the impact of this one year only. In accordance with the requirements of the Act, we will publish a notice for each subsequent FY that will provide for an update to the payment rates and include an associated impact analysis.

The UMRA also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure in any year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule will have no consequential effect on State, local, or tribal governments. We believe the private sector cost of this rule falls below these thresholds as well.

Executive Order 13132 (effective November 2, 1999), establishes certain

requirements that an agency must meet when it promulgates regulations that impose substantial direct compliance costs on State and local governments, preempt State law, or otherwise have Federalism implications. As stated above, this rule will have no consequential effect on State and local governments.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most SNFs and most other providers and suppliers are small entities, either by virtue of their nonprofit status or by having revenues of $5 million or less annually. For purposes of the RFA, all States and tribal governments are not considered to be small entities, nor are intermediaries or carriers. Individuals and States are not included in the definition of a small entity. The policies contained in this rule would update the SNF PPS rates by increasing the payment rates published in the July 30, 1999 notice, but will not have a significant effect upon small entities.

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

A. Background

Section 1888(e) of the Act establishes the SNF PPS for the payment of Medicare SNF services for periods beginning on or after July 1, 1998. This section specifies that the base year cost data to be used for computing the RUG-III payment rates must be from FY 1995 (that is, October 1, 1994, through September 30, 1995.) In accordance with the statute, we also incorporated a number of elements into the SNF PPS, such as case-mix classification methodology, the MDS assessment schedule, a market basket index, a wage index, the urban and rural distinction used in the development or adjustment of the Federal rates, and other features.

This final rule sets forth updates of the SNF PPS rates contained in the April 10, 2000 proposed rule. Table 11 below, presents the projected effects of the policy changes in the SNF PPS from FY 2000 to FY 2001, as well as statutory changes effective for FY 2001 on SNFs. In so doing, we estimate the effects of each policy change by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to our policy changes, and we do not make adjustments for future changes in such variables as days or case-mix.

This analysis incorporates the latest estimates of growth in service use and payments under the Medicare SNF benefit based on the latest available Medicare claims data and MDS 2.0 assessment data from 1999. Because we are not incorporating the refinements to the case-mix classification system, we are not presenting any additional information regarding their distributional impact on facility payments as we had indicated we would in the proposed rule. We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, very susceptible to forecasting errors due to other changes in the forecasted impact time period. Some examples of such possible events are newly legislated general Medicare program funding changes by the Congress, or changes specifically related to SNFs. In addition, changes to the Medicare program may continue to be made as a result of the BBA, BBRA, or new statutory provisions. Although these changes may not be specific to SNF PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon SNFs.

B. Impact of This Final Rule

The purpose of this final rule is not to initiate significant policy changes with regard to the SNF PPS; rather, it is to respond to the comments on the proposed rule and establish the update methodology for FY 2001 after completion of our validation of the analysis presented in the proposed rule, based upon national data. Accordingly, we believe that the revisions and clarifications mentioned elsewhere in the preamble (for example, the update to the wage index used for adjusting the Federal rates) will have, at most, only a negligible overall effect upon the regulatory impact estimate specified in the proposed rule. As such, these revisions will not represent an additional burden to the industry.

As stated previously in this rule, the aggregate increase in payments associated with this final rule is estimated to be $3.1 billion. There are three areas of change that produce this increase for facilities—

1. The effect of the Federal transition, that results in many facilities being paid 75 percent at the Federal rate and 25 percent at the facility-specific rate instead of the current 50 percent Federal rate and 50 percent facility-specific rate. There is also the additional effect of the BBRA option to bypass the transition and be paid according to 100 percent of the Federal rate;

2. The implementation of various other provisions in the BBRA, such as the 20 percent and 4 percent add-ons to the Federal rates; and,

3. The total change in payments from FY 2000 levels to FY 2001 levels. This includes all of the previously noted changes in addition to the effect of the update to the rates.

As seen in Table 11 below, some of these areas result in increased aggregate payments and others tend to lower them. The breakdown of the various categories of data in the table are as follows:

The first row of the table describes the effects of the various policies on all facilities. The next six rows show the effects on facilities split by hospital-based, freestanding, urban and rural categories. The remainder of the table shows the effects on urban versus rural status by census region.

The second column in the table shows the number of facilities in the impact database. The third column shows the effect of the transition to the Federal rates. It includes the impact of the normal progression of facilities in the transition to new cost reporting periods and, therefore, blended payment amounts (that is, facility-specific versus Federal rates) as well as those facilities that, as a result of the BBRA, elect to bypass the transition and go immediately to the full Federal rate. This change has an overall effect of raising payments by 4.2 percent, with most of the increase coming from freestanding facilities. There are several regions that have decreased payments due to this provision, but the majority (and most populous) of the regions evidence higher payments, with the largest increase being in the New England and mid-Atlantic regions for both urban and rural facilities.

We estimate that approximately 63 percent of SNFs under the transition at the enactment of the BBRA have or will elect to be paid based on 100 percent of

the Federal rate. Of these facilities, we estimate 22 percent are hospital-based and 78 percent are freestanding, consistent with the proposed rule.

The fourth column shows the projected effect of the 4 percent add-on to the adjusted Federal rate mandated by the BBRA. As expected, this provision results in an increase in payments for all facilities. However, as seen in the table, the varying effect of the SNF PPS transition results in a distributional impact of this provision. In addition, since this increase only applies to the Federal portion of the payment rate, the effect on total expenditures is less than 4 percent.

The fifth column of the table shows the effect of the update to the Federal and facility-specific payment rates. It reflects an update to the Federal rates of 2.161 percent, which is equivalent to the market basket increase minus 1 percentage point, as required by law. In addition, it reflects an update to the facility-specific rates of 3.161 percent, which is equivalent to the full market basket increase for this period. For this analysis, it is assumed that payments will increase by 2.3 percent in total if there are no behavioral changes by the facilities. As can be seen from this table, the effects of the update itself do not vary significantly by specific types of providers or by location.

The sixth column of the table shows the effect of all of the revised wage index on the FY 2001 payments. The total impact of this change is 0 percent since the law requires this component of the update to be budget neutral. However, there are distributional effects of this change, as seen in the table.

The seventh column of the table indicates the overall impact of the 20 percent add-on for 15 specific RUG–III groups required under the BBRA.

Finally, the eighth column of the table shows the effect of all of the changes on the FY 2001 payments. This includes all of the previous changes, including the update to this year's payment rates by the market basket, and the 20 percent add-on. It is assumed that payments will increase by 21.8 percent in total, assuming facilities do not change their care delivery and billing practices in response. As can be seen from this table, the combined effects of all of the changes vary much more widely by specific types of providers and by location. For example, freestanding facilities enjoy more significant payment increases due to the policy changes, while the effects of the transition tend to diminish the increase for hospital-based providers.

TABLE 11.—PROJECTED IMPACT OF FY 2001 UPDATE TO THE SNF PPS

	Number of facilities	Transition to federal rates (percent)	Add on to Federal rates (percent)	Update change (percent)	Wage index change (percent)	20% add on (percent)	Total FY 2001 change (percent)
Total	9034	4.2	3.5	2.3	0.0	10.4	21.8
Urban	6300	3.6	3.5	2.3	−0.1	10.2	20.8
Rural	2737	7.1	3.7	2.2	0.8	11.3	27.3
Hospital based urban	683	−4.5	3.0	2.4	0.0	9.6	10.4
Freestanding urban	5617	5.1	3.6	2.3	−0.1	10.2	22.6
Hospital based rural	533	2.0	3.4	2.3	0.9	12.2	22.1
Freestanding rural	2204	8.2	3.7	2.2	0.7	11.1	28.3
Urban by region.							
New England	630	10.5	3.8	2.2	−0.8	10.9	29.0
Middle Atlantic	877	14.3	3.8	2.2	−0.3	12.9	36.5
South Atlantic	959	−0.4	3.3	2.3	−0.4	8.9	14.2
East North Central	1232	6.1	3.6	2.2	0.4	10.1	24.2
East South Central	212	1.9	3.5	2.3	−0.7	9.8	17.6
West North Central	469	3.6	3.5	2.3	0.4	10.2	21.4
West South Central	519	−5.2	3.0	2.4	1.0	8.8	9.9
Mountain	303	−4.0	3.1	2.4	0.0	7.1	8.5
Pacific	1070	−2.3	3.2	2.4	−0.5	9.6	12.6
Rural by region:							
New England	88	14.4	3.9	2.2	−0.9	12.6	35.6
Middle Atlantic	144	13.1	3.9	2.2	0.0	13.4	36.2
South Atlantic	373	5.3	3.6	2.2	1.1	11.1	25.2
East North Central	561	9.2	3.7	2.2	1.0	11.1	29.9
East South Central	255	4.2	3.6	2.3	0.6	12.3	24.8
West North Central	581	11.1	3.7	2.2	0.8	12.5	33.5
West South Central	354	1.2	3.4	2.3	1.1	9.8	18.8
Mountain	204	3.3	3.5	2.3	0.7	9.4	20.5
Pacific	151	3.2	3.5	2.3	0.3	9.2	19.7

While not specifically detailed in Table 11, we would also like to indicate the impact of the proportional reduction in the Federal rates to account for the new services excluded from consolidated billing (and, therefore, SNF PPS) under section 103 of the BBRA. The 5 cent ($0.05) reduction to the urban and rural unadjusted Federal rate results in an overall impact of a $2 million decrease in SNF payments for FY 2001.

Finally, in accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

VII. Federalism

We have reviewed this final rule under the threshold criteria of Executive Order 13132, Federalism, and we have determined that it does not significantly affect the rights, roles, and responsibilities of States.

List of Subjects

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 413

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

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR chapter IV is amended as follows:

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

A. Part 411 is amended as set forth below:

1. The authority citation for part 411 continues to read as follows:

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

Subpart A—General Exclusions and Exclusion of Particular Services

2. Section 411.15 is amended by:

A. Republishing the introductory text, and paragraph (p)(2) introductory text.

B. Revising paragraphs (p)(2)(vii) and (p)(2)(xi).

C. Adding new paragraphs (p)(2)(xii), (p)(2)(xiii), (p)(2)(xiv), and (p)(2)(xv).

D. Revising paragraph (p)(3)(iv).

§ 411.15 Particular services excluded from coverage.

The following services are excluded from coverage.

* * * * *

(p) *Services furnished to SNF residents.*

* * * * *

(2) *Exceptions.* The following services are not excluded from coverage:

* * * * *

(vii) Dialysis services and supplies, as defined in section 1861(s)(2)(F) of the Act, and those ambulance services that are furnished in conjunction with them.

* * * * *

(xi) The transportation costs of electrocardiogram equipment (HCPCS code R0076), but only with respect to those electrocardiogram test services furnished during 1998.

(xii) Those chemotherapy items identified, as of July 1, 1999, by HCPCS codes J9000–J9020; J9040–J9151; J9170–J9185; J9200–J9201; J9206–J9208; J9211; J9230–J9245; and J9265–J9600.

(xiii) Those chemotherapy administration services identified, as of July 1, 1999, by HCPCS codes 36260–36262; 36489; 36530–36535; 36640; 36823; and 96405–96542.

(xiv) Those radioisotope services identified, as of July 1, 1999, by HCPCS codes 79030–79440.

(xv) Those customized prosthetic devices (including artificial limbs and their components) identified, as of July 1, 1999, by HCPCS codes L5050–L5340; L5500–L5611; L5613–L5986; L5988; L6050–L6370; L6400–6880; L6920–L7274; and L7362–L7366, which are delivered for a resident's use during a stay in the SNF and intended to be used by the resident after discharge from the SNF.

(3) *SNF resident defined.* * * *

(iv) The beneficiary is formally discharged (or otherwise departs) from the SNF, unless the beneficiary is readmitted (or returns) to that or another SNF by midnight of the day of departure.

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

B. Part 413 is amended as set forth below:

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

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

Subpart A—Introduction and General Rules

2. Section 413.1, paragraph (b), is amended by revising the phrase "paragraphs (c) through (f) of this section" to read "paragraphs (c) through (h) of this section".

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

C. Part 489 is amended to read as follows:

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

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

Subpart B—Essentials of Provider Agreements

2. Section 489.20 is amended by:

A. Republishing the introductory text and paragraph (s) introductory text.

B. Revising paragraphs (s)(7) and (s)(11).

C. Adding new paragraphs (s)(12), (s)(13), (s)(14), and (s)(15).

§ 489.20 Basic commitments.

The provider agrees to the following:

* * * * *

(s) In the case of an SNF, either to furnish directly or make arrangements (as defined in § 409.3 of this chapter) for all Medicare-covered services furnished to a resident (as defined in § 411.15(p)(3) of this chapter) of the SNF, except the following:

* * * * *

(7) Dialysis services and supplies, as defined in section 1861(s)(2)(F) of the Act, and those ambulance services that are furnished in conjunction with them.

* * * * *

(11) The transportation costs of electrocardiogram equipment (HCPCS code R0076), but only with respect to those electrocardiogram test services furnished during 1998.

(12) Those chemotherapy items identified, as of July 1, 1999, by HCPCS codes J9000–J9020; J9040–J9151; J9170–J9185; J9200–J9201; J9206–J9208; J9211; J9230–J9245; and J9265–J9600.

(13) Those chemotherapy administration services identified, as of July 1, 1999, by HCPCS codes 36260–36262; 36489; 36530–36535; 36640; 36823; and 96405–96542.

(14) Those radioisotope services identified, as of July 1, 1999, by HCPCS codes 79030–79440.

(15) Those customized prosthetic devices (including artificial limbs and their components) identified, as of July 1, 1999, by HCPCS codes L5050–L5340; L5500–L5611; L5613–L5986; L5988; L6050–L6370; L6400–6880; L6920–L7274; and L7362–L7366, which are delivered for a resident's use during a stay in the SNF and intended to be used by the resident after discharge from the SNF.

§ 489.21 [Amended]

3. In § 489.21, paragraph (h), the phrase "§ 489.20(s)(1) through (11)" is revised to read "§ 489.20(s)(1) through (15)".

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 18, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

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Secretary.

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29 CFR Part 1910

Nationally Recognized Testing Laboratories-Fees; Public Comment Period on Recognition Notices; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. NRTL 95–F–1]

RIN 1218–AB57

Nationally Recognized Testing Laboratories—Fees; Public Comment Period on Recognition Notices

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is amending the requirements for nationally recognized testing laboratories (NRTLs) by adding provisions for the establishment of fees for services provided by the government. On August 18, 1999, OSHA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** requesting comments on a proposed fee schedule. The NPRM also proposed a reduction of the public comment period on the "preliminary" **Federal Register** notices that OSHA publishes for its NRTL recognition activities. The four comments received have been reviewed, and this final rule is based on OSHA's consideration of the public record.

OSHA is amending its requirements to establish fees and to reduce the comment periods on **Federal Register** notices related to recognition.

DATES: This rule is effective on August 30, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Bonnie Friedman, Office of Public Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, NW, Washington, D.C. 20210, Telephone: (202) 693–1999, or Mr. Bernard Pasquet, Office of Technical Programs and Coordination Activities, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW, Washington, D.C. 20210, telephone: (202) 693–2110. You may also send an email to: nrtlprogram@osha-no.osha.gov, or review our web page on the NRTL Program. (See http://www.osha-slc.gov/dts/otpca/nrtl/index.html or see http://www.osha.gov and select "Programs")

SUPPLEMENTARY INFORMATION: This preamble is divided into seven (7) sections: background, summary and analysis of comments, explanation of the final rule, legal authority to charge fees, detailed discussion of the fees, the first fee schedule, and regulatory matters.

I. Background

Many of OSHA's safety standards require equipment or products that are going to be used in the workplace to be tested and certified to help ensure they can be used safely (for example, see 29 CFR 1910.303(a) coupled with definition of "acceptable" under 29 CFR 1910.399). Products or equipment that have been tested and certified must have a certification mark on them. An employer may rely on the certification mark which shows the equipment or product has been tested and certified in accordance with OSHA requirements. In order to ensure that the testing and certification have been done appropriately, OSHA implemented the NRTL Program. The NRTL Program establishes the criteria that an organization must meet in order to be recognized as an NRTL.

The NRTL Program requirements are in 29 CFR 1910.7, "Definition and requirements for a nationally recognized testing laboratory." To be recognized by OSHA, an organization must: (1) Have the appropriate capability to test, evaluate, and approve products to assure their safe use in the workplace; (2) be completely independent of the manufacturers, vendors, and users of the products for which OSHA requires certification; (3) have internal programs that ensure proper control of the testing and certification process; and (4) establish effective reporting and complaint handling procedures.

OSHA requires NRTL applicants (*i.e.*, organizations seeking initial recognition as an NRTL) to provide detailed information about their programs, processes, and procedures in writing when they apply for initial recognition. OSHA reviews the written information and conducts on-site assessments to determine whether the organization meets the requirements. OSHA uses a similar process when an NRTL (*i.e.*, an organization already recognized) applies for expansion or renewal of its recognition. In addition, the Agency conducts annual audits to ensure that the recognized laboratories maintain their programs.

The NRTL Program is an effective public and private partnership. Rather than performing testing and certification itself, OSHA relies on private sector organizations to accomplish it. This helps to ensure worker safety, allows existing private sector systems to perform the work, and avoids the need for the government to maintain facilities for testing and certification.

Currently, there are 17 NRTLs operating 42 sites in the U.S., Europe, Canada, and the Far East. The NRTL Program has grown significantly in the past few years, both in terms of numbers of laboratories and sites, as well as the number of test standards included in their recognition.

OSHA has devoted significant resources in the last three years to improving the management of the NRTL Program, ensuring its viability, and enhancing its credibility with the public. This has included a process improvement project; audits of all the NRTL sites; reduction of the backlog of applications for recognition, expansion, and renewals; and development of application guidelines and information about our procedures to help people understand the process of NRTL recognition. A web page on the NRTL Program is now available to provide information about the recognized labs and the scope of their recognition, as well as a description of the NRTL Program. (See web page address in above "Contact" information.) We also have prepared a new training program for our compliance staff to increase awareness within the Agency of NRTL requirements.

The size of the NRTL Program and the amount of work involved in maintaining it have resulted in large costs for the Agency, both in terms of human resources and in direct costs such as travel. For example, OSHA's goal is to audit every site once a year. This involves about 40 annual visits, given the current number of sites recognized, not only to locations in the U.S. but also to many foreign locations. Time and travel costs are obviously much higher for foreign locations. Because international trade in many of the types of products OSHA requires to be tested and certified is increasing substantially, the Agency anticipates that there will be more applications for laboratories or sites in locations outside the U.S. In particular, under the terms of a recent Mutual Recognition Agreement (MRA) with the European Union (EU), a number of European laboratories are expected to submit applications for NRTL recognition. For more information on the MRA, refer to the U.S. Department of Commerce web site.

The number of people who can be assigned to work in a particular area in OSHA, as well as the travel money that can be used, is dependent on the overall funding the Agency receives from Congress in a given year. The potential for reduced funding, leaving OSHA with inadequate money to properly implement the Program, led to discussions about the possibility of

assessing fees. Having a consistent funding process related specifically to the time and travel needed to maintain the Program would help OSHA ensure that the NRTL Program can continue to function and can be perceived as a viable and credible part of OSHA's overall approach to workplace safety.

In 1995, OSHA sent a letter to the existing NRTLs regarding its plan to explore the possibility of assessing fees (Ex. 1), and received twelve responses. Nine responses were conditionally in favor of establishing fees (Exs. 2–2, 2–4, 2–5, 2–6, 2–7, 2–8, 2–9, 2–11, 2–12). The favorable responses generally were conditioned on OSHA utilizing the funds generated from the fees for the NRTL Program to improve the services provided to the NRTLs.

At a September 24, 1996, meeting with the NRTLs, OSHA released a draft **Federal Register** notice for a proposed revision of 29 CFR 1910.7 allowing the Agency to collect fees. Comments received on the September 1996 draft indicated that most of the NRTLs supported the concept of a fee schedule, although the specific approach they favored was not necessarily the one included in the draft notice (see, *e.g.*, Exs. 2–13, 2–17, 2–21, 2–22, 2–24).

OSHA reviewed a number of legal precedents concerning the assessment of fees by Federal agencies in developing its proposal. Based on this review, the Agency determined that it has the authority to charge fees for services it provides to users of the NRTL recognition process, *i.e.*, the NRTLs and NRTL applicants. These fees are not intended to cover all the costs of the program.

In response to the fee issue, OSHA requested specific authority from Congress to retain the fees that it collects for the NRTL Program. In its Fiscal Year 1997 appropriations for OSHA, Congress authorized the Secretary of Labor to collect and retain fees for services provided to NRTLs and to use such fees to administer the NRTL Program. Congress has renewed this authorization annually since then.

OSHA decided to implement the improvements in the Program described above before undertaking rulemaking to establish fees. The process of implementing these improvements also allowed OSHA to better estimate the time involved in providing certain services to NRTL applicants or existing NRTLs, and the travel costs associated with on-site visits. This information helped to refine the approach proposed, which the Agency is now adopting in this final rule. In addition, the Agency examined the practices of other Federal agencies that assess fees and the fees of other organizations that recognize or accredit laboratories. Our findings in these areas are described below under section IV of this preamble.

OSHA also is reducing the time allowed for public comment on **Federal Register** notices required under the Program. OSHA has considered a number of ways to improve the program's application handling process and believes that a reduction in the comment period is an appropriate way to help make such improvements.

II. Summary and Analysis of the Comments

We accepted comments on the Notice of Proposed Rulemaking (NPRM) (64 FR 45098, August 18, 1999) for forty-five (45) days after publication. The end of the comment period was October 4, 1999. We received four (4) comments, and we will discuss each of them individually.

The NPRM addressed two issues: Modification of 29 CFR 1910.7 to include a fee schedule, and reduction of the comment period on **Federal Register** notices proposing or granting recognition or a change in the scope of recognition. The text proposing a fee schedule included a description of the model used to develop the proposed fees (64 FR 45102, 8/18/99), as well as the initial proposed fee schedule (64 FR 45105). We also included in the NPRM preamble a short discussion of fees charged by other organizations performing similar services for laboratories.

Participation in the NRTL Program is voluntary. OSHA assumes that any laboratory that has chosen to complete the application and recognition process, as well as submit to the requirements for regular audits, has benefitted from its participation. Although the fees that OSHA will assess do not relate directly to financial benefits that NRTLs receive from OSHA's NRTL services, laboratories do have a clear financial incentive to seek and maintain NRTL recognition. Laboratories undoubtedly analyze the financial benefits of participation in the NRTL Program when determining whether to apply for recognition initially, as well as whether to take the time and effort to continue recognition in the future.

None of the four comments received addressed the model used to develop the proposed fee schedule, or any of the supporting documentation related to the fees proposed. They focused instead on whether fees should be assessed, and what services are associated with the fees.

Exhibit 8–1; European Commission

As mentioned in the NPRM (64 FR 45099) and again in this notice, the United States and the European Union (EU) have entered into a Mutual Recognition Agreement (MRA). The MRA includes an Electrical Safety Annex, which permits a European laboratory to apply to the NRTL Program without separately establishing that its country of origin has "reciprocity" for U.S. laboratories doing electrical safety work. While the MRA has now been in effect for more than a year, OSHA has yet to receive and process any complete applications from laboratories in the European Union. In part, this is because there are differing interpretations of the agreed text of the MRA and how it applies.

The MRA anticipates that OSHA may charge fees for its activities in processing EU applications or monitoring EU NRTLs. Although OSHA had no fees at the time the agreement was negotiated, the U.S. has always made clear that authority to assess and retain fees is in place and that OSHA would be proposing fees in the near future.

The EC comment states that the activities for which OSHA will assess fees under the proposal are similar to activities for which fees are already assessed by European Union authorities. Under the conditions of the MRA, they argue, some of the activities performed by EU authorities duplicate activities that are part of OSHA's NRTL recognition process. Based on this argument, the EC contends that OSHA should not assess fees for any of these activities that are performed by an EU authority, to avoid the possibility that these fees would duplicate those already incurred, which would be in violation of the MRA.

OSHA does not intend to charge fees for services the Agency has not provided itself. Any comparable services that a European authority performs in the context of their own accreditation process are not duplicative services since they involve recognition or accreditation by two different organizations. Similarly, the process used by European authorities to designate a laboratory under the MRA for consideration by OSHA does not duplicate any procedures used by OSHA to determine whether recognition should be granted under the NRTL Program. Therefore, we do not believe there is a legitimate problem in terms of duplicative fee assessment, or violation of the MRA, in establishment of a fee schedule for the NRTL Program.

Exhibit 8–2; Underwriters Laboratories Inc.

Underwriters Laboratories Inc. (UL) is an NRTL. They are opposing the imposition of fees for the NRTL Program. The following four points are the major arguments in their comment:

1. UL opposes the imposition of fees for OSHA's NRTL process.
2. The OSHA NRTL process has not enhanced workplace safety.
3. Funding for the OSHA NRTL process should come from Federal funds, if at all, because the NRTL process does not provide any "special benefits".
4. A complete economic impact analysis will not support a proposal for fees.

In order to understand the context of the UL comments, we need to review the history of the NRTL Program requirements and UL's role in NRTL testing and certification. When OSHA initially promulgated its safety standards requiring third party testing and certification for a number of products used in the workplace, it specified and, in some cases, implied that this testing and certification was to be done by one of two laboratories: UL or Factory Mutual Research Corporation (FMRC). Thus UL and Factory Mutual had the "special benefits" of being the source for all mandatory testing and certification of products to be used in the workplace. This was a significant benefit that lasted for many years. It was challenged in court by other testing laboratories on the basis that it gave an unfair business advantage to these two laboratories when others were equally qualified to perform such testing and certification. The litigation was settled when OSHA agreed to establish a system to recognize other qualified laboratories. The NRTL Program, established in 1988 (53 FR 12102, 4/12/88), is the result of that litigation.

The 1988 NRTL regulation allowed UL and FMRC to continue to operate as NRTLs for five years without applying for OSHA recognition. At the end of the five-year temporary recognition period, they were to be treated like other testing laboratories, *i.e.*, they had to apply to OSHA and be evaluated to keep their NRTL status. However, the temporary recognition did not end automatically at the end of the five-year period. As long as they filed timely applications, their temporary NRTL status continued until OSHA acted on their application. Both companies did file timely applications for permanent recognition. In 1994, while OSHA was evaluating those applications, other NRTLs sued OSHA in Federal district court seeking an immediate end to UL's and FMRC's temporary recognition status. In a 1995 decision[1], the court held that OSHA had violated the earlier settlement agreement by continuing to give preferential treatment to UL and FMRC after the end of the five-year temporary recognition period and ordered OSHA to act on their applications as expeditiously as possible so that they would be treated the same as all other NRTLs. Later in 1995, OSHA completed its evaluations and recognized UL and FMRC as NRTLs.

UL argues that the NRTL Program has not increased workplace safety. In fact, the NRTL Program itself is an administrative mechanism to ensure that laboratories performing third party testing and certification have the competency and qualifications to do so. As UL notes in its comments, it is a "strong supporter of the benefits to the safety of the American public at large, as well as those in the workplace, provided by competent third party product safety certifications." OSHA has agreed with UL and others that third party certification is the best way to ensure workplace safety. The safety standards promulgated by OSHA that require third party testing and certification of products used in the workplace have, we believe, enhanced workplace safety. The NRTL Program is the means we use to ensure that enhancement continues by reviewing and monitoring the laboratories in the program as they implement an appropriate program to conduct testing and certification.

UL also argues that such testing and certification would take place regardless of OSHA requirements. Certainly it is true that voluntary testing and certification is undertaken by a number of manufacturers. In addition, there are other types of requirements that may encourage such manufacturers to do the testing and certification to protect themselves from liability, to comply with insurance company requirements, or to follow state or local requirements. However, a mandatory requirement for such testing and certification is most certainly a stronger incentive than most of those that result in voluntary testing and certification.

UL and Factory Mutual are unique among the current NRTLs in that their benefits changed as a result of the 1988 rule and the court's 1995 ruling that they should no longer receive preferential treatment. However, they continue to enjoy the benefits of NRTL status, even though they now share those benefits with other laboratories. Had OSHA not recognized them as NRTLs under the 1988 rule, they would no longer be able to test and certify products for workplace use. Thus, the argument that they do not receive benefits from the NRTL Program is not valid.

UL's continued participation in the NRTL Program is perhaps the most telling argument regarding the special benefits it receives. Since participation is completely voluntary, UL must have accrued benefits from its participation and regular expansion of UL's scope of recognition. Most recently, UL was the first NRTL to obtain recognition for sites in the European Union in order to do NRTL testing in Denmark, Italy, and the United Kingdom. UL also has sites in Taiwan and Hong Kong. These business decisions are undoubtedly based on the recognition of the special benefits of being able to test products for use in American workplaces, and give them an NRTL certification, in the countries where they are produced before they are shipped to the U.S. The costs to OSHA to deal with expansions into other countries are significant, particularly with regard to travel. These are the types of direct expenses that the fees are designed to address, so that resources are available as laboratories expand their NRTL business opportunities into other countries.

While UL makes no specific comment on the economic analysis included in the NPRM (64 FR 45107), it argues that more analysis is needed. In its arguments, however, UL tacitly acknowledges that the fees are not unreasonable: "The fees may be minimal now, but this may only be the initial assessment with the potential for substantial uncontrolled increases to follow."

As described in the NPRM (64 FR 45101), the fee structure is based essentially on the time that OSHA spends to perform activities related to a laboratory's application for recognition, expansion, renewal, or annual audits. The fees for these activities were calculated based on current experiences, and are related to the salaries of the individuals assigned to the Program, to the time needed to complete the required actions, as well as to the travel costs associated with on-site assessments and audits.

Under the requirements for Federal agencies that assess fees, a "substantial uncontrolled" increase in fees is not permitted. First, as proposed in the NPRM (64 FR 45104), OSHA will publish any proposed changes to the fee structure in the **Federal Register** for comment. In doing so, the Agency must

[1] MET Laboratories v. Reich, 875 F. Supp. 304 (D. Md., 1995)

explain any changes and the necessity for any increase in fees. Secondly, based on our review of the items that contribute to the fees, we believe that none of them are subject to great fluctuation or uncontrolled increases. We must emphasize that since the fees must be used only for the NRTL Program, we will only collect fees that are specifically related to that program.

Salaries of Federal employees, which are one of the two main bases for the fee structure, increase in relation to comparable salary increases in the private sector. These increases are modest, and would be unlikely to have a major impact on the fee structure. Similarly, while travel costs do increase periodically, these increases are also not expected to rise dramatically. If they increase, it will be commensurate with travel expenses in the private sector. Laboratories will benefit from the fact that travel expenses will be assessed based on rates paid by the government for items such as air travel and hotel bills, since these rates are generally lower than those paid by private sector business travelers.

We believe that the current economic analysis is adequate, and that it supports our determinations that the proposed fees are reasonable and that the manner of determining the fee schedule is fair, equitable, and unlikely to result in "substantial uncontrolled increases." The fees that OSHA will impose on laboratories for the NRTL Program are small, particularly when compared to the other costs of testing and certification that are already borne by manufacturers. The small additional cost to the laboratories will likely have little impact on the ultimate cost of the product itself.

UL mentions trade issues as a reason for more economic analysis. In fact, as noted in the NPRM (64 FR 45099), the opportunity for foreign laboratories to participate in the NRTL Program is expected to increase the costs to the Agency, particularly in the area of travel expenses. Assessment of fees for reimbursement of these direct costs will ensure that the costs are borne by those laboratories acquiring the benefits of participation in the NRTL Program rather than the American taxpayer.

Exhibit 8–3; ACIL

ACIL is a trade association of independent laboratories, including 12 of the 16 current NRTLs. It has a committee of NRTL laboratories that meets on a regular basis to discuss issues of common interest.

ACIL states that it supports the assessment of fees as follows:

ACIL supports OSHA's intent to obtain fees for services as necessary to maintain the NRTL Program and to insure greater workplace safety involving electrical products. We believe the method described for establishing fee schedules is fair and equitable. Every country or entity that offers laboratory accreditation charges a fee for services. Establishing this fee is reasonable and should be accepted by laboratories that desire NRTL accreditation and recognition.

However, ACIL then indicates that its support is contingent upon "improved services," and it enumerates what it would consider to be such services. The services ACIL describes are discussed below.

In response, OSHA notes that assessment of fees is based on the services currently provided, and expected to continue to be provided, on the processing of applications and on the maintenance of recognition. The fees are assessed on an individual laboratory basis and are related to specific actions involving that laboratory. These do not include any unrelated overhead or management activities of the program as a whole. The rules for assessment of such fees by a Federal Agency are very narrowly drawn and are not related to any of the items mentioned by ACIL. In other words, the items listed by ACIL are not "services" in the sense of the requirements for assessment of fees by a Federal agency, and the fees themselves are in no way related to those items. ACIL's list of items generally relates to the overall management of the Program and internal OSHA decisions regarding priorities and activities. However, we believe it is useful to list those items and specifically respond to them.

1. NRTL Program Training for Compliance Officers

OSHA has prepared a training program for compliance officers during the past year, and copies of the presentation have been made available to the NRTLs electronically. Furthermore, the training program has been made available to the public through OSHA's web site for the NRTL Program. The training presentation was a joint effort between the NRTL Program staff and OSHA's professional curriculum development staff in its Office of Training and Education. We consulted about the best and most useful format, as well as manner of presentation, given the competing training needs of OSHA's compliance staff. Ultimately, it was decided that the most useful way to get information about the Program out to our staff would be through the development and distribution of a training presentation that can be used at the Area and Regional Office level in staff meetings or as a module in other training courses. The program has been broadly distributed and well-received. Development of such a program was funded by the Agency, and would have been even if the fee schedule was in place, since it is not the type of activity that is specific to a laboratory and thus could be subject to fees. The training is an internal OSHA activity and is not a "service" to the laboratories.

2. OSHA Employing Outside Auditors To Assist and Support OSHA Staff, Whether They Be OSHA Trained Contract Auditors or Permanent OSHA Auditors

OSHA does not have a shortage of trained auditors to perform on-site visits under the NRTL Program, nor do we expect to be unable to meet the requirements of the Program any time in the foreseeable future. This is actually financially advantageous to the laboratories since we would be unlikely to be able to contract for the services performed for any less money than we currently spend using our own staff. If we were to have a shortage of staff, we would consider using this approach. At this point, it is not necessary. This again is not a "service" to the laboratories. It is related to the management of the program, and if we did have to use such an approach, we would have to adjust the fee schedule accordingly.

3. Increased Enforcement Efforts by Compliance Officers, OSHA Inspectors, and Program Auditors

In no way are OSHA enforcement activities a "service" to the NRTLs. OSHA determines its enforcement activities based on consideration of a number of factors, including targeting, complaints, and accidents. The safety standards that require NRTL testing and certification are among many other requirements that are reviewed by compliance staff as they conduct inspections. The fees to be collected for the NRTL Program are not and cannot be related to enforcement.

4. Development of a Program To Support the Significance of the NRTL Program

It is not clear what this means specifically, but we believe it is related to the efforts of some NRTLs to promote the use of the NRTL Program for purposes beyond workplace safety and health. For example, some NRTLs have encouraged State and local authorities to rely on NRTL product testing and certification in their public safety program activities outside the

workplace. This is outside the scope of OSHA's authority. While it is certainly the prerogative of these authorities to use testing laboratories, including NRTLs, for that purpose, OSHA does not endorse, promote, or engage in such activity since our mandate is limited to workplace safety and health. Again, this is unrelated to the services addressed by the fee schedule.

5. Promoting Employer Awareness of the NRTL Program

Promotion of employer awareness of any OSHA requirements is related to improving workplace safety and health. It is not a "service" to the NRTLs, and would not be an item subject to the fee schedule.

It appears from these suggestions that there is a basic misunderstanding about the fact that fees are specific to a laboratory, and to the activities related to recognition that are performed for that laboratory. There is a further issue underlying these items that should be addressed. Based on discussions OSHA has had with ACIL and the NRTLs they represent, we know that ACIL's suggestions are intended to promote the NRTL Program for marketing purposes. In other words, increased training, enforcement, and program promotion all increase the visibility of the NRTLs as business concerns. When OSHA promotes the NRTL Program, it does so to increase workplace safety and health. We continue to promote the Program in this way through various means funded directly by OSHA. Besides the training presentation already described, we have developed a web page on the NRTL Program that includes extensive information, as well as listing the NRTLs, showing their marks, and addressing their scope of recognition. We believe this is the most effective way to reach our own compliance staff, as well as the public, with substantive information about the NRTL Program and the recognized laboratories. This is done to enhance workplace safety and health, and is not a "service" to the NRTLs.

We have also completed a directive that details the policies and procedures of the NRTL Program for the first time in its history. This directive ensures that OSHA staff, as well as the NRTLs and the public, has access to information about the Program and its operation.

OSHA will continue to undertake such activities as resources permit and as found appropriate by the Agency. However, the fees to be collected will not be used for these purposes. We will be happy to continue to work with ACIL or any NRTL or other interested party, to define appropriate activities to increase workplace safety and health through enhancement of the NRTL Program and the testing and certification requirements.

ACIL also indicated that it did not believe that fees should be retroactively assessed. OSHA has no plans to assess fees on a retroactive basis for services already provided without cost to the laboratory. ACIL also suggested that OSHA bill for its services "at the time services are rendered," rather than at the beginning of the year, as proposed in the notice (64 FR 45105).

We find merit in ACIL's suggestion. This approach would reduce the collection activity of the Agency, since only one bill would have to be sent to the NRTL for an audit, rather than the two contemplated under the NPRM. There would be minimal financial burden to the Agency by delaying collection. We proposed "up-front" billing in the NPRM to ensure the Agency would receive payment regardless of the outcome of the audit process. Since an NRTL's recognition can be revoked for non-payment, we believe this is enough incentive to pay after the audit is performed. For similar reasons, we plan to bill the NRTLs for any assessment that we perform for a renewal or expansion after we have performed it. However, we will still require applicants seeking initial recognition to submit the assessment fee with their application to ensure the Agency is reimbursed for its costs should an applicant decide to withdraw its application after OSHA performs its assessment.

On the issue of reducing the comment period, ACIL indicated this would provide some benefit to the laboratories. Because the longest time period in the process precedes this formal comment period, ACIL suggests that OSHA should include a set time period for processing.

Based on OSHA's experience, this is not possible. The biggest delays in the process are generally associated with incomplete information provided in an application, or the time a laboratory spends to correct deficiencies found in on-site assessments. In addition, new applicants frequently have testing experience, but they may not have experience in the certification process. Considerable work may be required to ensure they have internal procedures to meet the requirements of OSHA's NRTL Program.

We have prepared application guidelines to help address the first issue, and have made them available on our web site. If an applicant provides all of the information and supporting documentation indicated in the guidelines, we should not need to go back to the laboratory on one or more occasions to gather additional information. The application guidelines also follow what is normally reviewed in an on-site assessment. If laboratories provide the information specified and are ready to show assessors what they do in these areas, they may have to correct fewer deficiencies before we grant recognition. These guidelines are just beginning to be used, and we will be monitoring their use to determine how well they are working.

We process applications in the order they arrive, and the time to wait for processing depends on the number that have already been submitted by other laboratories. There is no way to predict when applications will be submitted, and there is no advance indication about the numbers of laboratories that may choose to apply at any given time. We continue to encourage laboratories to cover as many test standards as possible in any one application to help reduce the overall number of applications to be processed.

ACIL also attached a paper regarding some issues on surveillance audits, which were not addressed by the NRPM. The paper contains certain suggestions that ACIL wants the Agency to consider, and OSHA will consider them for future action.

Exhibit 8–4; National Electrical Manufacturers Association

The National Electrical Manufacturers Association (NEMA) represents a number of manufacturers of products that are subject to requirements for third party testing and certification under OSHA's safety standards. NEMA objects to the assessment of fees, and questions whether OSHA has the authority to require fees. In particular, NEMA states that because the testing activities are mandatory, they "do not support the conclusion that the fee is incident to a voluntary act."

While testing and certification of equipment is mandatory, participation in the NRTL Program by a laboratory is completely voluntary. As noted in the NPRM (64 FR 45100), OSHA has the authority to collect fees under the OMB Circular, and Congress has given OSHA specific authority to collect and retain those fees for the specific use of the NRTL Program.

NEMA also notes that the fees will be passed on to manufacturers such as those they represent. While this is true, the fees themselves are quite small compared to the overall costs of testing and certification, and will be spread among the customers for whom the laboratories are testing and certifying

products for. In addition, the manufacturers will most likely distribute these costs to their customers through the pricing of their products. The costs are so small that the price increase for any particular product is also unlikely to be significant.

NEMA further argues that if fees are assessed, foreign laboratories should not be given any special treatment or privilege. OSHA will be applying any fee schedule in the same manner to all NRTL Program participants, both foreign and domestic.

Conclusion

OSHA has decided to establish a fee schedule for the NRTL Program in this final rule. The comments received did not address the specific fees proposed or the method of developing the proposed fee schedule. While two of the commenters objected to the assessment of fees (Exs. 8–2 and 8–4), their arguments were not compelling. ACIL, the trade association that includes 12 of the 16 organizations from whom fees would be collected, stated that the fees are fair and equitable and simply reflect what is common practice for other organizations doing similar work. OSHA has the authority to assess fees to laboratories for the direct expenses the Agency incurs as a result of providing services to them. The laboratories receive "special benefits" as a result of the requirements established by OSHA for testing and certification of products to be used in the workplace. In addition, Congress has given OSHA the authority to collect and retain these fees for the administration of the NRTL Program.

On the issue of reducing the comment period for **Federal Register** notices concerning recognition, only ACIL commented, and it agreed that this would lead to a useful reduction in the total time for processing applications. The reduction of the time for public comment is also being addressed in this final rule.

III. Explanation of Final Rule

A. Establishment of Fees

OSHA is modifying 29 CFR 1910.7 to add a new paragraph "(f) Fees" related to the assessment and payment of fees for certain services rendered to NRTLs and NRTL applicants. This new paragraph provides the general framework that OSHA will use to calculate, charge, and collect the fees. OSHA will provide the specific details for calculating, charging, and collecting the fees through appropriate OSHA Program Directives, which will be published on the OSHA web site, consistent with the framework laid out in this final rule.

1. Obligation To Pay and Fee Assessment

The first part of paragraph (f) reads as follows:

(1) Each applicant for NRTL recognition and each NRTL must pay fees for services provided by OSHA. OSHA will assess fees for the following services:

(i) Processing of applications for initial recognition, expansion of recognition, or renewal of recognition, including on-site reviews; review and evaluation of the applications; and preparation of reports, evaluations and **Federal Register** notices; and

(ii) Audits of sites.

Organizations seeking OSHA recognition (i.e., NRTL applicants) and organizations that OSHA has recognized as NRTLs must pay fees for the specific services that OSHA provides to them. The services for which the Agency will charge fees are: (1) processing of applications for initial recognition, expansion of recognition, or renewal of recognition, and (2) audits, which are post-recognition on-site or office reviews. The activities involved in providing these services are described in more detail later.

Typically, OSHA annually audits the testing sites it has recognized for an NRTL. However, if an NRTL has appropriate controls in place, OSHA allows it to use non-recognized sites, such as testing sites of other laboratories or even manufacturers, to conduct testing or other activities necessary for certifying products. OSHA may also need to audit such non-recognized sites to determine whether the NRTL or the site is properly controlling the NRTL-related activities. For example, OSHA may audit a manufacturer to determine how well it controls the NRTL's certification mark or maintains production or quality controls. NRTLs must also pay for these "special" audits when required and will be billed accordingly.

2. Fee Calculation

The second part of paragraph (f) reads as follows:

(2) The fee schedule established by OSHA reflects the cost of performing the activities for each service listed in paragraph (f)(1) of this section. OSHA calculates the fees based on either the average or actual time required to perform the work necessary; the staff costs per hour (which include wages, fringe benefits, and expenses other than travel for personnel that perform or administer the activities covered by the fees); and the average or actual costs for travel when on-site reviews are involved. The formula for the fee calculation is as follows:

Activity Fee = [Average (or Actual) Hours to Complete the Activity × Staff Costs per Hour] + Average (or Actual) Travel Costs

Each activity performed by OSHA accomplishes a particular phase of the service the Agency provides to the recipients (*i.e.*, NRTLs or NRTL applicants). Currently, these activities are as follows:

—Review of initial, expansion, and renewal applications;
—On-site assessment per person, per site—first day , and per person, per site—each additional day;
—Review and evaluation (per standard)—initial and expansion applications;
—Final report/**Federal Register** notice—initial and expansion or renewal applications; and
—On-site audit (per person, per site) and office audit (per site).

The fees that the Agency is initially establishing are shown in the Fee Schedule (Table A in section VI of this preamble). This schedule is somewhat different from the one we published in the NPRM. We have made changes as a result of our decision, as explained in section II of this preamble, to bill NRTLs for audits and for certain assessments after we perform them. We had proposed in the NPRM (64 FR 45105) to pre-bill the NRTLs for these activities. We further explained that we would bill or refund to NRTLs the difference between any pre-paid fee amounts and the "actual costs" for an assessment and or audit. Since we have decided not to pre-bill for these activities, we have changed the fee schedule to clearly reflect this approach. The fee schedule now contains two types of fees: flat fees and variable fees.

The "flat fees" are calculated by multiplying the average estimated time to perform the work by the equivalent staff cost per hour, and adding the average travel costs for any assessment we must perform for an application for initial recognition. Use of the average time spent on each activity simplifies the accounting for the NRTL and for OSHA since the recordkeeping time and associated costs are reduced. The variable fees are based on the "actual costs,", *i.e.*, actual staff time and travel costs to the government. These are calculated by multiplying the equivalent staff cost by the actual number of days or fractional days that staff spend in performing the on-site activity, and adding actual staff travel costs, using government rates where possible. In section V of this preamble, we show how we derived the equivalent staff cost per hour (Figure 1) and provide details on the costs and calculation for the fees.

As indicated above, we will bill applicants or NRTLs for the "actual costs" of an assessment and audit after we perform these activities. However, as we proposed in the NPRM (64 FR 45106) and now adopt in this final rule, applicants seeking initial recognition must still pay for an assessment in advance, i.e., at time of application, using the amount in the fee schedule. After we perform the assessment, OSHA will send them a bill or refund (i.e, credit their account) for the difference that reflects the "actual costs". We have added appropriate information to the fee schedule to clearly show the nature of the assessment fee for a new applicant.

3. Annual Review of Fee Schedule and Issuance

The third part of paragraph (f) reads as follows:

(3)(i) OSHA will review costs annually and will propose a revised fee schedule, if warranted. In its review, OSHA will apply the formula established in paragraph (f)(2) of this section to the current estimated costs for the NRTL Program. If a change is warranted, OSHA will follow the implementation table in paragraph (f)(4) of this section. (ii) OSHA will publish all fee schedules in the **Federal Register**. Once published, a fee schedule remains in effect until it is superseded by a new fee schedule. Any member of the public may request a change to the fees included in the current fee schedule. Such a request must include appropriate documentation in support of the suggested change. OSHA will consider such requests during its annual review of the fee schedule.

The first Fee Schedule, set forth in section VI of this preamble, will remain in effect until it is superseded by a revised schedule. OSHA will annually review the costs to the Government of providing the services to determine whether any changes to the fees are needed. In addition, as part of this annual review, OSHA will consider requests for changes to the fee schedule that it receives from the public. If OSHA believes that changes may be needed, we will publish a notice to provide the NRTLs and other members of the public an opportunity to comment on such changes. The Agency will follow the implementation table shown in paragraph (f)(4) of this rule. We will publish all subsequent fee schedules in the **Federal Register** and post them on the OSHA web site.

4. Fee Implementation

The fourth part of paragraph (f) reads as follows:

(4) OSHA will implement fee assessment, collection, and payment as follows:

Approximate dates	Action required
i. Annual Review of Fee Schedule	
November 1	OSHA will publish any proposed new Fee Schedule in the **Federal Register**, if OSHA determines changes in the schedule are warranted.
November 16	Comments due on the proposed new Fee Schedule.
December 15	OSHA will publish the final Fee Schedule in the **Federal Register**, making it effective.
II. Application Processing Fees	
Time of application	Applicant must pay the applicable fees shown in the Fee Schedule when submitting the application; OSHA will not begin processing until fees are received.
Publication of preliminary notice	Applicant must pay remainder of fees; OSHA cancels application if fees are not paid when due.
III. Audit Fees	
After audit performed	OSHA will bill each existing NRTL for the audit fees in effect at the time of audit, but will reflect actual travel costs and staff time in the bill.
30 days after bill date	NRTLs must pay audit fees; OSHA will assess late fee if audit fees are not paid.
45 days after bill date	OSHA will send a letter to the NRTL requesting immediate payment of the audit fees and late fee.
60 days after bill date	OSHA will publish a notice in the **Federal Register** announcing its intent to revoke recognition for NRTLs that have not paid these audit fees.

One significant change has been made to the table as a result of comments from ACIL (Ex. 8–3). Rather than billing each NRTL at the beginning of the year as proposed (64 FR 45105), we will bill them after an audit is conducted. Failure to pay the bill in a timely fashion may lead to revocation of recognition.

With regard to the other items in the schedule, OSHA needs approximately 30 days after the close of the government fiscal year (GFY) on September 30th, to obtain and review data for its annual review of the fee schedule. If a change in the schedule is necessary, OSHA will publish a proposed revision around November 1st, including an analysis of the changes. The period for comments will be no less than 15 calendar days. Approximately 30 days thereafter, OSHA will officially issue the new fee schedule in the **Federal Register**.

After we have audited an NRTL, we will bill that NRTL for the appropriate audit fee shown in the fee schedule in effect at the time the audit is performed. This bill will reflect actual travel costs and staff time for the audit. OSHA anticipates that most of the bills will be for on-site audits, rather than office audits. OSHA will automatically assess the NRTL the late fee, shown in the fee schedule, if the Agency does not fully receive the amount billed within 30 days. Fifteen days thereafter, if payment has not been received, OSHA will send a letter notifying the NRTL of the failure to pay the fees for the audit and requesting immediate payment, including a late fee. If the NRTL fails to fully pay those fees within 15 days of the issuance of the letter, OSHA will publish a notice in the **Federal Register** announcing its intent to revoke the NRTL's recognition. OSHA will then proceed with permanent revocation of the NRTL's recognition, which includes publication of a second notice formally revoking recognition.

In revoking recognition due to non-payment of fees, OSHA will follow the procedures described in this paragraph and not those under II.E of Appendix A to 29 CFR 1910.7. The Agency may consider reinstating an organization's recognition if it provides an explanation for non-payment that is acceptable to OSHA and it pays all fees that are due. We will address such a reinstatement option in the directive mentioned in paragraph (f)(5) below.

OSHA will bill the NRTL separately for additional audits of a site or for any "special" audits, and will bill

applicants separately for any additional or special assessment that it must perform in connection with an application. OSHA will bill the NRTL or applicant for these fees after these audits or assessments and will follow the same collection process as described above.

5. Details for Payment

The fifth and last part of paragraph (f) reads as follows:

(5) OSHA will provide details about how to pay the fees through appropriate OSHA Program Directives, which will be available on the OSHA web site.

For application processing, OSHA will bill the NRTL applicant or NRTL for the balance of fees due, including the "actual costs" for any assessment, at the time we publish the preliminary notice to announce the application. As previously explained, publication of this notice occurs after we have completed any assessment for processing an application. For new applicants, the bill will reflect a refund (*i.e.*, a credit) if the amount pre-paid exceeds the "actual costs" for the assessment. For expansion and renewal applications, the bill to the NRTL will include the fees for any assessment that we performed. For audits, we will also bill the NRTL after completion of the audit. For application processing and audits, any fees that are not paid when due will result in cancellation of application or revocation of recognition, as appropriate. OSHA will follow the same collection process for applications as that described for audits in paragraph (f)(4).

The instructions that accompany a fee schedule will include appropriate details about fee payments. OSHA will require payment of all fees in U.S. dollars by certified check or money order drawn on a U.S.-based institution or organization, but may include additional payment terms in these instructions. The Agency may consider other modes or methods for payment in these instructions.

The fees established by this final rule go into effect on October 1, 2000. Fees must be submitted for any application (whether for initial recognition, or expansion or renewal of recognition) postmarked on or after the effective date of the Fee Schedule shown in section VI of this preamble. Also, any application pending on October 1, 2000, will be subject to the fees for activities that OSHA has not yet begun as of that date. OSHA will bill applicants accordingly. However, since delays in processing may have occurred through no fault of an applicant, OSHA will review the circumstances surrounding all applications that are pending on October 1, 2000, to determine whether some fees should be waived.

B. Reduction of Public Comment Period

OSHA is amending provisions in Appendix A to 29 CFR 1910.7 to reduce the 60-day comment period currently required for the "preliminary" **Federal Register** notices. "Preliminary" refers to the first of the two notices that OSHA must publish to initially recognize an organization as an NRTL, or to expand or renew an NRTL's recognition. The notice announces OSHA's "preliminary finding" on an initial, expansion, or renewal application. The amended provisions of Appendix A will now provide a 30-day comment period for notices on applications for initial recognitions, and a 15-day comment period for notices on applications for expansion or renewal of recognition. The 30-day period for initial applications is consistent with that provided for some other notices published by the Agency. The shorter 15-day period reflects the nature and scope of OSHA's evaluation of expansion and renewal requests. Based on our experience, OSHA believes that such requests will present few issues. However, anyone who believes that the NRTL's request affects them but needs more time may request an extension of time to comment.

As pointed out in the proposal (64 FR 45107), in recent years, OSHA has received few or no comments on the preliminary notices. The comment periods add significantly to the amount of time required to process an application. Thus OSHA proposed to reduce the time periods required. ACIL (Ex. 8–3) recognized that this would reduce overall processing time. No comments were received objecting to this change.

NRTLs routinely adopt new test standards for the products that are within their testing and certification capability. Many of the new test standards are simply new revisions that supersede those for which OSHA has already recognized the NRTL. As a result, the NRTL must often apply to OSHA to "expand" its recognition to enable it to use the new test standards. While the NRTL may "expand" its recognition primarily to attain or maintain an economic benefit, timely recognition of the new test standards for the NRTL could also enhance safety in the workplace. The shorter periods will speed up approval of those expansions.

Federal Register notices are currently accessible to the public through the Office of the Federal Register web site on the day they are published. Reviewers of the notice can always request an extension of the comment period if they need more time for presenting any comments. OSHA will include a statement regarding such extensions in the preliminary notices. Given the rapid telecommunication (e.g., Internet, electronic mail, fax) capabilities that now exist throughout the world, comments or requests for an extension of the comment period can be filed in much less time than 60 days. OSHA will generally grant an extension but will limit it to 15 days, unless the requester justifies a longer period. We may deny a request for extension if it is frivolous or otherwise unwarranted.

IV. Legal Authority and Other Considerations

A. Statutory Authority

OSHA is basing its fees on the Office of Management and Budget's (OMB's) policies for user fees imposed by Federal Agencies. These policies are contained in OMB Circular A–25, "User Fees," dated 7/8/93. Some key portions of Circular A–25 are as follows:

—"General Policy:" A user charge * * * will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public."

—"For example, a special benefit will be considered to accrue and a user charge will be imposed when a Government service * * * enables the beneficiary to obtain more immediate or substantial gains or values than those that accrue to the general public, * * * or * * * is performed at the request of or for the convenience of the recipient, and is beyond the services regularly received by other members of the same industry or group or by the general public."

—" * * * user charges will be sufficient to recover the full cost to the Federal Government * * *"

OMB developed Circular A–25 in accordance with Title V of the Independent Offices Appropriations Act of 1952 (IOAA), codified at 31 U.S.C. § 9701. The criteria established by the IOAA to guide agency heads in the establishment of fees were that the fees be "fair" and be based on:

(A) The costs to the Government;

(B) The value of the service or thing to the recipient;

(C) Public policy or interest served; and

(D) Other relevant facts.

31 U.S.C. 9701(b)

As discussed below, the U.S. Supreme Court has decided in two key cases that the intent of the IOAA was to require fees to be based on "value to the recipient" and not upon "public policy or interest served [or] other [relevant] * * * facts."

In a rider to OSHA's Fiscal Year 2000 appropriations, Congress specifically authorized the Secretary of Labor to collect and retain the fees to be collected under this rule: "* * * the Secretary of Labor is authorized, during the fiscal year ending September 30, 2000, to collect and retain fees for services provided to Nationally Recognized Testing Laboratories, and may utilize such sums, in accordance with the provisions of 29 U.S.C. 9a, to administer national and international laboratory recognition programs that ensure the safety of equipment and products used by workers in the workplace: * * *" Public Law 106–113 (113 Stat. 1501A–222). Through this rider, OSHA has the necessary authority to retain the fees, which otherwise would be credited to the general fund of the U.S. Treasury, as explained in OMB Circular A–25.

B. Legal Basis for Assessing the Fees

As noted in the proposal (64 FR 45100), to determine a proper basis for assessing the fees, OSHA reviewed a number of legal precedents and analyzed the costs and activities for the functions undertaken for the NRTL Program. We summarize our legal review below, and provide the details of our costs in section V of this preamble.

The legal precedents center on the application of the IOAA and its interpretation by federal agencies. The most pertinent precedents are two decisions by the U.S. Supreme Court, and four cases of the U.S. Court of Appeals for the D.C. Circuit.

In March 1974, the Supreme Court decided the companion cases of *National Cable Television Ass'n.* v. *United States and FCC,* 415 U.S. 336 (1974) and *Federal Power Commission* v. *New England Power Co.,* 415 U.S. 345 (1974). In *National Cable*, the Court expressed the view that an agency may charge a "fee" for services based on "value to the recipient." The Court essentially ruled out the other bases permitted in the IOAA, which, in the court's opinion, could change an assessed "fee" into the levy of a "tax." *In Federal Power Commission*, the Court held that only specific charges for specific services to specific individuals or companies may be recouped by the fees permitted by the IOAA.

The first of the Court of Appeals decisions was *National Cable Television Ass'n Inc.* v. *Federal Communications Commission* (FCC), 554 F.2d 1094 (1976). The Court of Appeals upheld the charging (by the FCC, in this case) of both an application fee and an annual fee, provided the agency makes clear which activities are covered by each of these fees to prevent charging twice for the same activity. The court acknowledged that fees based on reasonable approximations for costs of services rendered would be acceptable. The court stated the following: "It is sufficient for the Commission to identify the specific items of * * * cost incurred in providing each service or benefit * * *, and then to divide the cost among the * * * [recipients] in such as way as to assess each a fee which is roughly proportional to the "value" which that member has thereby received." *Id.* at 1105–06.

In *Electronic Industries Ass'n* v. *F.C.C.,* 554 F.2d 1109 (DC Cir. 1976), the court indicated that a fee for services may be charged for private benefits "although they may also create incidental public benefits as well." Id. at 1115. In the case of NRTLs, the services that OSHA provides to NRTLs and NRTL applicants result primarily in private benefits to these parties, as described below. In *Capital Cities Communications, Inc.* v. *F.C.C.,* 554 F.2d 1135 (D.C. Cir. 1976), the court held that a fee for services should bear a reasonable relationship to the cost to the government to provide the service.

Finally, in *Miss. Power and Light* v. *U.S. Nuclear Regulatory Comm'n* (NRC), 601 F.2d. 223 (5th Cir. 1979), the court upheld a fee for agency services. The NRC calculated its fees based upon the costs of providing the services to the private parties. OSHA is using a similar method to calculate the application processing and audit fees in this final rule.

Based in large part on the results of the foregoing six cases and on the guidelines of OMB Circular A–25, OSHA is establishing fees for specific benefits that organizations receive as a result of the specific services that OSHA provides to them for their initial and continued recognition as an NRTL. The fees will reflect the costs of providing these services, and the costs will be reasonably itemized to the smallest unit practical.

C. Special Benefits and Services Provided

To help clarify the basis for the fees in this final rule, the following describes how OSHA generally handles applications and continuing services under the NRTL Program.

When an organization submits its application, the NRTL Program staff thoroughly review it for completeness and adequacy. Each organization applies for a specific scope of recognition. This scope consists of the specific safety test standards, locations or sites, and programs for which the organization seeks recognition. OSHA has broadly grouped the activities an NRTL may perform in testing and certifying products into nine categories of "programs and procedures," or just "programs." (See 60 FR 12980, March 9, 1995)

When the NRTL Program staff determine that the application is complete and adequate, the staff performs an in-depth on-site review of the applicant's organization, programs, and facilities. Based upon the information obtained primarily through the on-site review, the staff prepares a report and recommendation. The report and the application provide the main basis for a preliminary finding on the application. OSHA publishes a notice of this finding in the **Federal Register** to allow for public comment. Following a comment period (now established as 30 days or 15 days in this final rule, but formerly 60 days), OSHA must publish a final decision and response to comments in the **Federal Register.** Publication makes the recognition official for successful applicants and officially denies the recognition for unsuccessful applicants.

NRTL recognition is valid for five years. During this period, OSHA program staff audit the NRTL to assure that it continues to meet the requirements for recognition. NRTLs may also on occasion request expansion of their scope of recognition to include additional test standards, facilities, or programs. At the end of its initial recognition period, the NRTL may apply for renewal of its recognition. OSHA processes requests for expansion and renewal following a process similar to that used for initial applications for recognition.

Program staff work closely with attorneys of the Department of Labor on a regular basis for both initial recognition and continuing recognition activities. These attorneys review the **Federal Register** notices. They also advise the program staff on issues and other matters that directly relate to the services covered by the fees.

In addition to application processing and audits, NRTL Program staff also perform a number of activities that are essential to the normal operation of the NRTL Program. These activities include administration of program, budgetary, and policy matters; assistance in

training OSHA personnel about the program; inter-agency and international coordination; response to requests for information related to the program; and participation in meetings with stakeholders and outside interest groups. Although necessary to the continued functioning of the program, these activities are incidental to the direct services of application processing and the audits of the NRTLs. Accordingly, costs for these activities are not covered by this final rule.

NRTLs accrue "special benefits" from the services that OSHA renders to them. These "special benefits" are the product of OSHA's initial and continuing evaluation of their qualifications to test and certify products used in the workplace, *e.g.*, the acknowledgment of their capability as an NRTL. The primary special benefits of NRTL recognition are the resulting business opportunities to test and certify products for manufacturers, the NRTL's clients. These opportunities may be in the form of new, additional, or continuing revenue and clients. Once the NRTL has properly certified a product, a manufacturer may then sell this product to employers, enabling them to comply with product approval requirements in OSHA standards.

The services rendered by OSHA that confer these "special benefits" to NRTLs are: (1) Processing of applications for initial recognition as an NRTL and for expansion and renewal of an existing NRTL's recognition, and (2) audits ("post recognition reviews"), which enable the NRTL to maintain the recognition from OSHA.

D. Fees of Other Agencies

Many other Federal agencies charge fees for services they provide to specific recipients. The following is a list of some of these agencies, along with a citation to the regulations that cover the fees they charge:

FEDERAL AGENCIES THAT CHARGE FEES FOR SERVICES

Agency	Regulation
Federal Communications Commission	47 CFR 1.1151
Federal Maritime Commission	46 CFR 514.21
Environmental Protection Agency	40 CFR 152.400
National Voluntary Laboratory Accreditation Program (NVLAP); US Department of Commerce	15 CFR 285
Mine Safety and Health Administration; Department of Labor	30 CFR 5.10
Bureau of Indian Affairs; Department of the Interior	25 CFR 143.4
Food Safety and Health Service; Department of Agriculture	9 CFR 318.21 and 391.5
Federal Aviation Administration; Department of Transportation	14 CFR 187.1

With the exception of the FCC and NVLAP, the above agencies also derive their authority for charging the fees from the IOAA.

OSHA has also examined the fee schedules for other non-governmental organizations that accredit or recognize testing laboratories or certification bodies. Although the fees established in this final rule are specific to the costs to OSHA, the practices of these other organizations may be of interest to reviewers of this rule.

FEES CHARGED BY VARIOUS ACCREDITATION ORGANIZATIONS

Organization	Activity	Fee (as of 3/8/99)
Standards Council of Canada—Fees for Certification Organizations.	Application fee	$15,000
	Fees for assessments and audits	Per person on a per diem basis + travel expenses
	Annual accreditation fee	$9,000 + a business volume fee (up to $36,000)
ANSI Accreditation for Certification Programs	Application fee	$2,000
	Accreditation fees	$1,200/day per professional staff time + travel expenses
	Continuing accreditation	$1,200/day for professional staff time related to audits + travel expenses; plus, Percent of gross revenues related to the certification program, up to $40,000
National Voluntary Laboratory Accreditation Program (NVLAP).	Application fee	$500
	Assessment fee (for accreditation and every two years).	per program/field, $1,600 to $3,000 or variable
	Annual support fee	per program/field, $3000 to $3,925 less $2,200 for more than one field
	Annual proficiency testing fee	per program/field, $0 to $5,405 or variable
American Association for Laboratory Accreditation (A2LA).	Application fee	$800
	Assessment fee (for accreditation and every two years).	Deposit of $3,000 + $1,500/extra field/lab, actual costs billed at $750/day + travel expenses (fee also paid for surveillance visit in 2nd year)
	Annual fee	$1,100 for first field/lab, less for two or more fields/labs
American Industrial Hygiene Association—Laboratory Quality Assurance Programs.	Application fee	$250

FEES CHARGED BY VARIOUS ACCREDITATION ORGANIZATIONS—Continued

Organization	Activity	Fee (as of 3/8/99)
	Site visit fee	$675/day or $2,400 outside North America + expenses
	Annual fee (also due with application)	$300/program ($150/program with application after June 30)
	Proficiency analytical testing program fee	program/sample specific, also based on # of samples, $86 to $1,800

V. Detailed Discussion of Fees

A. Cost Basis for the Fees

OSHA's first Fee Schedule (set forth in section VI of this preamble) is based on the "full cost" to OSHA of the activities it undertakes for NRTLs. "Full cost" is defined in Section 6d of OMB Circular A–25.[2]

For application processing, full costs consist mainly of the salary and benefits of office and field personnel, travel costs, and other direct and indirect costs necessary to the processing and related support activities. The fees equal the estimated cost of staff time and the actual cost of travel for these activities. These activities mainly include the following: performing the office review of the application, preparing for and performing the on-site review of the organization's testing and administrative facilities, resolving findings of deficiencies in the application, drafting and finalizing the on-site review report, and preparing and publishing the Federal Register documents.

For audits, full costs consist mainly of the salary and benefits of office and field personnel, travel costs, and other costs necessary to the audit and related support activities. The fees equal the estimated cost of staff time and the actual cost of travel for those activities. These activities mainly include the following: preparing for and performing the office or on-site audit of the NRTL, drafting and finalizing necessary reports or documentation, resolving findings of deficiencies in the NRTL's operations, and reviewing and processing audit reports.

Prior to developing the proposed rule on the fees, OSHA had not accounted separately for the costs of the NRTL Program. The personnel and other costs associated with performing activities related to the Program involve a number of different offices throughout the Department of Labor. In preparing the fee schedule presented in this final rule, OSHA has evaluated the total resources that it has committed to the NRTL Program overall and has then estimated the costs that are involved solely with the approval and periodic review functions. It is these costs alone that OSHA seeks to recover through its fees. Personnel costs are the wages, salary, and fringe benefit costs of the staff positions involved and the number of full time equivalent (FTE) personnel devoted to the NRTL approval and review activities. These estimates also include travel and other costs of these activities. The Agency believes these estimates are fair and reasonable.

Based on the total estimated costs and the total estimated FTE, OSHA has calculated an estimated equivalent cost per hour (excluding travel). This equivalent cost per hour includes both the direct and indirect costs per hour for "direct staff" members, who are the staff that perform the application, on-site, and legal reviews and the other activities involved in application processing and audits. Direct costs are expenses for direct staff members. Indirect costs are expenses for support and management staff, equipment, and other costs that are involved in the operation of the program. Support and management staff consists of program management and secretarial staff, and we include $29,800 in our estimate in Figure 1 to cover these costs. Equipment and other costs are intended to cover items such as computers, telephones, building space, utilities, and supplies, that are necessary or used in performing the services covered by the fees. We include $46,500 in our estimate in Figure 1 to cover these costs. Although essential to the services provided, these indirect costs are not readily linked to the specific activities involved in application processing and audits and, as explained later, are therefore allocated to the activities based on direct staff costs.

Figure 1 is an itemization of the total estimated costs and the equivalent cost per hour calculated. OSHA believes that the costs shown fairly reflect the full cost of providing the services to NRTLs and NRTL applicants. Figure 1 shows the costs used to calculate the fees.

[2] OMB Circular A–25, Section 6. General policy: A user charge, as described below, will be assessed
* * *

a. Special benefits

1. * * *

2. Determining the amount of user charges to assess.

(a) Except as provided in Section 6c, user charges will be sufficient to recover the full cost to the Federal Government (as defined in Section 6(d) of providing the service, resource, or good when the Government is acting in its capacity as sovereign.
* * *

d. Determining full cost and market price

1. "Full cost" includes all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service. These costs include, but are not limited to, an appropriate share of:

(a) Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement. Retirement costs should include all (funded or unfunded) accrued costs not covered by employee contributions as specified in Circular No. A–11.

(b) Physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment. If imputed rental costs are applied, they should include:

(i) depreciation of structures and equipment, based on official Internal Revenue Service depreciation guidelines unless better estimates are available; and

(ii) an annual rate of return (equal to the average long-term Treasury bond rate) on land, structures, equipment and other capital resources used.

(c) The management and supervisory costs.

(d) The costs of enforcement, collection, research, establishment of standards, and regulation, including any required environmental impact statements.

(e) Full cost shall be determined or estimated from the best available records of the agency, and new cost accounting systems need not be established solely for this purpose.

FIGURE 1.—CURRENT ESTIMATED ANNUAL COSTS OF NRTL PROGRAM

Cost description	Est. FTE	Avg. cost per FTE (including fringe)	Total est. costs
Direct Staff Costs	4.2	$83.860	$352,200
Travel	na	na	40,000
Indirect Staff & Other Costs	na	na	76,300
Total Est. Program Costs			$468,500

Avg. direct staff cost/hr ($352,200 ÷ 4.2 FTE (2,080) hours) $40
Equivalent avg. direct staff cost/hr ($428,500 ÷ 4.2 FTE hours) $49
(includes direct & indirect costs)

[a] This amount consists of $29,800 of indirect staff costs and $46,500 for equipment and other costs.

The use of an "equivalent average direct staff cost per hour" measure is a convenient method of allocating indirect costs to each of the services for which OSHA will charge fees. The same result is obtained if direct staff costs are first calculated and then indirect costs are allocated based on the value, i.e., dollar amount, of the direct staff costs, which is an approach that is consistent with Federal accounting standards. To illustrate, assume a direct staff member spends 10 hours on an activity; the direct staff costs would then be calculated as follows:

Direct staff costs=10 hours × $40/hour = $400

The $40/hour is the direct staff cost/hour amount shown in Figure 1. The indirect costs would be allocated by first calculating the ratio of indirect costs to direct staff costs, again using the costs shown in Figure 1. This ratio would be as follows:

Indirect costs/direct staff costs=$76,300/$352,200 = 0.217

Next, the indirect costs would be calculated based on the $400 estimate of direct staff costs:

Indirect costs=$400 × 0.217 = $87

Finally, the total costs of the activity are calculated:

Total costs=direct staff costs+indirect costs=$400+$87=$487

Taking into account the rounding shown in Figure 1, the actual amount calculated would be $490.

Figures 2, 3, and 4 show the estimated time the Agency spends on each major service category. These estimates were developed, in part, for the information collection package for the NRTL Program submitted to OMB in September 1997 under the Paperwork Reduction Act. The major service categories are initial applications. expansion and renewal applications, and audits; and each figure shows the major activities performed and the estimated staff time and travel costs for each of these activities. The Agency calculates the cost of each major activity using the time estimates, the equivalent costs per hour, and the estimate of travel costs. These costs then serve as the basis for the fees shown in the first Fee Schedule (refer to section VI of this preamble).

FIGURE 2.—ESTIMATED COSTS FOR INITIAL APPLICATION

Major activity	Average hours	Average costs[a]
Initial Application Review:		
Staff time: (includes review by office and field staff)	80	$3,924
On-Site Assessment—first day:		
Staff time: (includes 16 hours preparation, 4 hours travel, 8 hours at site)	28	1,373
Travel		670
Total (per site, per assessor)		2,043
On-Site Assessment—addnl. day:		
Staff time	8	392
Travel amount: (to cover per diem)		70
Total (per site, per assessor)		462
Final Report & **Federal Register** notice:		
Staff time: (includes work performed by field staff and office staff)	160	7,848

[a] Average costs for staff time equal average hours × equivalent average direct staff cost/hr ($49).

FIGURE 3.—ESTIMATED COSTS FOR EXPANSION OR RENEWAL APPLICATION

Major activity	Average hours	Average costs[a]
Initial Application Review (expansion):		
Staff time: (includes review by office and field staff)	32	$1,570
(Note for renewals: 2 hours, i.e. $98, are allotted for processing the NRTL's request)		
$1,570On-Site Assessment—first day:		

FIGURE 3.—ESTIMATED COSTS FOR EXPANSION OR RENEWAL APPLICATION—Continued

Major activity	Average hours	Average costs [a]
Staff time: (includes 8 hours preparation, 4 hours travel, 8 hours at site)	20	981
Travel		670
Total (per site, per assessor)		1,651
On-Site Assessment—addnl. day:		
Staff time	8	392
Travel amount: (to cover per diem)		70
Total (per site, per assessor)		462
Final Report & **Federal Register** notice		
Staff time: (includes work performed by field staff and office staff)	88	4,316

[a] Average costs for staff time equal average hours × equivalent average direct staff cost/hr ($49).

FIGURE 4.—ESTIMATED COSTS FOR ON-SITE AUDIT

Major activity	Average hours	Average costs [a]
Pre-Site Review:		
Staff time: (field staff only)	8	$392
On-Site Audit—first day:		
Staff time: (includes 4 hours travel)	12	589
Travel		670
Total (per site, per assessor)		1,259
Final Report:		
Staff time: (includes work performed by field staff and office staff)	16	785
Total costs		$2,436 [b]

[a] Average costs for staff time equal average hours × equivalent average direct staff cost/hr ($49).
[b] Based on a one day audit. The costs for any additional days are the same as the additional day costs for an assessment.

In deriving the fee amounts shown in the Fee Schedule shown in section VI of this preamble, OSHA has generally rounded the costs shown in Figures 2, 3, and 4, up or down, to the nearest $50 or $100 amount.

OSHA believes that the Fee Schedule accurately reflects costs to the Agency for the staff time and travel involved in performing and administering the application processing and auditing activities. The amounts shown in the schedule reflect the Agency's current reasonable estimation of the costs involved for the services rendered. As previously mentioned, OSHA is not attempting to recover the entire costs of the NRTL Program through the fees but only the costs of providing the specific services already described.

B. Description of the Fees

The following is a description of the fees and work involved for the activities currently covered under each type of fee service category, e.g., application processing fees, and the basis used to charge each fee. The amount of each fee is shown in the Fee Schedule set forth in section VI of this preamble.

Application Review Fees: This fee reflects the technical work performed by office and field staff in reviewing application documents to determine whether an applicant submitted complete and adequate information. This fee does not cover the work involved in reviewing the test standards requested, which is reflected in the review and evaluation fee. Application fees are based on average costs per type of application. OSHA uses average costs since the amount of time spent on the application review does not vary greatly by type of application. This is based on the premise that the number and type of documents submitted will generally be the same for a given type of application. Experience has shown that most applicants follow the application guide that OSHA provides to them.

Assessment Fees: There are three assessment fees: a fee for the first day for initial applications, a fee for the first day for expansion or renewal applications, and a fee for each additional day for any type of application. The assessment fee for an initial application covers the estimated time for staff preparatory and on-site work for the first day and an amount to cover travel in the 48 contiguous states (including the District of Columbia). As in the case of application review fee, the office preparation time generally involves the same types of tasks. Actual time assessing the facility may vary, but our staff devote at least a full day for traveling and for performing the on-site work. The fee for each additional day reflects time spent at the facility and an amount for one day's room and board. Generally, an applicant for initial recognition must pay for two additional days, submitting these fees with its application. Both the first day and the additional day fees are calculated per person per site. As previously explained, all applicants pay "actual costs" for an assessment (defined in section III of this preamble). Any difference between actual costs and the amounts submitted with an application will be reflected in the final bill that we provide to the applicant.

The assessment fee for expansion and renewal applications, submitted only by NRTLs, covers the estimated time for staff preparatory and the actual on-site work with travel expenses. Upon

completion of these activities, OSHA will bill the NRTL for "actual costs" of the assessment.

For initial applications, a supplemental travel amount is assessed for travel outside the 48 contiguous states (including the District of Columbia). The supplemental amount is 1,000 US dollars and is shown in footnote 4 of Table A. FEE SCHEDULE. This amount reflects an estimate of the additional cost of staff and travel. All travel amounts are only estimates for purposes of submitting the initial payment of the fees. As already noted, an applicant will be billed for actual travel expenses, based on government per diem and travel fares in effect at the time of the travel.

A supplemental travel cost table reflecting a specific dollar amount was not developed for applicants from each potential country that could apply for recognition. Even though such a table was proposed in the NPRM, it was not developed since the supplemental fee is only an estimate for prepayment of assessment fees, and is not the final billed cost to the applicant. The supplemental travel fee will be updated along with the fee schedule to reflect changes in the government travel rates. OSHA may develop supplemental travel fees based upon specific countries or regions as costs dictate. Specific instructions on submitting the fees will be made available to the public along with the current fee schedule.

Review and Evaluation Fee: This fee is charged per test standard (which is part of an applicant's proposed scope of recognition). The fee reflects the fact that staff time spent in the office review of an application varies mainly with the number of test standards requested by the applicant. The fee is based on the estimated time necessary to review each standard to determine whether it is "appropriate," as defined in 29 CFR 1910.7, and whether it covers equipment for which OSHA requires certification by an NRTL. The fee also covers time to determine the current designation and status (*i.e.*, active or withdrawn) of a test standard by reviewing current directories of the applicable test standard organization. In addition, it includes time spent discussing the results of the application review with the applicant. The actual time spent will vary depending on whether an applicant requests test standards that have previously been approved for other NRTLs. The current estimated average review time per test standard is one hour.

Final Report/Register Notice Fees: Each of these fees is charged per application. The fee reflects the staff time to prepare the report of the on-site review (*i.e.*, assessment) of an applicant's or an NRTL's facility. The fee also reflects the time spent making the final evaluation of an application, preparing the required **Federal Register** notices, and responding to comments received due to the preliminary finding notice. These fees are based on average costs per type of application, since the type and content of documents prepared are generally the same for each type of applicant.

Audit (Post-Recognition Review) Fees: The on-site audit fee reflects the time for office preparation, time at the facility and travel, and time to prepare the audit report of the on-site audit. OSHA will bill the NRTL for the on-site audit fee after we have performed the audit, and the bill will reflect the actual staff time and travel costs for the audit. We have based the audit fee on the premise that we spend a full day at a site. In some cases, due to the proximity of two sites, we may actually audit two sites in one day. In such cases, we would apportion our audit fee between the two sites based on the percent of time we spent at each site.

Miscellaneous Fees: OSHA will also charge a fee for late payment of the annual audit fee. The amount for the late fee is based on 1 hour of staff time.

VI. Fee Schedule

The first Fee Schedule, included in this section VI of the preamble, is effective on October 1, 2000. The fees apply to any organization seeking recognition or already recognized as an NRTL on or after October 1, 2000. Fees must be submitted for any application (whether for initial recognition, or expansion or renewal of recognition) postmarked on or after October 1, 2000. The fees apply also to any pending application (*i.e.*, an application that OSHA has not yet completed processing) only for those activities that the Agency begins on or after the effective date of this first Fee Schedule.

OSHA establishes the following fee schedule:

TABLE A. FEE SCHEDULE—NATIONALLY RECOGNIZED TESTING LABORATORY PROGRAM (NRTL PROGRAM)

[Fee schedule (effective October 1, 2000)] [10]

Type of service	Activity or category (fee charged per application unless noted otherwise)	Fee amount
Application Processing	Initial Application Review [1]	$3,900.
	Expansion Application Review [1]	$1,550.
	Renewal Application Review [1]	$100.
	Assessment—Initial Application (per site—SUBMIT WITH APPLICATION) [2, 4]	$5,900.
	Assessment—Initial Application (per person, per site—first day—BILLED AFTER ASSESSMENT) [2, 7, 8].	$1,350 + travel expenses.
	Assessment—Expansion or Renewal Application (per person, per site—first day) [3, 8].	$1,000 + travel expenses.
	Assessment—each addnl. day (per person, per site) [2, 3, 8]	$400 + travel expenses.
	Review & Evaluation (per standard) [5] (for initial or expansion applications)	$50.
	Final Report/Register Notice—Initial Application [5]	$7,850.
	Final Report/Register Notice—Expansion or Renewal Application [5]	$4,300.
Audits	On-site Audit (per person, per site-first day) [6]	$1,750 + travel expenses.
	On-site Audit (per person, per site-each addnl. day) [6]	$400 + travel expenses.
	Office Audit (per site) [6]	$400.
Miscellaneous	Supplemental Travel (per site—for sites located outside the 48 contiguous States, including the District of Columbia) [4].	$1,000.
	Late Payment [9]	$50.

Notes to OSHA Fee Schedule for NRTLs:

1. Who must pay the Application Review fees, and when must they be paid?

If you are applying for initial recognition as an NRTL, you must pay the Initial Application Review fee and include this fee with your initial application. If you are an NRTL and applying for an expansion or renewal of recognition, you must pay the Expansion Application Review fee or Renewal Application Review fee, as appropriate, and include the fee with your expansion or renewal application.

2. What assessment fees do you submit for an initial application, and when must they be paid?

If you are applying for initial recognition as an NRTL, you must pay $5,900 for each site for which you wish to obtain recognition, and you must include this amount with your initial application. We base this amount on two assessors performing a three day assessment at each site. After we have completed the assessment work, we will calculate our assessment fee based on the actual staff time and travel costs incurred in performing the assessment. We will calculate this fee at the rate of $1,350 for the first day and $400 for each additional day, plus actual travel expenses, for each assessor. Actual travel expenses are based on government per diem and travel fares. We will bill or refund the difference between the amount you pre-paid, $5,900/site, and this fee. We will reflect this difference in the final bill that we will send to you at the time we publish the preliminary **Federal Register** notice announcing the application.

3. What assessment fees do you submit for an expansion or renewal application, and when must they be paid?

If you are an NRTL and applying solely for an expansion or renewal of recognition, you do not submit any assessment fee with your application. If we need to perform an assessment for the expansion or renewal request, we will bill you for the fee after we perform the assessment for the actual staff time and travel costs we incurred in performing the assessment. We will assess this fee at the rate of $1,000 for the first day and $400 for each additional day, plus actual travel expenses, for each assessor. Actual travel expenses are based on government per diem and travel fares.

4. When do I pay the Supplemental Travel fee?

You must include this fee when you submit an initial application for recognition and the site you wish to recognized is located outside the 48 contiguous U.S. states (including the District of Columbia). The current supplemental travel fee is $1,000. We will factor in this prepayment when we bill for the actual costs of the assessment, as described in our note #2 above. See note 7 for possible refund of Assessment fees.

5. When do I pay the Review and Evaluation and the appropriate Final Report/Register Notice fees?

We will bill an applicant or an NRTL for the appropriate fees at the time we publish the preliminary **Federal Register** notice to announce the application.

6. When do I pay the Audit fee?

We will bill the NRTL for this fee (on-site or office, as deemed necessary) after completion of the audit. We will calculate our fee based on actual staff time and travel costs incurred in performing the audit. We will calculate this fee at the rate of $1,750 for the first day and $400 for each additional day, plus actual travel expenses for each auditor. Actual travel expenses are based on government per diem and travel fares.

7. When and how can I obtain a refund for the fees that I paid?

If you are applying for initial recognition as an NRTL, we will refund the assessment fees that we have collected if you withdraw your application before we have traveled to your site to perform the on-site assessment. We will also credit your account for any amount we owe you if the assessment fees we have collected are greater than the actual costs of the assessment. Other than these two cases, we will not refund or grant credit for any other fees that are due or that we have collected.

8. What rate does OSHA use to charge for staff time?

OSHA has estimated an equivalent staff cost per hour that it uses for determining the fees that are shown in the Fee Schedule. This hourly rate takes into account the costs for salary, fringe benefits, equipment, supervision and support for each "direct staff" member, that is, the staff that perform the main activities identified in the Fee Schedule. The rate is an average of these amounts for each of these direct staff members. The current estimated equivalent staff costs per hour = $49.

9. What happens if I do not pay the fees that I am billed?

As explained above, if you are an applicant, we will send you a final bill for the fees at the time we publish the preliminary **Federal Register** notice. If you do not pay the bill by the due date, we will assess the Late Payment fee shown in the Fee Schedule. This late payment fee represents one hour of staff time at the equivalent staff cost per hour (see note 8). If we do not receive payment within 60 days of the bill date, we will cancel your application. As also explained above, if you are an NRTL, we will send you a bill for the audit fee after completion of the audit. If you do not pay the fee by the due date, we will assess the Late Payment Fee shown in the Fee Schedule. If we do not receive payment within 60 days of the bill date, we will publish a **Federal Register** notice stating our intent to revoke recognition.

10. How do I know whether this is the most Current Fee Schedule?

You should contact OSHA's NRTL Program (202–693–2110) or visit the program's web site to determine the effective date of the most current Fee Schedule. Access the site by selecting "Subject Index" or "Programs" at *www.osha.gov*. Any application processing fees are those in effect on the date you submit your application. Audit fees are those in effect on the date we begin our audit. Any pending application (*i.e.*, an application that OSHA has not yet completed processing) will be subject only to the fees for the activities that OSHA begins on or after the effective date of the initial fee schedule.

The Fee Schedule shows the current activities for which OSHA plans to charge fees. However, the Agency may find, after it has gained experience charging the fees or based upon suggestions it receives, that it may be better to further break down or even combine some fee categories. OSHA would give the public an opportunity to comment on any such changes. However, these changes would merely reapportion costs or further detail the fees; they would not apply to different services than those described in this final rule. In evaluating any changes to a fee schedule, OSHA will also consider the following in determining the fees it needs to charge for its services: (1) Actual expenditures (direct and indirect) of the most recently completed government fiscal year for rendering the services for which fees will be charged, and (2) estimated costs (direct and indirect) of the upcoming government fiscal year for rendering the services for which fees will be charged.

An organization applying for its initial recognition as an NRTL must include both the application fee and on-site review ("assessment") fee with the application. An existing NRTL that is applying solely for an expansion or renewal of NRTL recognition need

include only the application fee. If we need to perform an on-site review for the expansion or renewal request, we will bill the NRTL for the fee after we perform the assessment. If a renewal applicant does not pay all fees that are due, OSHA will not renew the NRTL's recognition.

If an applicant withdraws its initial application before we have traveled to their site to perform an on-site assessment, we will refund any on-site assessment fee that we have collected. However, if we have begun our travel for the on-site visit, we will not refund any portion of the assessment fee. When we publish a preliminary **Federal Register** notice to announce an application for initial recognition, expansion, or renewal, we will bill the applicant for the balance of the application processing fees and will include actual travel costs and staff time for the assessment. For applications and audits, if an NRTL or applicant does not pay its fees, we will cancel the application or revoke its recognition, as appropriate.

VII. Regulatory Matters

A. Final Economic Analysis and Final Regulatory Flexibility Analysis

Executive Order 12866 and the Regulatory Flexibility Act require Federal agencies to analyze the cost, and other consequences and impacts, of proposed and final rules. In accordance with these requirements, OSHA prepared this final economic analysis to accompany this final rule by OSHA to allow the Department of Labor to charge and retain fees for services provided to Nationally Recognized Testing Laboratories (NRTLs). The analysis included a description of the industry, an estimation of the costs of compliance, and an evaluation of the economic and other impacts of the proposed rule on firms in this sector. The analysis also examined the costs and impacts of the proposal on affected small entities, as defined by the Small Business Administration. Because the fee structure has remained largely unchanged, and because there were no comments on the substance of this analysis, it is the same as that for the proposed rule.

Affected Industry

OSHA standards require that certain equipment and materials used in the workplace meet minimum criteria for performance or safety. In 29 CFR Parts 1910 (governing hazards in general industry) and 1926 (governing hazards in the construction industry), there are more than 160 paragraphs that require certain equipment to be either safety tested, listed, or approved in order for that equipment to be used in the workplace. Table 1 provides a listing of the types of equipment that require testing, listing or approval by NRTLs. The requirements to test, list or approve equipment are necessary to ensure that employees use appropriate safe equipment [3]. Although it is ultimately the employer's responsibility to provide safe equipment, few, if any, have the technical capabilities to test items such as electrical conductors and equipment, the fire resistance properties of materials, the lifting capacity of scaffold hoists, etc., for safety.

Table 1. Categories of Equipment/ Materials Required by Various Provisions in OSHA's Standards to Be Certified by an NRTL

Electrical Conductors or Equipment

- Automatic Sprinkler Systems
- Fixed Extinguishing Systems (Dry chemical, water spray, foam or gaseous agents)
- Fixed Extinguishing Systems Components and Agents
- Portable Fire Extinguishers
- Automatic Fire Detection Devices and Equipment
- Employee Alarm Systems
- Self-Closing Fire Doors
- Fire (B) Doors
- Windows (Frames)
- Heat Actuated (Closing) Devices (Dip Tanks)
- Exit Components
- Spray Booth Overspray Filters
- Flame Arresters, Check Valves, Hoses (Transfer Stations), Portable Tanks, and Safety Cans—Flammable Combustible Liquids)
- Pumps and Self-Closing Faucets (for Dispensing Class I Liquids)
- Flexible Connectors (Piping, Valves, Fittings)
- Service Station Dispensing Units (Automotive, Marine)
- Mechanical or Gravity Ventilation Systems (Automotive Service Station Dispensing Area)
- Automotive Service Station Latch—Open Devices for Dispensing Units
- New Commercial and Industrial LPG Consuming Appliances
- Flexible Connectors (Piping, Valves, Fittings)—LPG
- Powered Industrial Truck LPG Conversion Equipment
- LPG Storage and Handling Systems (DOT Containers, Cylinders)
- Automatic Shut-off Devices (Portable LPG Heaters Including Salamanders)
- LPG container assemblies (non-DOT) for interchangeable installation above or under ground.

sbull: Fixed electrostatic apparatus and devices (coating operations).

- Electrostatic hand spray apparatus and devices.
- Electrostatic fluidized beds and associated equipment.
- Each appurtenance (*e.g.*, pumps, compressors, safety relief devices, liquid-level gauging devices, valves and pressure gauges) in storage and handling of anhydrous ammonia.
- Gasoline, LPG, diesel, or electrically powered industrial trucks used in hazardous atmospheres.
- Acetylene apparatus (torches, regulators or pressure-reducing valves, generators [stationary and portable], manifolds).
- Acetylene generator compressors or booster systems.
- Acetylene piping protective devices.
- Manifolds (fuel gas or oxygen)—separately for each component part or as assembled units.
- Scaffolding and power or manually operated units of single-point adjustable suspension scaffolds.
- Hoisting machine and supports (Stone setters' adjustable multiple-point suspension scaffold).
- Hoisting machines (Two-point suspension; Masons' adjustable multiple-point suspension scaffold).

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, 2000.

A product testing lab tests equipment in accordance with test standards, such as those established by Underwriters Laboratories (UL), Factory Mutual Research Corporation (FMRC), the American National Standards Institute (ANSI), or the American Society for Testing and Materials (ASTM). These materials typically contain requirements concerning the design specifications of the equipment, the specific physical tests to be performed, the criteria for passing these tests, etc. The development of a product test standard for a particular type of product can be a deliberate, lengthy, and expensive process that involves a team of engineers and scientists. In addition, test standard development is a dynamic process in which test standards are constantly revised. For example, UL generally reviews each of its test standards at least once every 3 years. Further, at any point in time, between 10 and 20 percent of the UL test standards have been changed during the preceding 6 months. In light of this effort and expense, very few organizations develop their own product test standards.

Independent testing labs are entities that are separate from any manufacturer,

[3] A substantial amount of the equipment tested is used in situations other than those in which OSHA has sole interest. As one example, electrical conductors and equipment installed in buildings must conform with the state and local building code, the National Electrical Code, and any requirements established by the property insurer. In addition, manufacturers have products examined by testing laboratories in order to meet the demands of their product liability insurers as well as to improve the product. Thus, OSHA is not the only organization concerned about the safety of many of these products.

trade association, or equipment vendor. They typically test a variety of products within one or more general testing disciplines (*e.g.*, electrical, thermal, mechanical) for many clients, such as manufacturers, trade associations, physicians, and state agencies. Most of the smaller labs specialize in testing specific types of products within one or two general testing disciplines. Even the larger testing labs tend to specialize within one or two general testing disciplines and do not test every type of product within a general testing discipline.

According to the 1992 Census, there are approximately 4,704 independent testing labs in the United States, of which 4,540 are profit making and 164 are not-for-profit (see Table 2). Of the 4,704 testing labs, 1,776 perform chemical or biological testing [4] and about 2,928 concentrate on product testing [1]. The second category of testing labs performs such types of tests as electrical resistance or capacity, fire resistance of materials, materials strength, acoustic and vibration testing, etc. Some of these testing labs will be affected by the rule. Total combined receipts for taxable and non-taxable establishments were $5.13 billion in 1992. Not-for-profit establishments represent 3.4 percent of the total number of testing establishments and 7.2 percent of total revenues.

TABLE 2.—CHARACTERISTICS OF TESTING LABORATORIES

	Number of firms	Number of establishments	Number of employees	Total receipts ($million)	Percent receipts [b] from testing
Taxable Establishments	3,513	4,540	70,762	$4,764	94.47
Non-Taxable Establishments	135 [a]	164	6,256	371	90.13

Source: US Department of Commerce. 1992 Census of Service Industries. SC92–S–1. February 1995.
[a] Calculated based on the ratio of non-taxable firms to establishments in SIC 873.
[b] Other sources of receipts for taxable and non-taxable labs include physical or biological research and development, engineering consulting and design, and contributions (tax-exempt labs only).

By 1992, the testing industry increased by 40 percent, from a total of 3,458 testing labs in 1987; there are several reasons for this growth. First, as technology grows more complex, fewer personnel within the equipment manufacturing organization have the technical expertise to certify the quality of the finished product, *i.e.*, fewer people in a given organization have the ability to perform the overall product certification function. Product testing laboratories can help to provide this quality assurance function. Second, the increase in product liability suits has encouraged manufacturers to take additional steps to verify the safety characteristics of their products. Third, more information is now being sought on product toxicity [2].

The testing industry employs 76,718 workers. Small establishments with one to nine employees represent 3,002 establishments (64 percent of all establishments), but collectively employ only 11,095 employees (14 percent of all employees).

The rule contains requirements for the payment of fees for services provided by OSHA to the NRTLs. The two distinct groups of testing labs that will be affected by the rule are: (1) Testing labs that will seek acceptance by OSHA as "nationally recognized testing labs" for particular types of equipment testing, listing, and approval required under Part 1910.7, and (2) existing NRTLs wishing to retain their eligibility for testing and certification of workplace equipment and/or to expand their NRTL program. Testing labs that do not seek OSHA acceptance will not be affected by the rule and will, therefore, incur no costs of compliance.

Currently, there are 17 testing laboratories that have NRTL status and that operate over 40 testing facilities (sites). Table 3 lists the laboratories and the number of sites for these labs. Both domestic and foreign testing laboratories may be affected by this rule. The Canadian Standards Association (CSA) is a product testing lab that is Canadian-owned and operated and is the only foreign testing lab that has, to any significant degree, entered the American product safety testing market. CSA certification is accepted by some state and local building code authorities.

TABLE 3.—NATIONALLY RECOGNIZED TESTING LABORATORIES (NRTLS)

Testing laboratory	Number of sites
1. Applied Reserch Laboratories, Inc. (ARL)	1
2. Canadian Standards Association (CSA)	6
3. Communication Certification Laboratory, Inc. (CCL)	1
4. Curtis-Straus LLC. (CSL)	1
5. Detroit Testing Laboratory, Inc. (DTL)	1
6. Electro-Test, Inc. (ETI)	2
7. Entela, Inc. (ENT)	2
8. Factory Mutual Research Corporation (FM)	2
9. Intertek Testing Services NA, Inc. (ITS)	8
10. MET Laboratories, Inc. (MET)	1
11. National Technical Systems, Inc. (NTS)	1
12. NSF International (NSF)	1
13. SGS U.S. Testing Co., Inc. (SGSUS)	2
14. Southwest Research Institute (SwRI)	1
15. TUV Rheinland of North America, Inc. (TUV)	1
16. Underwriters Laboratories Inc. (UL)	10
17. Wyle Laboratories, Inc. (WL)	1
Total	42

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, 2000.

Costs

This section presents estimates of the costs that will be incurred by firms to come into compliance with the final rule for NRTL fees. These costs do not represent new costs to the economy; instead, they represent a new method of paying for the costs of the NRTL certification program. Today, these costs are paid by taxpayers as part of OSHA's budget. This rule will transfer the payment of these costs to the NRTLs themselves and NRTL applicants.

Testing laboratories participating in the OSHA program will be subject to

[4] Biological and chemical testing labs perform such tests as chemical composition of substances, blood tests, etc., and would not be affected by the final rule.

costs for two types of services: (1) Application processing for the initial recognition of an organization, and for expansion and renewal of an existing NRTL's recognition; and (2) audits (post-recognition reviews), which enable the NRTL to maintain its recognition from OSHA. The fees for these services are based on the actual cost of the service rendered and will thus vary by circumstances. Table A, in Part VI of this notice, shows the elements of the fee structure and a sample fee schedule. The activities covered by each category of fees are explained in detail in that part.

OSHA relied on a review of the NRTL application information from 1988 to 1996 to develop estimates on the annual number of new applicants, and expansion and renewal requests. On average, OSHA receives about 3 initial applications for NRTLs and 3 applications for renewal, and 7 applications for expansions on an annual basis.

OSHA expects to receive NRTL application requests from foreign-based testing laboratories as a result of a Mutual Recognition Agreement (MRA) between the United States and the European Union (EU). Through the MRA, foreign labs located in the EU that apply for and are recognized as NRTLs can perform the same activities as US based NRTLs. The fees being adopted by OSHA will ensure that US taxpayers are not subsidizing foreign businesses. At this time, there is insufficient information to quantify the number of foreign labs that may apply for NRTL status and their future costs of compliance for these labs.

OSHA estimates that labs will require approximately 0.5 hours of an accountant's time to estimate OSHA-related activities and to process payment. Employee wages are based on the Bureau of Labor Statistics estimate of total employee compensation for the professional specialty of $30.17 per hour [3]. These costs and the estimated fee costs are shown combined in Table 5.

Estimates of the total cost of full compliance with the requirements of the NRTL fee rule are presented in Table 4. This table also shows OSHA's estimates of the average fee for each type of service costs, as well as a current estimate of total annual fee collections. Total estimated costs for the testing laboratory industry would amount to about $240,000 annually. OSHA estimates that initial recognitions will cost an average of $20,423 per establishment, expansions of recognition application will cost an average of $7,820 per establishment, renewals of recognition will cost an average of $8,641 per establishment, and annual audits will cost an average of $2,436 per establishment.

TABLE 4.—SUMMARY OF TOTAL ESTIMATED FEE COLLECTION BY CATEGORY

Category	Average cost per application or audit	Est. number per year	Estimated fee collection
Initial Recognition Applications	$20,423	3	$61,269
Expansion of Recognition Applications	7,820	7	54,739
Renewal of Recognition Applications	8,641	3	25,924
Annual Site Visits (Audits)	2,436	40	97,432
Total			239,364

Source: Office of Technical Programs and Coordination Activities, 1999.

Economic Impacts

OSHA assessed the economic impacts of the costs of compliance with the regulation for NRTL fees and has determined that the regulation is economically feasible for firms in this industry. The rule would have the advantage of encouraging economic efficiency by pricing the service of the NRTL program rather than providing the service for free. As mentioned above, the cost of the NRTL program is currently borne by taxpayers through OSHA's budget. This rule would transfer the payment of some of these costs to firms receiving the service from OSHA.

To determine whether the rule's projected costs of compliance would raise issues of economic feasibility for the affected industry or would adversely alter the competitive structure of the industry, OSHA developed quantitative estimates of the economic impact of the rule on establishments in the affected industry, and thus on the 17 firms already recognized as NRTLs. In this analysis, compliance costs are compared with industry revenues and profits.

Estimates of compliance costs are compared with estimates of annual revenues based on data from the U.S. Department of Commerce, Bureau of the Census, "Table 3: United States—The Number and Percent of Firms, Establishments, Employment, Annual Payroll, and Estimated Receipts by Industry and Employment Size for 1993," while estimates of pre-tax profits for most industries are based on data from Robert Morris Associates [3].

OSHA compared the baseline financial data with total annual compliance costs by computing compliance costs as a percentage of revenues. Table 5 shows compliance costs as a percentage of sales and pre-tax profits. This table is titled a screening analysis because it simply measures costs as a percentage of pre-tax profits and sales and does not predict impacts on these sales and pre-tax profits. The screening analysis is used to determine whether the compliance costs associated with the NRTL fees could lead to significant impacts on the affected firms. The actual impact of the rule on the profits and sales of firms will depend on the price elasticity of demand for the services provided by the affected firms.

TABLE 5.—SCREENING ANALYSIS TO IDENTIFY POSSIBLE ECONOMIC IMPACTS OF THE PROPOSED NRTL FEES

	Annual costs of compliance	Revenues ($1000)	Pre-tax profits ($1000)	Annualized costs of compliance as a percent of	
				Sales	Pre-tax profit
Testing Laboratories (SIC 8734)	$239,825	$5,547,796	$316,224	0.004	0.08

Sources:
US Department of Labor, OSHA, Office of Regulatory Analysis, 1998; Office of Technical Programs and Coordination Activities, 1999.
US Small Business Administration, Office of Advocacy. Table 3: US Establishments, Employment, and Payroll by Industry and Firm Size, 1993.
[a] Revenues do not include foreign laboratories sales.

Price elasticity refers to the relationship between the price charged for a product and demand for that product; that is, the more elastic the relationship, the less able a firm is to pass the costs of compliance through to its customers in the form of a price increase and the more it will have to absorb the costs of compliance from its profit. When demand is completely inelastic, firms can absorb all the costs of compliance simply by raising the prices they charge for the service; under this scenario, profits are untouched. Where demand is inelastic, the impact of compliance costs that amount to 1 percent of revenues would be a 1 percent increase in the price of the product, with no decline either in demand or in profits. Such a situation would be most likely when there are few, if any, substitutes for the service offered by the affected establishments and where such services account only for a small portion of the income of its consumers. When demand is completely elastic, firms cannot absorb the costs simply by passing the cost increase through in the form of a price increase; instead, they must absorb the cost increase from their profits. In this case, no increase in price is possible, and before-tax profits would be reduced by an amount equal to the costs of compliance. Under this scenario, if the costs of compliance are a large percentage of the establishment's profits, some establishments might be forced to close. This scenario is highly unlikely to occur, however, because it can only arise when there are other services that are, in the eyes of consumers, perfect substitutes for the services the affected establishments provide. A common intermediate case would be a price elasticity of one. In this situation, if the costs of compliance amount to 1 percent of revenues, then production would decline by 1 percent and prices would rise by 1 percent. In this case, establishments remain in business and maintain the same revenue as before but would produce 1 percent less product or service. Consumers would effectively absorb the costs through a combination of increased prices and reduced consumption; this, as the court described in *ADA* v. *Secretary of Labor*, is the more typical case.

As shown in Table 5, the impacts imposed by the rule are not sizeable on the industry. On average, annualized compliance costs would amount to only 0.004 percent of estimated industry revenues and 0.08 percent of estimated profits. Even if no price increase were possible, a 0.08 percent decline in profits would not threaten the viability of the industry. These impacts are overestimated since the revenues do not include foreign organization revenues. Thus, the rule is determined to be economically feasible for affected laboratories.

As previously noted, OSHA received a comment from a "stakeholder" that stated the proposed fees would have a significant impact on the manufacturers who are customers of NRTL services [Ex. 2–19]. However, they did not present any information or evidence of such impacts. Testing fees are minor costs compared with the product's development and manufacturing costs. The price of testing entails not only the charges for the direct testing service, but also the length of time taken by the testing process. In other words, the time spent by the manufacturer waiting for the product to be tested is time during which the product is not being sold and the manufacturer is not receiving the income necessary to offset the expenses of designing the product, establishing a production line, etc. In addition to the time component, the market for testing services is highly competitive and the demand inelastic because, in general, the price for testing services is a very small component of the overall costs of the product. OSHA estimated in its Final Regulatory Impact Analysis of the Final Rule for 29 CFR Part 1910, Safety Testing of Certification of Certain Workplace Equipment and Materials and Programs, that the actual testing, listing and approval expenditures for tested equipment would be between 0.23 percent and 0.50 percent of the value of these products [2]. Thus, on average, product testing fees are a minor component of the cost of manufacturing equipment and will continue to remain so even after the fees have been implemented.

Potential Economic Impacts of the Regulation on Small Entities

This section measures the potential economic impacts of the regulation on small entities in the affected testing laboratory industry to determine whether the regulation has a significant impact on a substantial number of small firms, as required by the Regulatory Flexibility Act (as amended in 1996). For the purposes of this analysis, OSHA defines small entities using the Small Business Administration's (SBA) Table of Size Standards. The SBA size standards for-profit firms identify firms with less than $5 million in revenues as small in the testing laboratory service sector.

The Regulatory Flexibility Act addresses impacts on "small businesses," and "small not-for-profit organizations," both of which are referred to in this analysis as "small entities." What constitutes a small entity is defined by the SBA in terms of the number of employees or annual receipts (unless otherwise stated) constituting the largest size that a for-profit enterprise (together with its affiliates) may be and still remain eligible as a small business for various SBA and other Federal Government programs. A "small organization" is defined as any "not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Since this definition would include all of the not-for-profit entities, no separate analysis of small organizations is necessary.

The number of establishments operated by small firms and the number

of affected workers employed in small firms are based on Bureau of the Census data[5]. The Bureau of the Census data classify firms according to the number of workers employed by the enterprise. The following employment size classifications were used: 1–4, 5–9, 10–19, 20–99, 100–499, 500+. For each firm size classification, data were provided on the total number of firms, establishments, employees and estimated annual receipts.

Based on the SBA size category and the Census data, OSHA has determined that most of the testing labs with NRTL status are of substantial size in terms of both gross revenues and number of employees. The average revenue of these firms, based on the employment size categories provided by the Census data, is estimated to range from $6.9 million to $18.9 million per firm.

The purpose of this analysis is to assess the impacts on business organizations consisting of one or more domestic establishments under common ownership or control, without regard to the number of states in which a business organization may be operating establishments. However, the data provided by the Census do not include the number of enterprises, but rather the number of firms, which, by the Census' definition, is essentially the number of states in which an enterprise operates establishments in a specific industry. Thus, to the extent that enterprises operate establishments in the same industry in multiple states, estimates of the number of entities may be overestimated.

To estimate the number of small entities, average revenues per firm were calculated in each enterprise size category using Census data, and size categories where average revenues per firm were less than the standards set by SBA (i.e., less than $5 million for all other firms), firms in those size categories were assumed to be small entities. Table 6 shows the estimated number of small entities in the industry. Only 9 small businesses and 1 not-for-profit entity are currently NRTLs and thus certain to be affected. However, the rule could affect any of the 3,170 small independent testing laboratories if such entities wish to become NRTLs. About 87 percent of all independent testing laboratories are estimated to be operated by small entities.

Table 6 presents the results of the regulatory flexibility screening analysis. It shows the estimated annual compliance costs and economic impacts relative to revenues and pre-tax profit for affected small entities. For testing laboratories seeking NRTL status for the first time, the annual compliance cost amounts to only 0.22 percent of revenues and 3.90 percent of profits for small entities. The analysis also shows that for-profit testing labs with current NRTL status have compliance costs that are 0.25 percent of revenues and 4.36 percent of profits. For not-for-profit NRTLs, compliance costs represent 0.10 percent of revenues. Impacts of these magnitudes do not exceed the thresholds OSHA has established for significant impacts.

Thus, because this rule will not have a significant impact on small entities (as defined by the SBA), OSHA certifies that this final rule will not have a significant impact on a substantial number of small entities.

TABLE 6.—SCREENING ANALYSIS TO IDENTIFY POSSIBLE ECONOMIC IMPACTS OF THE PROPOSED NRTL FEES RULE ON SMALL ENTITIES

	Definition of small entity	Employment size	Number of small firms	Annualized cost per firm	Average revenues per small firm	Pre-tax profits per small firm	Annualized cost of compliance as a percent of	
							Sales	Pre-tax profit
Testing Laboratories (SIC 8734).	<$5 million	<100	NA	$5,359	$2,413,243	$137,555	0.22	3.90
Testing Laboratories with NRTL Status								
For-Profit Firms.	<$5 million	<100	9	6,000	2,413,243	137,555	0.25	4.36
Not-For-Profit Firms.	Not-for-Profit ...	500+	1	18,180	18,913,183		0.10	

Source:
US Department of Labor, OSHA, Office of Regulatory Analysis, 2000; Office of Technical Programs and Coordination Activities, 1999.
US Small Business Administration, Office of Advocacy. Table 3: US Establishments, Employments, and Payroll by Industry and Firm Size, 1993.
Note: As defined by the Small Business Administration's Table of Size Standards.

References

1. US Department of Commerce, Bureau of the Census. 1992 Census of Service Industries: Industry Series: SC92–S–1, –4, –5. Washington, D.C., February 1995.

2. US Department of Labor, OSHA. Final Regulatory Impact Analysis of the Final Rule 29 CFR PART 1910 for Safety Testing of Certification of Certain Workplace Equipment and Materials and Programs. March 1988.

3. Robert Morris Associates. Annual Statement Studies. September 1995.

B. Environmental Impact Assessment

In accordance with the requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), Council on Environmental Quality NEPA regulations (40 CFR Part 1500), and the Department of Labor's NEPA regulations (29 CFR Part 11), the Assistant Secretary has determined that this final rule will not have a significant impact on the external environment.

C. Federalism

This final rule has been reviewed in accordance with Executive Order 13132,

[5] The Bureau of the Census defines a "firm" as "a business organization consisting of one or more domestic establishments in the same state and industry that were specified under common ownership or control," and an "enterprise" as "a business organization consisting of one or more domestic establishments that were specified under common ownership or control." In other words, if, for example, an enterprise with 100 employees operates nursing homes in four states, the Bureau of the Census would count this as four firms in the nursing home industry in the 100 to 499 employment size classification.

regarding Federalism. This final rule would only set fees for services provided by the Federal Government to private entities and has no impact on Federalism. The rule does not limit or restrict State policy options.

D. Paperwork Reduction Act of 1995

OSHA does not plan to develop or implement a form for NRTLs and NRTL applicants to use to pay the fees but will provide instructions on how to calculate the fees, as previously stated. The Agency does not believe a form is needed since the fee calculations are relatively simple. In addition, OSHA has no reporting requirements related to the fees. As a result, there are no additional burden hours associated with the fees.

E. Unfunded Mandates

For the purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments), this rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million in any year.

F. State Plan States

The 25 States and territories with their own OSHA approved occupational safety and health plans are not affected by this final rule. These 25 states and territories are: Alaska, Arizona, California, Connecticut (for state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for state and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

VIII. Authority

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210. The final sections are issued under the authority of section 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657); and Secretary of Labor's Order No 6–96 (62 FR 111). The final sections are also issued under authority of OMB Circular A–25 (dated 7/8/93); Public Law 106–113 (113 Stat. 1501A–222); 29 U.S.C. 9a; the Administrative Procedure Act (5 U.S.C. 553); and the Independent Offices Appropriations Act (31 U.S.C. 9701).

List of Subjects in 29 CFR Part 1910

Fees, Laboratories, Occupational safety and health.

Signed at Washington, D.C. this 20th day of July, 2000.

Charles N. Jeffress,

Assistant Secretary.

For the reasons discussed in the preamble, OSHA amends 29 CFR part 1910 as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for subpart A of 29 CFR part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Numbers 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 6–96 (62 FR 111), as applicable.

Sections 1910.7 and 1910.8 also issued under 29 CFR Part 1911. Section 1910.7(f) also issued under 31 U.S.C. 9701, 29 U.S.C. 9a, 5 U.S.C. 553; Pub. L. 106–113 (113 Stat. 1501A–222); and OMB Circular A–25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

2. Add new paragraph (f) to § 1910.7 to read as follows:

§ 1910.7 Definition and requirements for a nationally recognized testing laboratory.

* * * * *

(f) *Fees.* (1) Each applicant for NRTL recognition and each NRTL must pay fees for services provided by OSHA. OSHA will assess fees for the following services:

(i) Processing of applications for initial recognition, expansion of recognition, or renewal of recognition, including on-site reviews; review and evaluation of the applications; and preparation of reports, evaluations and **Federal Register** notices; and

(ii) Audits of sites.

(2) The fee schedule established by OSHA reflects the cost of performing the activities for each service listed in paragraph (f)(1) of this section. OSHA calculates the fees based on either the average or actual time required to perform the work necessary; the staff costs per hour (which include wages, fringe benefits, and expenses other than travel for personnel that perform or administer the activities covered by the fees); and the average or actual costs for travel when on-site reviews are involved. The formula for the fee calculation is as follows:

Activity Fee = [Average (or Actual) Hours to Complete the Activity × Staff Costs per Hour] + Average (or Actual) Travel Costs

(3) (i) OSHA will review costs annually and will propose a revised fee schedule, if warranted. In its review, OSHA will apply the formula established in paragraph (f)(2) of this section to the current estimated costs for the NRTL Program. If a change is warranted, OSHA will follow the implementation table in paragraph (f)(4) of this section.

(ii) OSHA will publish all fee schedules in the **Federal Register**. Once published, a fee schedule remains in effect until it is superseded by a new fee schedule. Any member of the public may request a change to the fees included in the current fee schedule. Such a request must include appropriate documentation in support of the suggested change. OSHA will consider such requests during its annual review of the fee schedule.

(4) OSHA will implement fee assessment, collection, and payment as follows:

Approximate dates	Action required
I. Annual Review of Fee Schedule	
November 1	OSHA will publish any proposed new Fee Schedule in the **Federal Register**, if OSHA determines changes in the schedule are warranted.
November 16	Comments due on the proposed new Fee Schedule.
December 15	OSHA will publish the final Fee Schedule in the **Federal Register**, making it effective.
II. Application Processing Fees	
Time of application	Applicant must pay the applicable fees shown in the Fee Schedule when submitting the application; OSHA will not begin processing until fees are received.

Approximate dates	Action required
Publication of preliminary notice	Applicant must pay remainder of fees; OSHA cancels application if fees are not paid when due.
	III. Audit Fees
After audit performed	OSHA will bill each existing NRTL for the audit fees in effect at the time of audit, but will reflect actual travel costs and staff time in the bill.
30 days after bill date	NRTLs must pay audit fees; OSHA will assess late fee if audit fees are not paid.
45 days after bill date	OSHA will send a letter to the NRTL requesting immediate payment of the audit fees and late fee
60 days after bill date	OSHA will publish a notice in the **Federal Register** announcing its intent to revoke recognition for NRTLs that have not paid these audit fees.

(5) OSHA will provide details about how to pay the fees through appropriate OSHA Program Directives, which will be available on the OSHA web site.

3. Revise paragraphs I.B.5.a, II.B.2.a, and II.C.2.a of Appendix A to § 1910.7, to read as follows:

Appendix A to § 1910.7—OSHA Recognition Process for Nationally Recognized Testing Laboratories

* * * * *

I. Procedures for Initial OSHA Recognition

* * * * *

B. Review and Decision Process; Issuance or Renewal

* * * * *

5. *Public review and comment period.*—a. The **Federal Register** notice of preliminary finding will provide a period of not less than 30 calendar days for written comments on the applicant's fulfillment of the requirements for recognition. The application, supporting documents, staff recommendation, statement of applicant's reasons, and any comments received, will be available for public inspection in the OSHA Docket Office.

* * * * *

II. Supplementary Procedures

* * * * *

B. Expansion of Current Recognition

* * * * *

2. Procedure. a. OSHA will act upon and process the application for expansion in accordance with subsection I.B. of this appendix, except that the period for written comments, specified in paragraph 5.a of subsection I.B. of this appendix, will be not less than 15 calendar days.

* * * * *

C. Renewal of OSHA Recognition

* * * * *

2. Procedure. a. OSHA will process the renewal request in accordance with subsection I.B. of this appendix, except that the period for written comments, specified in paragraph 5.a of subsection I.B. of this appendix, will be not less than 15 calendar days.

* * * * *

[FR Doc. 00–18922 Filed 7–28–00; 8:45 am]
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Federal Register

Monday,
July 31, 2000

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 960

Licensing of Private Land Remote-Sensing Space Systems; Interim Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 960

[Docket No.: 951031259–9279–03]

RIN 0648–AC64

Licensing of Private Land Remote-Sensing Space Systems

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Interim final rule with request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) issues regulations revising the agency's minimum requirements for the licensing, monitoring and compliance of operators of private Earth remote sensing space systems under Title II of the Land Remote Sensing Policy Act of 1992 (the Act). These regulations implement the provisions of the 1992 Act, as amended by the 1998 Commercial Space Act, and the Presidential Policy announced March 10, 1994 (hereinafter PDD 23). They are intended to facilitate the development of the U.S. commercial remote sensing industry and promote the collection and widespread availability of Earth remote sensing data, while preserving essential U.S. national security interests, foreign policy and international obligations.

DATES: This rule is effective August 30, 2000. Comments must be received by September 29, 2000.

ADDRESSES: Comments should be sent to, Charles Wooldridge, NOAA, National Environmental Satellite, Data, and Information Service, 1335 East-West Highway, Room 7311, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Charles Wooldridge at (301) 713–2024, ext. 207 or Karen D. Dacres, NOAA, Office of the General Counsel, Office of the Senior Counselor for Atmospheric and Space Services and Research, at (301)713-1329, ext. 200.

SUPPLEMENTARY INFORMATION: Title II of the Act, 15 U.S.C. 5601 et seq., as amended by Public Law 105–303, authorizes the Secretary of Commerce (the Secretary) to issue licenses for operation of private remote sensing space systems. The authority to issue licenses has been delegated from the Secretary to the Administrator of NOAA (the Administrator) and redelegated to the Assistant Administrator for Satellite and Information Services (the Assistant Administrator).

On November 3, 1997, NOAA issued a Notice of Proposed Rulemaking (NPRM) (See 62 FR 59317). The regulations published herein update the 1987 Regulations and address the public comments received in response to the prior NPRM. These regulations apply to all existing licenses, as well as to all pending and future applications to operate a private remote sensing space system. They are intended to promote the development of the U.S. commercial remote sensing industry and promote the collection and widespread availability of earth remote sensing data while protecting U.S. national security concerns, foreign policy and international obligations.

NOAA encourages and promotes the development of advanced technologies in the remote sensing industry, but recognizes that national security concerns, foreign policy and international obligations of the United States may mandate that limitations be imposed on a system's operation.

1. Major Substantive Issues Raised by Public Comment

NOAA received 24 sets of public comments regarding the November 3, 1997, Notice of Proposed Rulemaking from a wide range of interests in industry, academia, government, and the foreign policy community. Despite the volume of comments, most issues raised can be summarized under the following categories:

(1) control, ownership, and investment;

(2) national security interests, foreign policy and international obligations;

(3) review of foreign agreements;

(4) confidentiality of information; and

(5) the interagency memorandum of understanding.

Control, Ownership, and Investment

Numerous public comments were related to NOAA's proposed approach to address the U.S. Government's requirement to regulate and monitor the control of licensees and the operation of their systems. Most commenters thought that the proposed regulations failed to adequately distinguish between control and ownership; that NOAA has no statutory authority to prohibit foreign investment per se; and that NOAA should harmonize its regulations with existing Treasury and Securities and Exchange Commission regulations to monitor change of control.

In developing these final regulations, NOAA accepted many of the suggestions by the commenters. This final rule focuses on control over the "operation" of the remote sensing system, consistent with NOAA's statutory authority to license "operations" in a manner that protects the national security, foreign policy and international obligations of the United States. In furtherance of these mandates, a fundamental obligation is incorporated into these regulations requiring the licensee to maintain operational control at all times and provide other safeguards to ensure the integrity of system operations. NOAA has added definitions for "operations" and "operational control". The definition of "operations" serves to effectively determine the scope of activities covered by the NOAA license. Foreign entities may be involved in the operations of the system with approval based on a review conducted by NOAA in consultation with other U.S. Government (USG) agencies. Operational control is defined to include the requirement that if entities, domestic or foreign, other than the licensee are involved in the operations of the system, the licensee must ultimately be able to override from U.S. territory all commands issued by any operations centers and stations.

A definition of administrative control has been included and is adapted from the definition of control contained in the Department of Treasury Regulations Pertaining to Mergers, Acquisitions, and Takeovers by Foreign Persons (31 CFR Part 200). Transfer of administrative control is permissible on a case by case basis unless the USG believes that the foreign entity exercising control might take action that threatens to impair U.S. national security, foreign policy and international obligations. Licensees are required to obtain an amendment for any transaction that would constitute a transfer of administrative control. Consequently, NOAA has dropped the strict presumption of transfer of control based solely on level of foreign investment and has also deleted bright line tests linked to specific investment levels or thresholds. However, the level of investment will be one of several factors to be considered in our analysis.

In an effort to eliminate excessive and redundant regulatory burdens on industry, NOAA has eliminated certain portions of the lengthy and rigid notification, amendment, technology transfer, and export control requirements found in the section on investments (960.14) from the previous NPRM. Some of these requirements are now more appropriately addressed in the sections on amendments and foreign agreements. Others have been eliminated due to overlap with similar requirements imposed by other agencies' authorities relating to mergers and acquisitions, securities reporting,

and export control. For instance, for monitoring purposes NOAA will use quarterly reports filed by publicly-traded licensees as required by the SEC. In the event that the licensee is not a publicly-traded company, the licensee must provide the information required by the SEC in the 10K and 10Q forms.

National Security, Foreign Policy and International Obligations

Many commenters contended that the NPRM was too vague and lacked needed transparency with regard to limitations on data collection and/or dissemination (shutter control) during periods when national security, foreign policy or international obligations may be compromised. Further, some insisted that shutter control is fraught with constitutional issues relating to prior restraint of speech and therefore shutter control required tighter standards than those articulated in the NPRM. Finally, some commenters contended that shutter control could only be imposed by the Executive Branch after judicial review.

A fundamental precept of the 1992 Land Remote Sensing Policy Act and PDD 23 is that licensing of private remote sensing space systems must protect the national security, foreign policy and international obligations of the United States. The USG has reviewed these regulations in light of the expressed concerns and finds that the regulations strike an appropriate balance between promoting the U.S. commercial remote sensing industry and protecting U.S. national security, foreign policies and international obligations.

In an effort to provide more clarity, the Departments of State, Defense, Interior, Commerce, and the Intelligence Community, with the participation of the Office of Science and Technology Policy (OSTP) and the National Security Council (NSC), concluded an interagency Memorandum of Understanding (Interagency MOU) concerning the Licensing of Private Remote Sensing Space Systems. On February 2, 2000, a Fact Sheet on the Interagency MOU was released. This Fact Sheet is included as Appendix 2.

The MOU provides among other things that determinations involving impositions of limitations during commercial operations will be made at the highest level. The industry and its customers should be reassured by the MOU's terms which provide that any such limitation should be imposed for the smallest area and for the shortest period necessary to protect the national security, international obligation, or foreign policy concerns at issue. Alternatives to prohibitions on collection and/or distribution will be considered such as delaying the transmission or distribution of data, restricting the field of view of the system, encryption of the data if available, or other means to control the use of the data.

Review of Foreign Agreements

The definition of significant and substantial foreign agreement was too broad according to many comments. Several commenters stated that the NPRM lacked necessary timelines and criteria for the review of foreign agreements.

These regulations contain a revised definition of significant and substantial foreign agreement to reflect the tighter focus on issues of control. This definition has been harmonized with the definitions of administrative control, operations, and operational control. NOAA has also added timelines and criteria to indicate the scope of the review.

Confidentiality of Information

Several commenters argued that the NPRM levied burdensome and intrusive requirements on applicants/licensees to protect their proprietary information. Recommendations were made that NOAA treat anything marked proprietary by an applicant/licensee as such without further justification. Others felt that it is in the public interest for NOAA to make its licensing regime more transparent, specifically that the public should have access to summaries of license actions under review by the agency.

NOAA has removed the requirements of the previous NPRM to provide justification for all information submitted by an applicant/licensee in order for the USG to treat it as proprietary information. In accordance with Section 960.5 and the Federal Trade Secrets Act (18 U.S.C. 1905), NOAA will treat all information marked by the licensee as proprietary and no further action on the part of the licensee will be required. Any requests for information will be treated in accordance with the Freedom of Information Act in order to protect proprietary information. In the compelling public interest to have basic information concerning the regulatory activities of NOAA made more broadly available, these regulations retain the requirement that licensees provide an executive summary of their application that can be made available to the public.

Interagency Memorandum of Understanding

Several commenters stated that the Interagency MOU referenced in the preamble should be part of the public rulemaking process and submitted for public review and comment.

The Interagency MOU is to establish under the 1992 Act and the President's policy on remote sensing, interagency procedures concerning certain aspects of licensing of private remote sensing space systems. The Interagency MOU Fact Sheet released on February 2, 2000, is included as Appendix 2 and is not intended to solicit public comments.

2. Organization

Part 960 is organized into four (4) Subparts, discussed in greater detail below:

(a) Subpart A consists of general information about the regulations such as the purpose, scope and definitions;

(b) Subpart B addresses licensing procedures and conditions;

(c) Subpart C describes the prohibitions on operating a remote sensing space system under these regulations; and

(d) Subpart D sets forth the civil penalties available to the agency for noncompliance with these regulations and/or the terms of any license issued pursuant to these regulations.

3. Subpart A—General

Section 960.1. Purpose. This section sets forth the purpose of the regulations regarding licensing and regulating the operation of private remote sensing space systems under Title II of the Act and reflects the President's Policy announced on March 10, 1994, entitled, "U.S. Policy on Foreign Access to Remote Sensing Space Capabilities" (PDD 23).

Section 960.2. Scope. This section sets forth the legal parameters for application of the Act and these regulations. In addition, this Section makes the regulations applicable with respect to all existing and new licenses. Potential licensees may address questions regarding the applicability of the Act and these regulations to the Assistant Administrator.

Of particular interest is the fact that the Act and these regulations apply to any person subject to the jurisdiction or control of the United States who operates or proposes to operate a private remote sensing space system, either directly or through an affiliate or subsidiary. For the purposes of these regulations, a person is:

(1) An individual who is a United States citizen, or a foreign person

subject to the jurisdiction and control of the United States;

(2) A corporation, partnership, association, or other entity organized or existing under the laws of any state, territory, or possession of the United States;

(3) A subsidiary (foreign or domestic) of a U.S. parent company;

(4) An affiliate (foreign or domestic) of a U.S. company; or

(5) Any other private remote sensing space system operator having substantial connections with the United States or deriving substantial benefits from the United States that support its international remote sensing operations sufficient to assert U.S. jurisdiction as a matter of common law.

Relevant connections may include: using a U.S. launch vehicle and/or platform; operating a spacecraft command and/or data acquisition or ground remote station in the United States; and processing the data at and/or marketing it from facilities within the United States. Please note that these examples are merely illustrative of the factors that may be examined in making a jurisdictional determination and are not intended to be all-encompassing.

Section 960.3. Definitions. This section defines terms used throughout these regulations, including the following terms:

(1) Administrative control; (2) significant and substantial foreign agreement; (3) remote sensing space system and (4) operational control.

4. Subpart B—Licenses

License applicants are encouraged to contact the Assistant Administrator or his or her designee at the earliest possible planning stages. Such consultation may reveal design or data collection requirements that may be accommodated early, thereby avoiding changes to system design or data collection characteristics.

Section 960.4. Application. This section sets forth license application instructions. Further information regarding the content of the license application has been included in Appendix 1. The agency record will be opened upon the filing of the license application.

In general, a license application should contain a complete description of the design of the sensor package. The level of detail should approximate that necessary for a contractor Preliminary Design Review. The potential licensee should note that subsequent changes to the design affecting those operational capabilities after a license is awarded may require a license amendment.

Section 960.5. Confidentiality of information. This section sets forth NOAA's obligation to keep confidential proprietary information submitted by licensees or potential licensees and imposes a requirement to provide a summary of such information that can be made public.

Section 960.6. Review Procedures for license applications. This section describes the application review process.

Section 960.7. Amendments to licenses. This section enumerates some of the events or conditions which may trigger the requirement for a license amendment. An application for a license amendment must contain all relevant new information and must be filed with the Assistant Administrator. Amendment applications must be filed in accordance with the procedures specified in Section 960.4 and Appendix 1 for original license applications.

Please note that for purposes of Section 960.7, the following transactions do not require an amendment to a license. However, they do require agency notification under its monitoring and compliance requirements in the Annual Compliance Audit:

(1) An acquisition of voting securities pursuant to a stock split or pro rata stock dividend which does not involve a change in administrative control;

(2) An acquisition of convertible voting securities that does not involve acquisition of administrative control;

(3) A purchase of voting securities or comparable interests in a licensee solely for the purpose of investment if, as a result of the acquisition:

(A) When the acquisition is by a foreign person, the foreign person would hold ten percent or less of the outstanding voting securities of the licensee, regardless of the dollar value of the voting securities so acquired and held; or

(B) The purchase is made directly by a bank, trust company, insurance company, pension fund, employee benefit plan, mutual fund, finance company or brokerage company in the ordinary course of business for its own account, provided that a significant portion of that business does not involve the acquisition of entities.

(4) An acquisition of securities by a person acting as a securities underwriter, in the ordinary course of business, and in the process of underwriting;

(5) An acquisition pursuant to a condition in a contract of insurance relating to fidelity, surety, or casualty obligations if the contract was made by an insurer in the ordinary course of business;

(6) An acquisition of a security interest, but not control, in the voting securities or assets of a licensee at the time a loan or other financing is extended; or

(7) An acquisition of voting securities or assets of a U.S. person by a foreign person upon default or other condition, involving a loan or other financing, provided that the loan was made by a syndicate of banks in a loan participation where the foreign lender(s) is/are in the syndicate:

(A) Need(s) the majority consent of the U.S. participants in the syndicate to take action, and cannot on its own initiate any action vis-a-vis the debtor; or

(B) Do/does not have the lead role in the syndicate, and are/is subject to a provision in the loan or financing documents limiting its influence, ownership or administrative control of the debtor.

Section 960.8. Notification of Foreign Agreements. This section reflects the balance between promoting the commercial U.S. remote sensing industry and those requirements imposed by national security concerns, foreign policy and international obligations of the U.S. Government. Specifically, this section establishes the procedures, timelines and criteria for review and approval of a licensee's significant and substantial foreign agreements.

Section 960.9. License Term. This section provides that the term of a license for operation of a remote sensing space system is the operational lifetime of the system as long as the system is operated in compliance with the terms and conditions of the license and in accordance with the Act and this Part. In particular, Section 201(b) of the Act authorizes the Secretary to grant licenses to operate a system, only upon a determination that the granting of such license and the operation of the system by the licensee would be consistent with the national security concerns, foreign policy and international obligations of the United States. The requirement set forth in Section 201(b) is an ongoing obligation of the Secretary, and as such, the Secretary must regularly monitor the operation of the system and the activities of the licensee to assure that the national security concerns, foreign policy and international obligations of the U.S. are being protected and that the licensee is in compliance with the requirements of this Act, any regulations issued pursuant to the Act,

and the terms and conditions of its license.

Section 960.10. Hearings and Appeals. This section sets forth the administrative appeals mechanism with regard to licensing and enforcement actions.

Section 960.11. Conditions for Operation. This section sets forth the conditions for operation of all systems licensed under these regulations and includes NOAA's requirement to protect national security concerns, foreign policy and international obligations of the United States. In furtherance of these obligations, the license contains rigorous conditions on the operation of a system, including the requirement that the licensee maintain operational control of its system from a U.S. territory at all times and incorporate safeguards to ensure the integrity of system operations. In particular, it is important to note that the license requirement imposed on the licensee that it maintain "operational control," as the term is defined in Section 960.3, is an implementation of U.S. obligations under the United Nations Outer Space Treaty of 1967. That treaty provides that the U.S. Government, as a State party, will be held strictly liable for any U.S. private or governmental entity's actions in outer-space. Consequently, NOAA requires that licensees under this part maintain ultimate control of their systems, in order to minimize the risk of such liability and assure that the national security concerns, foreign policy and international obligations of the United States are protected.

In determining what constitutes operational control, NOAA has moved away from a percentage formula of foreign ownership and has instead imposed a requirement that operational control of the system be based within the territorial jurisdiction of the United States including U.S. territories and protectorates. The Secretary may also examine the level of administrative control of a licensee exercised by foreign investors, including whether the respective controlling investment was a foreign merger, acquisition or takeover of a U.S. company that was reviewed by the Committee on Foreign Investment in the United States (CFIUS) under section 721 of the Defense Production Act.

In addition, Section 960.11 requires the licensee to maintain and make available to the U.S. Government, upon request, various records of operations for the previous year, and allow the Secretary of Commerce or his or her designee to inspect such records at all reasonable times, as described in the license.

As part of the reporting and recordkeeping requirements imposed by the license, the licensee is expected to provide various data as verification of compliance with the operating restrictions detailed in the operating license. In addition, monitoring and compliance requirements are imposed within the license such as quarterly reporting, on-site inspections and appropriate records review. Finally, the license sets forth reporting requirements for both publicly-traded and privately-held companies. Licensees that are registered pursuant to the Securities Exchange Act of 1934 (Exchange Act) may submit copies of their Securities and Exchange Commission (SEC) forms 10–K and 10–Q to fulfill this requirement. Licensees that are not registered pursuant to the Exchange Act must include, in their quarterly and annual reports, applicable information listed in the SEC's 10K and 10Q forms.

Monitoring and Compliance Program

Consistent with the requirements outlined in Section 960.11 and NOAA's monitoring and compliance program under these regulations, the following information shall be filed by the licensee, in order to evaluate its compliance with the provisions of its private remote sensing space system license. Data provided must be in sufficient detail to enable the Secretary to determine whether the licensee's actions meet the requirements of the Act, these regulations, and the license. Additional information may be required.

Section I—Annual Compliance Audit

An on-site audit shall be conducted at least annually, following the issuance of a license, to confirm the licensee's compliance with the national security, foreign policy, and international obligations of the United States and compliance with all other license conditions. This audit shall review, for example, any changes to corporate structure, board membership (including citizenship), ownership, and financial investments. The audit will also include Securities and Exchange Commission filings. In the event that the licensee is not a publicly-traded company, the licensee must provide applicable information required by the SEC in the 10K and 10Q forms. The Annual Compliance Audit will also review agreements which impact the national security, foreign policy and international obligations of the United States, and the concept of operations. Additional information may be required.

Section II—Twelve Months Prior to Launch

1. Submit plan for agency approval describing how licensee will comply with data collection restrictions, operational limitations, or any data protection plans, as required.

2. Submit operations plan for restricting collection and/or dissemination of imagery of Israeli territory to that which is no more detailed or precise than what will be available from non-U.S. commercial sources during the time of the licensee's planned operations.

Section III—No Later Than Six Months Prior To Launch

1. Submit a data flow diagram which graphically represents the data flow from the sensor to the final product delivery locations.

2. Submit satellite sub-systems drawing showing the various sub-system locations on the satellite.

3. Submit a final imaging system specification document for each sensor. This must be coordinated with the imaging system contractor.

Section IV—When the Spacecraft is Declared Operational

Spacecraft designation number.
Orbital altitude.
Orbital inclination.
Spacecraft state of health.
Imaging system state of health.
Spatial Resolution.
Spectral Resolution.
On-orbit absolute geo-positioning accuracy.
Circular Error and Linear Error.

Section V—Quarterly Reporting

1. Date, description, and corrective action performed for any anomalies or events which have caused the system to operate outside of license parameters and what action, if any, was performed to return the system to licensed baseline status.

2. Estimated GSD of all images collected and disseminated on the State of Israel.

Section VI—Annual Operational Audit and Record Keeping

In addition to the information required for the Annual Compliance Audit listed in Section I, all records and data from the previous twelve months pertaining to the following will be maintained by the licensee:

1. Spacecraft telemetry.

2. Imaging sensor(s) tasking and associated metadata to include date/time of collection, image number, imager used, image corner points in

latitude/longitude, inertial position (x,y,z), scan duration, azimuth. In addition, radar systems will include tasking and assorted meta data for phase history, grazing angle and polarization information.

3. Imagery data purges and purge alerts provided to the National Satellite Land Remote Sensing Data Archive (the National Archive).

Purge Notifications to the National Archive

Licensees are required to notify the National Archive of any data in its possession from its licensed remote-sensing space system that it intends to discard so that the Archive may acquire such data on reasonable cost terms as agreed by the licensee and the Archive. At the beginning of each quarter, licensees must notify the Archive of data sets it intends to purge for review by the National Archive.

Unenhanced Data

When Congress removed the blanket nondiscriminatory data access requirement, it was careful to ensure that access to the unenhanced data would remain consistent with the United Nations' Principles on Remote Sensing, that the government of a sensed state should have timely access to all such data concerning its own territory. Section 202(b)(2) of the 1992 Act requires that all licenses include the condition that the licensee shall make available upon request to the government of any country, including the United States, unenhanced data collected by the system concerning the territory under the jurisdiction of such government on reasonable commercial terms and conditions as soon as such data are available; consistent with the national security concerns, foreign policy and international obligations of the U.S.

The regulations incorporate this requirement and consistent with this requirement, NOAA interprets the terms and conditions that are "reasonable" in those cases where the data will not be made available on a nondiscriminatory basis. Making the data available to different classes of customers, e.g. non-commercial scientific and educational users, other public benefit users, commercial end users, and value-added re-distributors, at different prices is reasonable.

If a licensee intends to provide its unenhanced data on a restricted or exclusive basis, it becomes more difficult to determine what is "reasonable" vis-a-vis a sensed state. The price of these data, if measured in terms of their value to a particular commercial customer, may be prohibitive to a small government that simply wishes to monitor its own natural resources or to use the data, for example, for purposes of land use planning or to mitigate the effects of a recent natural disaster. On the other hand, the same price may be reasonable if the sensed state intends to use the data for competitive purposes. The reasonable commercial terms and conditions will have to be considered on a case-by-case basis. In any event, the sensed state has the opportunity to demonstrate that the terms result in an undue hardship.

NOAA fully expects that a licensee's obligation to make unenhanced data available to the sensed state will in almost all instances be satisfied as a normal commercial transaction where the government of a sensed state is a regular customer. In those instances where the sensed state has not been able to satisfy its desire to acquire unenhanced data directly from the licensee, the sensed state shall make a formal written request to the Assistant Administrator including the specific information (*i.e.*, geographic location, date) on the unenhanced data it desires to acquire.

Licensing of New or Advanced Systems

As a general matter, the NOAA license covers the end-to-end operational capability of a remote sensing space system's ability to quantify information that includes, but is not limited to spatial, spectral, temporal, coherence, and polarization properties of reflected, transmitted, or emitted electromagnetic radiation.

In issuing licenses for new and advanced technologies that have not previously been licensed by NOAA, NOAA may apply new license conditions to address the unique characteristics and attributes of these systems. For example, NOAA may grant a "two-tiered" license, allowing the licensee to operate its system at one level, available to all users, while reserving the full operational capability of that system for USG or USG-approved customers only. In some cases, the system may have a USG partnership client.

Since the 1997 NPRM, NOAA has licensed space-based radar and hyperspectral systems. The conditions outlined in section 960.11 apply to all systems, including licensed space-based radar and hyperspectral systems. However, in issuing licenses for synthetic aperture radar and hyperspectral systems, conditions or specific limitations may be placed, as necessary, on operational parameters, design characteristics, and data throughput due to national security, foreign policy and international obligations.

For synthetic aperture radar systems these include, but are not limited to:

(1) resolution in terms of impulse response (IPR);

(2) grazing angles;

(3) geolocational accuracy;

(4) multiple polarization;

(5) system throughput (*i.e.*, measurement of time during data collection, ground processing, and dissemination);

(6) protection of phase history data;

(7) location and function of non-U.S. operations centers and stations; and

(8) protection of all uplinks and downlinks.

For hyperspectral systems these include, but are not limited to:

(1) Spatial and spectral resolution;

(2) Co-registration of hyperspectral data with data provided by other on-board sensors;

(3) Operational wavelengths;

(4) System throughput (i.e., measurement of time during data collection, ground processing, and dissemination);

(5) Protection of remote sensing space system commanding, sensor tasking, and tasking information;

(6) Protection of raw data;

(7) Location and function of non-U.S. operations centers and stations; and

(8) Protection of all uplinks and downlinks.

Reimbursements

As allowed by Section 507 (d) of the Act, if additional technical modifications are imposed on a system operated under a previously granted license, on the basis of national security, the licensee may be reimbursed for those technical modifications. Generally, conditions in original licenses, previously-granted licenses or amendments that are the result of licensee initiated activities will not be considered for reimbursement. The Assistant Administrator, in consultation with the Secretary of Defense or other appropriate federal agencies, will determine whether actual modification costs or past development costs (including the cost of capital) incurred by the licensee shall be reimbursed by the government agency or agencies which requested such technical modifications. The costs and terms associated with meeting this condition will be negotiated directly between the licensee and the agency or agencies requesting the technical modifications. The loss of anticipated profits and the cost of security measures imposed on all licensees are not reimbursable.

Kyl-Bingaman Amendment

Consistent with the requirement that licensees operate their systems in a manner that protects national security concerns, foreign policy and international obligations, Section 1064, Pub. L. No. 104–201, (the 1997 Defense Authorization Act), referred to as the Kyl-Bingaman Amendment, requires that "[a] department or agency of the United States may issue a license for the collection or dissemination by a non-Federal entity of satellite imagery with respect to Israel only if such imagery is no more detailed or precise than satellite imagery of Israel that is available from commercial sources."

Pursuant to that law, the Department of Commerce will make a finding as to the level of detail or precision of satellite imagery of Israel available from commercial sources. Moreover, as the statutory limitation applies to U.S. licensees, the term "commercial sources" is interpreted for purposes of these regulations as referring to satellite imagery so readily and consistently available from non-U.S. commercial entities that the availability of additional imagery from U.S. commercial sources may be permitted.

To interpret the term "commercial availability" of imagery of Israel from non-U.S. sources, NOAA looks to regulations of the Commerce Department's Bureau of Export Administration, concerning findings on foreign availability for export control purposes, as a model (See 15 CFR 768). These regulations state that "foreign availability exists when the Secretary [of Commerce] determines that an item is comparable in quality to an item subject to U.S. national security export controls, and is available-in-fact to a country, from a non-U.S. source, in sufficient quantities to render the U.S. export control of that item or the denial of a license ineffective." (See 15 CFR 768.2(a)).

Applying the above approach to implement the Kyl-Bingaman Amendment, the Department of Commerce will monitor the level of imagery resolution readily and consistently available in sufficient quantities from non-U.S. sources, to determine what imaging or data dissemination restrictions, if any, shall apply to licensees. A review of non-U.S. commercial availability will be conducted on an annual basis or more frequently if warranted. Input from licensees or from the general public is welcome to assist in this determination. Findings of this review will be published in the **Federal Register** and will constitute the data collection and/or dissemination restrictions with respect to imagery of Israel.

As part of its licensing process, NOAA will require an applicant to submit a plan explaining how its proposed system will be able to restrict the collection and/or dissemination of imagery of Israeli territory at a level of resolution determined by the Commerce Department. NOAA will review this plan to ensure compliance.

Spacecraft Disposal and Orbital Debris Mitigation Plan

As an additional licensing requirement, licensees shall, "upon termination of operations under the license, make disposition of any satellites in space in a manner satisfactory to the President," in accordance with Section 202(b)(4) of the Act. Under Section 960.11 and the terms and conditions of the license, NOAA has interpreted this requirement to mean that a licensee shall assess and minimize the amount of orbital debris released during the post-mission disposal of its satellite. Applicants are required to provide at the time of application a plan for post-mission disposition of remote sensing satellites.

The U.S. Government has developed orbital debris mitigation practices for use in government missions. These practices include control of orbital debris released during normal operations, minimization of debris generated by accidental explosions, selection of a safe flight profile and operational configuration, and post-mission disposal of space structures. NOAA will make available to applicants background information on three possible methods for post-mission disposal which are consistent with these practices: atmospheric re-entry, maneuvering to a storage orbit, or direct retrieval. NOAA will review an applicant's plan for post-mission disposal on a case-by-case basis. NOAA will assess whether the plan, including satellite design and components, provide an acceptable post-mission disposal method to mitigate orbital debris and minimize any potential adverse effects. Applicants are specifically required to submit a casualty risk assessment if planned post-mission disposal involves atmospheric re-entry of the spacecraft.

Section 960.12 Data Policy for Remote Sensing Space Systems. This section describes various circumstances under which the licensee may be required, consistent with the terms of its license, to make available some or all of the unenhanced data from the system on a nondiscriminatory basis in accordance with Section 501 of the Act. For example, if the U.S. Government has (either directly or indirectly) funded some of the development, fabrication, launch, or operations costs of a licensed system, the Secretary of Commerce or his or her designee, in consultation with other appropriate U.S. agencies, must determine whether the interest of the United States, in promoting widespread availability of remote sensing data, requires that some or all of the unenhanced data from the system be made available on a nondiscriminatory basis in accordance with Section 501 of the Act. In addition, the license must specify any data subject to this requirement.

The Act requires that an operator of a system that can be characterized as essentially a Governmental system, such as the Landsat system and those systems that are substantially funded by the U.S. Government, make its unenhanced data available on a nondiscriminatory basis, but allows the operator of a non-governmental system to follow normal commercial practices unless U.S. interests dictate otherwise. (See Sections 201(e), 202(b)(3), and 501).

Section 960.13 of the regulations implements this provision consistent with the Act's overall objective of making data available to the widest possible spectrum of users, particularly for scientific purposes in support of the public benefit upon reasonable terms and conditions. This section addresses three categories of licensees. The first are those whose development, fabrication, launch, or operations costs have been funded, entirely or in substantial part, directly by the Government. As dictated by the Act, these operators must make their unenhanced data available on a nondiscriminatory basis. This requirement ensures that the data are broadly accessible and is consistent with the basic policy, codified in the Paperwork Reduction Act, 44 U.S.C. 3506 *et seq.* and included in Office of Management and Budget Circular A–130, that data paid for by the taxpayer is a public benefit to be made equally available to all members of the public.

The second category of licensees are those that are fully commercial, *i.e.*, not funded by the Government in whole or in part. These operators will be allowed to follow their preferred commercial data practices, subject to providing the unenhanced data to the governments of those states sensed, and consistent with concerns regarding U.S. national security, foreign policy, and international obligations, as discussed below. These licensees will be encouraged to promote access to their data on as widespread a basis as

possible and it is anticipated that, in most cases, there will be a commercial incentive to reach a broad customer base. It is recognized that in some cases, some of the data collected by such systems may not become generally accessible. However, NOAA believes that this loss will be outweighed by the substantially greater volume of data that will be collected by a vigorous commercial industry. It should be noted that limited purchases by the U.S. Government, as a normal customer of the licensee, would not constitute funding or support for purposes of this section.

The third category of licensees consists of those systems in which the U.S. Government provides some support. Here, the Government's interest is more significant, because of taxpayer investment and the possible precedential effect of permitting restricted access to the data through international data exchange involving government subsidized public-private ventures. The data policy applicable to these licensees will be determined on a case-by-case basis, balancing the effect on the licensee of limiting its commercial options against the potential benefits of providing widespread access of the data for non-commercial scientific, educational and other public benefit purposes. In evaluating the potential for data loss, NOAA will consider both the data to be gathered by the particular licensee as well as the possible implications for future intergovernmental data exchanges.

It is anticipated that the U.S. Government interest in making the data available can usually be addressed through terms and conditions in the license that do not require a full nondiscriminatory data access policy. For example, it may be possible to accommodate such interests by ensuring access for non-commercial scientific, educational, and other public good purposes, while protecting a licensee's commercial options.

5. Subpart C—Prohibitions

Section 960.13 Prohibitions. This section sets forth the prohibitions under these regulations. Under this section, it is unlawful for any person who is subject to the jurisdiction or control of the United States, directly or through any subsidiary or affiliate to, among other things: (a) operate a system without possession of a valid license issued under the Act and these regulations; (b) violate any provision of the Act, these regulations or any term, condition, or restriction of the license; (c) violate any order, directive, or other notice issued by the Secretary; and/or (d) interfere with the enforcement of this Part.

6. Subpart D—Enforcement Procedures

Section 960.14 Civil Penalties. Generally, this section states that any person found to be in violation of the Act, this part, or any license issued under this part, will be subject to the civil penalty provisions prescribed in the Act, 15 CFR 904 (Civil Procedures) and other applicable laws.

7. Appendices

Appendix 1—Application Information. This Appendix contains the information requirements of the license application as discussed in Section 960.4. Pursuant to the Paperwork Reduction Act, we are asking for comments to this Appendix.

Appendix 2—Fact Sheet Regarding the Memorandum of Understanding Concerning the Licensing of Private Remote Sensing Satellite Systems. The Departments of State, Defense, Interior, Commerce, and the Intelligence Community, with the participation of OSTP and the NSC, concluded an interagency MOU concerning the Licensing of Private Remote Sensing Space Systems. On February 2, 2000, a Fact Sheet on the Interagency MOU was released. This Fact Sheet is included as Appendix 2. The MOU is not within the scope of this rulemaking. Appendix 2 is not subject to public comment.

Classification

A. Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

These regulations establish a process intended to promote the development of the remote sensing industry and to minimize any adverse impact on any entity, large or small, that may seek a license to operate a private remote sensing space system.

Accordingly, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. The basis for this confirmation was on the fact that, given extraordinary capitalization required to operate a commercial remote sensing space system, costs of development and launch still remain high. As such, small entities have yet to enter this field and appear highly unlikely to do so. No comments were received regarding this certification. As a result, no final regulatory flexibility analysis was prepared.

B. Paperwork Reduction Act of 1995 (35 U.S.C. 3500 et seq.)

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has received emergency approval by OMB under control number 0648–0174. NOAA intends to submit a clearance request to receive a three-year approval and is soliciting comments on that submission at this time using the same estimated reporting burden.

Public reporting burden for these collection-of-information requirements are estimated to average: 40 hours per license application; 10 hours for license amendment submissions; 1 hour to provide an executive summary of a license application or amendment; 2 hours for notification/submission of a foreign agreement; 2 hours for a notification of the demise of a system or a decision to discontinue system operations; 2 hours for notification of any operational deviation; 5 hours for a plan describing how the licensee will comply with data collection restrictions; 3 hours for an operations plan for restricting collection or dissemination of imagery of Israeli territory; 3 hours for a data flow diagram; 1 hour for a satellite sub-systems drawing; 3 hours for a final imaging system specification document; 2 hours for submission of spacecraft operational information submitted when a spacecraft becomes operational; 2 hours for notification of deviation in orbit or spacecraft disposition; 3 hours for quarterly reports; 2 hours for purge notifications to the Archive; 8 hours for annual compliance audits; and 10 hours for annual operational audits. No estimate is being given at this time to provide imagery data to the National Satellite Land Remote Sensing Data Archive. An estimate will be developed at a later date.

Public reporting burden for this collection of information includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden to Charles Wooldridge, NOAA, National Environmental Satellite, Data, and Information Service, 1315 East-West Highway, Room 7311, Silver Spring, MD 20910.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

C. National Environmental Policy Act (42 U.S.C. 4321 et seq.)

Publication of these regulations does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

D. Executive Order 12866, Regulatory Planning and Review

This rule has been determined to be significant for purposes of Executive Order 12866.

List of Subjects in 15 CFR Part 960

Administrative practice and procedure, Confidential business information, Penalties, Reporting and recordkeeping requirements, Satellites, Scientific equipment, Space transportation and exploration.

Dated: July 19, 2000.

Gregory W. Withee,

Assistant Administrator for Satellite and Information Services.

Accordingly, for the reasons set forth above, Part 960 of title 15 of the Code of Federal Regulations is revised to read as follows:

PART 960—LICENSING OF PRIVATE REMOTE SENSING SYSTEMS

Subpart A—General

Subpart B—Licenses

Subpart C—Prohibitions

Subpart D—Enforcement Procedures

Authority: 15 U.S.C. 5624.

Subpart A—General

§ 960.1 Purpose.

(a) The regulations in this part set forth the procedural and informational requirements for obtaining a license to operate a private remote sensing space system under Title II of the Land Remote Sensing Policy Act of 1992 (15 U.S.C. 5601 *et seq.*) (Public Law 102–555, 106 Stat. 4163) and the President's Policy announced on March 10, 1994, entitled, "U.S. Policy on Foreign Access to Remote Sensing Space Capabilities" (PDD 23) (Available from NOAA, National Environmental Satellite Data and Information Service, 1335 East-West Highway, Room 7311, Silver Spring, MD 20910). In addition, this part describes NOAA's regulation of such systems, pursuant to the Act and PDD 23. The regulations in this part are intended to:

(1) Facilitate development of the commercial space remote sensing industry in the United States and promote the broad use of remote sensing data;

(2) Preserve the national security of the United States;

(3) Observe the foreign policies and international obligations of the United States;

(4) Ensure that unenhanced data collected by licensed private remote sensing space systems concerning the territory of any country are made available to the government of that country upon its request, as soon as such data are available and on reasonable commercial terms and conditions as appropriate;

(5) Ensure that remotely sensed data are widely available for research, particularly environmental and global change research; and

(6) Maintain a permanent comprehensive U.S. government archive of global land remote sensing data for long-term monitoring and study of the changing global environment and other archival purposes.

(b) In accordance with the Act and the PDD 23, decisions regarding the issuance of licenses and operational conditions (*See* subpart B of this part) will be made by the Secretary of Commerce, or his/her designee. Determinations of conditions to meet national security, foreign policy and international obligations are made by the Secretaries of Defense and State respectively. Determinations will be made in accordance with the process described in the Interagency MOU Fact Sheet contained in Appendix 2 of this part.

§ 960.2 Scope.

(a) The Act and the regulations in this part apply to any person subject to the jurisdiction or control of the United States who operates or proposes to operate a private remote sensing space system, either directly or through an affiliate or subsidiary, and/or establishes substantial connections with the United States regarding the operation of a private remote sensing system.

(b) In determining whether substantial connections exist with regard to a specific system, the factors NOAA may consider include, but are not limited to: the location of a system control center or operations centers and stations; the administrative control of the system; use of a U.S. launch vehicle; location or administrative control of ground receiving stations; the investment, ownership, or technology included in the system.

(c) The regulations in this part apply to any action taken on or after August 30, 2000 with respect to any license, and to pre-existing licenses.

(d) If any provision of the regulations in this part or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the regulations in this part or the application of such provision to other persons and circumstances shall not be affected.

(e) Issuance of a license under the regulations in this part does not affect the authority of any Department or Agency of the U.S. Government including, but not limited to, the Federal Communications Commission under the Communications Act of 1934 (47 U.S.C. 151 *et seq.*), the Department of Transportation under the Commercial Space Launch Act of 1984 (49 U.S.C. app.2601 *et seq.*), the Department of Commerce under the Export Administration Regulations (15 CFR parts 730–774), or the Department of State under the Arms Export Control Act (22 U.S.C. 2778) and the International Traffic in Arms Regulations (22 CFR parts 120–130).

§ 960.3 Definitions.

For purposes of the regulations in this part, the following terms have the following meanings:

Act means the Land Remote Sensing Policy Act of 1992 (Public Law 102–555, 106 Stat. 4163) as amended by the 1998 Commercial Space Act (Public Law 105–303, 112 Stat. 2846), 15 U.S.C. 5601 *et seq.*

Administrative control means the power or authority, direct or indirect, whether or not exercised through the legal or defacto ownership or possession thereof, ownership of voting securities of a licensee, or by proxy voting, contractual arrangements or other means, to determine, direct or decide matters affecting the operations of the system; specifically, to determine, direct, take, manage, administer, influence, reach, or cause decisions regarding the:

(1) Sale, lease, mortgage pledge, or other transfer of any or all of the system or system control assets of the licensee, whether in the ordinary course of business or not;

(2) Operation of the system(s), including but not limited to orbit maintenance and other housekeeping functions, tasking and tasking prioritization, data acquisition, data storage, data transmission, processing and dissemination;

(3) Dissolution of the licensee;

(4) Closing and/or relocation of the command and control center of the system;

(5) Execution, substantive modification and/or termination or non-fulfillment of any significant or substantial foreign agreement of the licensee regarding direct readout or tasking obligations; or

(6) Amendment of the Articles of Incorporation or constituent agreement of the licensee with respect to the matters described in paragraphs (1) through (4) of this definition.

Administrator means the Administrator of NOAA and Under Secretary of Commerce for Oceans and Atmosphere or his/her designee.

Affiliate means any person: (1) Which owns or controls more than a 5% interest in the applicant or licensee; or (2) Which is under common ownership or control with the applicant or licensee.

Applicant means a person who has submitted an application for a NOAA license to operate a remote sensing space system.

Archive means the National Satellite Land Remote Sensing Data Archive established by the Secretary of the Interior pursuant to the archival responsibilities defined in Section 502 of the Act.

Assistant Administrator means the Assistant Administrator of NOAA for Satellite and Information Services or his/her designee.

Authorized Officer means an individual designated by the Secretary of Commerce or his/her designee to enforce the regulations in this part.

Basic data set means those unenhanced data generated by the Landsat system or by any remote sensing space system licensed under the Act that have been selected by the Secretary of the Interior to be maintained in the Archive, as described in Section 502(c) of the Act.

Beneficial owner means any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, has or shares: the right to exercise administrative control over a licensee; and the power to dispose of, or to direct the disposition of, any security interest in a license. All securities of the same class beneficially owned by a person, regardless of the form which such beneficial ownership takes, shall be aggregated in calculating the number of shares beneficially owned by such person. A person shall be deemed to be the beneficial owner of a security interest if that person has the right to acquire beneficial ownership, as defined in this definition, within sixty (60) days from acquiring that interest, including, but not limited to, any right to acquire beneficial ownership through: the exercise of any option, warrant or right; the conversion of a security; the power to revoke a trust, discretionary account, or similar arrangement; or the automatic termination of a trust, discretionary account or similar arrangement.

License means a grant of authority under the Act by the Administrator to a person to operate a private remote-sensing space system.

Licensee means a person who holds a NOAA license to operate a remote sensing space system.

NOAA means the National Oceanic and Atmospheric Administration.

Operate means to manage, run, authorize, control, or otherwise affect the functioning of a remote sensing space system, directly or through an affiliate or subsidiary. This includes:

(1) Commanding, controlling, tasking, and navigation of the system; or

(2) Data acquisition, storage, processing, and dissemination.

Operational control means the ability to operate the system or override commands issued by any operations center or station.

Orbital debris means all human-generated debris in Earth orbit. This includes, but is not limited to, payloads that can no longer perform their mission, rocket bodies and other hardware (*e.g.*, bolt fragments and covers) left in orbit as a result of normal launch and operational activities, and fragmentation debris produced by failure or collision. Gases and liquids in free state are not considered orbital debris.

Person means any individual (whether or not a citizen of the United States) subject to U.S. jurisdiction; a corporation, partnership, association, or other entity organized or existing under the laws of the United States; a subsidiary (foreign or domestic) of a U.S. parent company; an affiliate (foreign or domestic) of a U.S. company; or any other private remote sensing space system operator having substantial connections with the United States or deriving substantial benefits from the United States that support its international remote sensing operations sufficient to assert U.S. jurisdiction as a matter of common law.

President's Policy means the President's Policy entitled, "U.S. Policy on Foreign Access to Remote Sensing Space Capabilities" announced on March 10, 1994 (PDD 23).

Proprietary information means any business or trade secrets or commercial or financial information explicitly designated as proprietary or confidential by the submitter, the public release of which would cause substantial harm to the competitive position of the submitter. Once the information is publicly-released by the submitter, it is no longer considered proprietary.

Remote sensing space system, Licensed system, or *System* means any device, instrument, or combination thereof, the space-borne platform upon which it is carried, and any related facilities capable of actively or passively sensing the Earth's surface, including bodies of water, from space by making use of the properties of the electromagnetic waves emitted, reflected, or diffracted by the sensed objects. For purposes of the regulations in this part, a licensed system consists of a finite number of satellites and associated facilities, including those for tasking, receiving, and storing data, designated at the time of the license application. Small, hand-held cameras shall not be considered remote sensing space systems.

Secretary means the Secretary of Commerce.

Security means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of

interest or participation in any profit-sharing agreement, collateral trust certificate, pre-organization certificate or subscription, transferable share, investment contract, voting trust certificate, or certificate of deposit for a security; any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof); any put, call, straddle, option, or privilege entered into a national securities exchange relating to foreign currency; any interest or instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

Significant or Substantial foreign agreement (also referred to in this part as foreign agreement or agreement) means an agreement with a foreign nation, entity, consortium, or person that provides for one or more of the following:

(1) Administrative control which may include distributorship arrangements involving the routine receipt of high volumes of the system's unenhanced data;

(2) Participation in the operations of the system;

(3) Direct access to the system's unenhanced data; or

(4) An equity interest in the licensee held by a foreign nation and/or person, if such interest equals or exceeds or will equal or exceed ten (10) percent of total outstanding shares, or entitles the foreign person to a position on the licensee's Board of Directors.

Subsidiary means a person over which the applicant or licensee may exercise administrative control.

Tasking means any action taken to command a remote sensing space system or its sensor to acquire data for transmission or storage on the satellite's recording subsystem. Such action can be in the form of commands sent to the system for execution or for storage in the satellite's memory for execution at a specified time or location within a given orbit.

Under Secretary means the Under Secretary of Commerce for Oceans and Atmosphere and Administrator of NOAA or his/her designee.

Unenhanced data means remote sensing signals or imagery products that are unprocessed or subject only to data preprocessing. Data preprocessing may include rectification of system and sensor distortions in remote sensing data as it is received directly from the satellite; registration of such data with respect to features of the Earth; and calibration of spectral response with respect to such data. It does not include conclusions, manipulations, or calculations derived from such data, or a combination of such data with other data. It also excludes phase history data for synthetic aperture radar systems or other space-based radar systems.

Subpart B—Licenses

§ 960.4 Application.

No person subject to the jurisdiction and/or control of the United States may operate a private remote sensing space system without a license issued pursuant to this part.

(a) Filing instructions, as well as a list of information to be included in the license application, are included in Appendix 1 of this part.

(b) If information in an application becomes inaccurate or incomplete prior to issuance of the license, the applicant must, within 14 days, file the new or corrected information with the Assistant Administrator. If new or revised information is filed during the application process, the Assistant Administrator shall, within fourteen (14) days, determine whether the deadline imposed by Section 201(c) of the Act and § 960.6(a) must be extended to allow adequate review of the revised application and, if so, for how long.

§ 960.5 Confidentiality of information.

(a) Any proprietary information contained in a license application or application for amendment and submitted to NOAA will be treated as business confidential or proprietary information, if that information is explicitly designated and marked as such by the submitter. This does not preclude the United States Government from citing information in the public domain provided by the licensee in another venue (*e.g.*, the licensee's website or a press release).

(b) Concurrently with the filing of a license application or an application for an amendment, the applicant or licensee shall provide the Assistant Administrator with a publicly-releasable summary of the application or amendment. This summary shall be available for public review at a location designated by the Assistant Administrator and shall include:

(1) The name, mailing address and telephone number of the applicant and any affiliates or subsidiaries;

(2) A general description of the system, its orbit(s) and the type of data to be acquired;

(3) The name and address upon whom service of all documents may be made;

(4) A general description of the information being modified by an amendment request.

§ 960.6 Review procedures for license applications.

The following procedures are consistent and have been harmonized with those procedures, including time lines, described in the Fact Sheet, at Appendix 2 of this part, which governs in lieu of this section and §§ 960.7 and 960.8 with respect to the process for reaching determinations of conditions necessary to meet national security, international obligations and foreign policy and which is outside the scope of the regulations in this part.

(a) The Assistant Administrator shall within three (3) working days of receipt of an application, forward a copy of the application to the Department of Defense, the Department of State, the Department of the Interior, and any other Federal agencies determined to have a substantial interest in the license application. The Assistant Administrator shall advise such agencies of the deadline prescribed by paragraph (b) of this section to require additional information from the applicant. The Assistant Administrator shall make a determination to issue the license, in accordance with the Act and § 960.1(b), within 120 days of its receipt. If a determination has not been made within 120 days, the Assistant Administrator shall inform the applicant of any pending issues and any action required to resolve them.

(b) The reviewing agencies have ten (10) working days from receipt of application to notify the Assistant Administrator in writing whether the application omits any of the information listed in Appendix 1 of this part or whether additional information may be necessary to complete the application. If these agencies cannot complete their review in the time allotted, they must notify NOAA in writing of the additional time needed to complete review, not to exceed ten (10) working days. This notification shall state the specific reasons why the additional information is sought. The Assistant Administrator shall then notify the applicant, in writing, what information is required to complete the license application. The 120-day review period prescribed in Section 201(c) of the Act will be stopped until the Assistant Administrator determines that the license application is complete.

(c) Within thirty (30) days of receipt of a complete application, as determined by the Assistant Administrator, each Federal agency consulted in paragraph (a) of this

section shall recommend, in writing, to the Assistant Administrator approval or disapproval of the application in writing. If a reviewing agency is unable to complete its review in thirty days, it is required to notify NOAA in writing of additional time necessary to complete the review.

(d) If the license application is denied, the Assistant Administrator shall provide the applicant with written notification along with a concise statement of the facts in the record determined to support the denial. This denial will be considered final agency action twenty-one (21) days after the date the notice was mailed, unless the applicant files an appeal, as provided in § 960.10.

(e) The Assistant Administrator shall terminate the license application review process if:

(1) The application is withdrawn before the decision approving or denying it is issued; or

(2) The applicant, after receiving a request for additional information pursuant to paragraph (c) of this section, does not provide such information within the time stated in the request.

(f) No license shall be granted by the Secretary unless the Secretary determines, in writing, that the applicant will comply with the requirements of the Act, any regulations issued pursuant to the Act, and that the granting of such license and the operation of the license and system by the licensee would be consistent with the national security interest, foreign policy and international obligations of the United States.

§ 960.7 Amendments to licenses

(a) Prior to taking any of the following actions a licensee must obtain an amendment to the license:

(1) assignment of any interest in or transfer of the license from one entity to another, renaming, or any change in identity of the license holder;

(2) change in or transfer of administrative control;

(3) change of operational control; or

(4) deviation from orbital characteristics, performance specifications, data collection and exploitation capabilities, operational characteristics identified under Appendix 1.C(6) of this part, or any other change in license parameters.

(b) Applications for an amendment to an existing license shall contain all relevant new information and shall be filed at the same address identified in Appendix 1 of this part. Amendment applications shall be filed in accordance with the procedures in § 960.4 and Appendix 1 of this part for original license applications.

(c) The Assistant Administrator, in consultation with other appropriate agencies, shall review amendment applications within 120 days of the receipt of such completed applications. The Assistant Administrator shall advise such agencies of the deadline prescribed by paragraph (d) of this section to require additional information from the applicant. If a determination has not been made within 120 days, the Assistant Administrator shall inform the licensee of any pending issues and any actions necessary to resolve them.

(d) The reviewing agencies have ten (10) working days from receipt of the amendment request to notify the Assistant Administrator in writing whether the request omits any of the information listed in Appendix 1 of this part or whether additional information may be necessary to complete the request. If these agencies cannot complete their review in the time allotted, they must notify NOAA in writing of the additional time needed to complete review, not to exceed ten (10) working days. This notification shall state the specific reasons why the additional information is sought. The Assistant Administrator shall then notify the licensee, in writing, what information is required to complete the amendment request. The 120 day review period prescribed in Section 201(c) of the Act will be stopped until the Assistant Administrator determines that the amendment request is complete.

(e) Within thirty (30) days of receipt of a complete amendment application, as determined by the Assistant Administrator, each Federal agency consulted in paragraph (a) of this section shall recommend, in writing, to the Assistant Administrator approval or disapproval of the amendment application in writing.

(f)(1) When the licensee is seeking an amendment in order to transfer administrative control or change in the participation of the operations of the system to a foreign person or nation, pursuant to paragraph (a)(2) of this section, the licensee must provide the following information:

(i) the identity, residence and citizenship of the foreign person(s) or nation(s) who will acquire control;

(ii) the applicant's proposed plan to ensure that the licensee will protect the operational control of the licensed system from foreign influence and prevent technology transfer that would adversely impact national security, foreign policy or international obligations; and

(iii) such additional information as the Assistant Administrator may prescribe as necessary or appropriate to protect the national security, foreign policy or international obligations of the United States.

(2) Such an amendment request will be reviewed to determine whether the foreign person(s) or nation(s) that will exercise administrative control of the licensee will take no action that impairs the national security interests, foreign policy or international obligations of the United States.

(g) If the license amendment application is denied, the Assistant Administrator shall provide the applicant with written notification along with a concise statement of the facts in the record determined to support the denial. This denial will be considered final agency action twenty-one (21) days after the date the notice was mailed, unless the applicant files an appeal, as provided in § 960.10.

§ 960.8 Notification of foreign agreements

Pursuant to the Act, the 1998 Commercial Space Act and licenses issued under this part, licensees must notify the Assistant Administrator of any significant or substantial agreement that they intend to enter into with any foreign nation, entity, or consortium, not later than sixty (60) days prior to concluding the agreement.

(a) Upon notification by a licensee, pursuant to § 960.11(b)(5), the Assistant Administrator shall initiate review of the proposed agreement in light of the national security interests, foreign policy and international obligations of the U.S. Government.

(b) The Assistant Administrator, in consultation with other appropriate agencies, will review the proposed foreign agreement. As part of this review, the Assistant Administrator will ensure that the proposed foreign agreement contains the appropriate provisions to ensure compliance with all requirements concerning national security interests, foreign policy and international obligations under the Act or the licensee's ability to comply with the Act, these regulations and the terms of the license, are appropriately accommodated in the proposed agreement. These requirements include:

(1) The ability to implement, as appropriate, restrictions on the foreign party's acquisition and dissemination of imagery as imposed by the license or by the Secretary of Commerce;

(2) The obligations of the licensee to provide access to data for the Archive; and

(3) The obligations of the licensee to convey to the foreign party the license's

reporting and recordkeeping requirements and to facilitate any monitoring and compliance activities identified in the license.

(c) Within thirty (30) days of receipt of the proposed agreement, other agencies reviewing the agreement will notify the Assistant Administrator that the proposed agreement sufficiently addresses the requirements in paragraph (b) of this section or identify what changes will need to be made to the agreement to meet these requirements.

(d)(1) Within sixty (60) days of notification by the licensee, if the Assistant Administrator determines that a proposed agreement will impair his or her ability to enforce the Act, or the licensee's ability to comply with the Act, these regulations, or the terms or conditions of the license, the licensee will be notified which terms and conditions of the license are affected and, specifically, how the agreement impairs their enforcement.

(2) The proposed agreement may not be implemented by the licensee until the licensee has been advised by the Assistant Administrator that the provisions of the proposed agreement are acceptable.

(e) Following approval of the agreement, if the factual circumstances surrounding this transaction change, the licensee must notify NOAA within twenty-one (21) days of the change. The licensee's failure to notify NOAA in a timely manner may result in penalties for noncompliance being levied, pursuant to Section 203(a)(3) of the Act.

(f) A licensee seeking to enter into a foreign agreement that would require the modification of the terms of an existing license shall also submit a license amendment request and the proposed foreign agreement shall be considered in the context of the amendment review process.

§ 960.9 License term.

(a) Each license for operation of a system shall be valid for the operational lifetime of the system or until the Secretary determines that the licensee is not in compliance with the requirements of the Act, the regulations issued pursuant to the Act, the terms and conditions of the license, or that the licensee's activities or system operations are not consistent with the national security, foreign policy and international obligations of the United States.

(b) The licensee shall notify the Assistant Administrator within seven (7) days of financial insolvency, dissolution, the demise of its system or of its decision to discontinue system operation. Upon notification, the Assistant Administrator will terminate the license. However, termination will not affect the obligations of the licensee with regard to provisions in its license, requiring the licensee to:

(1) Provide data to the Archive for the basic data set;

(2) Make data available to the Archive that the licensee intends to purge from its holdings;

(3) Make data available to a sensed state; and

(4) Restrict acquisition and dissemination of imagery as imposed by the license or by the Secretary of Commerce; and

(5) Manage the re-entry segment, including but not limited to, the disposal of the system.

§ 960.10 Appeals/hearings.

(a) An applicant or licensee may submit a written appeal to the Administrator involving the granting, denial, or conditioning of a license; a license amendment; a foreign agreement; or enforcement action under this part. The appeal must state the action(s) appealed, must set forth a detailed explanation of the reasons for the appeal, and must be submitted within twenty-one (21) days of the action appealed. The appellant may request a hearing on the appeal before a designated hearing officer.

(b) The hearing shall be held no later than thirty (30) days after receipt of the appeal, unless the hearing officer extends the time. The appellant and other interested persons may appear personally or by counsel and submit information and present arguments, as determined appropriate by the hearing officer. Hearings may be closed to the public as necessary to protect classified or proprietary information. Hearings shall be transcribed, and transcripts made available to the public, as required by statute. Classified and proprietary information shall not be included in the public transcripts. Within thirty (30) days of the conclusion of the hearing, the hearing officer shall recommend a decision to the Administrator.

(c) The hearing requested under paragraph (a) of this section may be granted unless the issues being appealed involve the conduct of military or foreign affairs functions. Determinations concerning limitations on data collection or distribution, license conditions, or enforcement actions necessary to meet national security concerns, foreign policies or international obligations are not subject to a hearing under this Section. A determination to deny an appeal/hearing on this basis shall constitute final agency action.

(d) The Administrator may adopt the hearing officer's recommended decision or may reject or modify it. The Administrator will notify the appellant of the decision, and the reason(s) therefor, in writing, within thirty (30) days of receipt of the hearing officer's recommended decision. The Administrator's action shall constitute final Agency action.

(e) Any time limit prescribed in this section may be extended for a period not to exceed thirty (30) days by the Administrator for good cause, upon his/her own motion or written request from the appellant.

(f) The licensee shall be entitled to an expedited hearing on the review of a foreign agreement if the request is filed with the Administrator within seven (7) days of the date of mailing of the Assistant Administrator's notice under § 960.8(d)(1). The request shall set forth the licensee's response to the determinations contained in the notice, and demonstrate that the time necessary to complete the normal hearing process will jeopardize the agreement.

(1) Expedited hearings shall commence within five (5) days after the filing of the request with the Administrator unless the Administrator or the Hearing Officer postpones the date of the hearing or the parties agree that it shall commence at a later time.

(2) Within five (5) days of the conclusion of the hearing, the Hearing Officer shall prepare findings and conclusions for consideration by the Administrator.

(3) Within fourteen (14) days after receipt of such material, the Administrator shall issue his/her findings and conclusions and a statement of the reasons on which they are based. This decision constitutes final agency action.

§ 960.11 Conditions for operation.

(a) Each license issued for the operation of a system shall require the licensee to comply with the Act and the regulations in this part. The licensee shall ensure that its license information is kept current and accurate. A licensee's failure to notify NOAA in a timely manner of any changes to that information on which the determination to issue the license or a subsequent licensing action was or will be made may result in penalties for noncompliance being levied, pursuant to Section 203(a)(3) of Public Law 102–555.

(b) The following conditions, as a minimum, shall be included in all licenses:

(1) The licensee shall operate its system in a manner that preserves the

national security and observes the foreign policy and international obligations of the United States. Specific limitations on operational performance, including, but not limited to, limitations on data collection and dissemination, as appropriate, will be specified in each license.

(2) The licensee shall maintain operational control from a location within the United States at all times, including the ability to override all commands issued by any operations centers or stations.

(3) The licensee will maintain and make available to the Assistant Administrator records of system tasking, operations and other data as specified in the license for the purposes of monitoring and compliance. Periodic reporting and record keeping requirements will be specified in the license. The licensee shall allow the Administrator access, at all reasonable times, to all facilities which comprise the remote sensing space system for the purpose of conducting license monitoring and compliance inspections.

(4) The licensee may be required by the Secretary to limit data collection and/or distribution by the system as determined to be necessary to meet significant national security or significant foreign policy concerns, or international obligations of the United States, in accordance with the procedures set forth in the Interagency MOU Fact Sheet. During such limitations, the licensee shall, on request, provide unenhanced restricted images on a commercial basis exclusively to the U.S. Government using U.S. government-approved rekeyable encryption on the down-link and shall use a data down-link format that allows the U.S. Government access to these data during such periods.

(5) A licensee shall notify the Administrator of its intent to enter into any significant or substantial foreign agreement, and shall submit this agreement for review in accordance with § 960.8. The proposed agreement may not be implemented by the licensee until the licensee has been advised by the Administrator that the document's provisions are acceptable.

(i) Notification of any agreement that provides for an on-going or a continuous relationship serves as notification of specific transactions carried out within the scope of that agreement for purposes of the regulations in this part and the Act. Such notification does not relieve a licensee of any obligation under any other laws including U.S. export laws or regulations to secure necessary USG authorizations and/or licenses, to provide notification, or to comply with other requirements.

(ii) A licensee seeking to enter a foreign agreement that would require the modification of the terms of an existing license shall submit a license amendment, as provided in § 960.7.

(6) In accordance with Section 201 (e) of the Act and § 960.12, a licensee shall make available on reasonable commercial terms and conditions, in accordance with the Act and § 960.12, any unenhanced data designated by the Assistant Administrator.

(7) A licensee shall provide to the U.S. Government, upon request, a complete list of all archived, unenhanced data which has been generated by its licensed system which is not already maintained in a public catalog. Any information on this list which is deemed proprietary by the licensee should be so noted by the licensee when the list is provided to the U.S. Government.

(8) A licensee shall make available unenhanced data requested by the National Satellite Land Remote Sensing Data Archive ("the Archive") in the Department of the Interior on reasonable cost terms and conditions as agreed by the licensee and the Archive. After the expiration of any exclusive right to sell, or after a reasonable period of time, as agreed with the licensee, the Archive shall make these data available to the public at a price equivalent to the cost of fulfilling user requests.

(9) Before purging any licensed data in its possession, the licensee shall offer such data to the Archive at the cost of reproduction and transmission. The Archive shall make these data available immediately to the public at a price equivalent to the cost of fulfilling user requests.

(10) A licensee shall make available to the government of any country (including the United States) upon request by that government, unenhanced data collected by its system concerning the territory under the jurisdiction of such government. The data shall be provided as soon as the licensee is able to distribute the data commercially or as soon as the licensee has processed them into a format that the licensee uses for its own purposes, whichever occurs sooner, on reasonable terms and conditions. However, no data shall be provided to the sensed state if such release is contrary to U.S. national security concerns, foreign policy or international obligations or is otherwise prohibited by law, *e.g.* where transactions with the sensed state are prohibited by the laws of the United States. The USG may require, as a specific license condition, coordination with NOAA prior to fulfilling specific sensed state requests for unenhanced data.

(11) A licensee shall inform the Assistant Administrator immediately of any operational deviation or proposed deviation of the system which would violate the conditions of the license. If advance notice is not possible because of an emergency posing an imminent and substantial threat to human life, property, the environment or the system itself, the licensee shall notify the Assistant Administrator of the deviation as soon as circumstances permit.

(12) A licensee shall dispose of any satellites operated by the licensee upon termination of operations under the license in a manner satisfactory to the President. The licensee shall obtain approval from the Assistant Administrator of all plans and procedures for the disposition of satellites as part of the application process.

§ 960.12 Data policy for remote sensing space systems.

(a) In accordance with the Act, if the U.S. Government has or will directly fund all or a substantial part of the development, fabrication, launch, or operation costs of a licensed system, the license shall require that all of the unenhanced data from the system be made available on a nondiscriminatory basis except on the basis of national security, foreign policy or international obligations.

(b) If the U.S. Government has not funded and will not fund, either directly or indirectly, any of the development, fabrication, launch, or operations costs of a licensed system, the licensee may provide access to its unenhanced data in accordance with reasonable commercial terms and conditions, subject to the requirement of providing data to the government of any sensed state, pursuant to § 960.11(b)(10), and to implementation of the licensee's plan, as contained in its application, to provide widespread access to its unenhanced data for non-commercial scientific, educational or other public benefit purposes.

(c) If the U.S. Government has (either directly or indirectly) funded some of the development, fabrication, launch, or operations costs of a licensed system, the Assistant Administrator, in consultation with other appropriate U.S. agencies, shall, subject to national security concerns, determine whether the interest of the United States in promoting widespread availability of remote sensing data on reasonable cost terms and conditions requires that some or all of the unenhanced data from the

system be made available on a nondiscriminatory basis in accordance with the Act. The license shall specify any data subject to this requirement. In making this determination, the Assistant Administrator may consider:

(1) The extent and proportion of private and federal funding of the system;

(2) The extent of the governmental versus the commercial market for the unenhanced data;

(3) The effect of a nondiscriminatory data access designation on the applicant's commercial activity;

(4) The extent to which the applicant's proposed commercial data policies would encourage foreign operators to limit access, particularly for research and public benefit purposes; or

(5) The extent to which the U.S. interest in promoting widespread data availability can be satisfied through license conditions that ensure access to the data for scientific, educational, or other public benefit purposes.

Subpart C—Prohibitions

§ 960.13 Prohibitions.

It is unlawful for any person who is subject to the jurisdiction or control of the United States, directly or through any subsidiary or affiliate to:

(a) Operate a private remote sensing space system in such a manner as to jeopardize the national security or foreign policy and international obligations of the United States;

(b) Operate a private remote sensing space system without possession of a valid license issued under the Act and/or the regulations in this part;

(c) Operate a private remote sensing space system in violation of the terms and conditions of the license issued for such system under the Act and the regulations in this part;

(d) Violate any provision of the Act or the regulations in this part or any term, condition, or restriction of the license;

(e) Violate or fail to comply with any order, directive, or notice issued by the Secretary or his/her designee, pursuant to the Act and/or the regulations in this part, with regard to the operation of the licensed private remote sensing space system;

(f) Fail or refuse to provide to the Secretary or his/her designee all reports and/or information required to be submitted to the Secretary under the Act or the regulations in this part;

(g) Fail to update the information required to be submitted to the Secretary in the license application; or

(h) Interfere with the enforcement of this part by:

(1) Refusing to permit access by the Secretary or his/her designee to any facilities which comprise the remote sensing space system for the purposes of conducting any search or inspection in connection with the enforcement of the regulations in this part;

(2) Assaulting, resisting, opposing, impeding, intimidating, or interfering with any authorized officer in the conduct of any search or inspection performed under the regulations in this part;

(3) Submitting false information to the Secretary, his/her designee or any authorized officer; or

(4) Assaulting, resisting, opposing, impeding, intimidating, harassing, bribing, or interfering with any person authorized by the Secretary or his/her designee to implement the provisions of the regulations in this part.

Subpart D—Enforcement Procedures

§ 960.14 In general.

(a) The Secretary shall conduct such enforcement activities as are necessary to carry out his/her obligations under the Act.

(b) Any person who is authorized to enforce the regulations in this part may:

(1) Enter, search and inspect any facility suspected of being used to violate the regulations in this part or any license issued pursuant to the regulations in this part and inspect and seize any equipment or records contained in such facility;

(2) Seize any data obtained in violation of the regulations in this part or any license issued pursuant to the regulations in this part;

(3) Seize any evidence of a violation of the regulations in this part or of any license issued pursuant to the regulations in this part;

(4) Execute any warrant or other process issued by any court of competent jurisdiction; and

(5) Exercise any other lawful authority.

§ 960.15 Penalties and sanctions.

As authorized by Section 203(a) of the Act, if the Secretary or his/her designee determines that the licensee has substantially failed to comply with the Act, the regulations in this part, or any term, condition or restriction of the license, the Secretary or his/her designee may request the appropriate U.S. Attorney to seek an order of injunction or similar judicial determination from the U.S. District Court for the District of Columbia Circuit or a U.S. District Court within which the licensee resides or has its principal place of business, to terminate, modify, or suspend the license, and/or to terminate licensed operations on an immediate basis.

(a) In addition, any person who violates any provision of the Act, any license issued thereunder, or the regulations in this part may be assessed a civil penalty by the Secretary of not more that $10,000 for each violation. Each day of operation in violation constitutes a separate violation. All civil penalties procedures shall be in accordance with 15 CFR part 904.

(b) Violation of the Act, this part, or any license issued under this part, may be subject to criminal penalty provisions prescribed in other applicable laws.

Appendix 1 to Part 960—Filing Instructions and Information To Be Included in the Licensing Application

(a) Where to file. Applications and all related documents shall be filed with the Assistant Administrator, National Environmental Satellite, Data and Information Service (NESDIS), NOAA, Department of Commerce, 1335 East West Highway, Silver Spring, Maryland 20910.

(b) Form. No particular form is required but each application must be in writing, must include all of the information specified in this subpart, and must be signed by an authorized principal executive officer. In addition, applicants must submit a copy on electronic media using commonly-available commercial word processing software.

(c) Number of copies. One (1) copy of each application must be submitted in a readily reproducible form accompanied by a copy on electronic media. One (1) copy of the public summary required by § 960.5(b) must also be submitted in a readily reproducible form accompanied by a copy on electronic media.

(d) The following information shall be filed by the applicant in order to evaluate its suitability to hold a private remote sensing space system license. Data provided regarding the applicant's proposed remote sensing space system must be in sufficient detail to enable the Secretary to determine whether the proposal meets requirements of the Act.

Sec. I—*Corporate Information*

(1) The name, street address and mailing address, telephone number and citizenship(s) of (as applicable):

(i) Applicant as well as any affiliates or subsidiaries;

(ii) Chief executive officer of the applicant and each director;

(iii) Each general corporation partner;

(iv) All executive personnel or senior management of a partnership;

(v) Any directors, partners, executive personnel or senior management who hold positions with or serve as consultants for any foreign nation or person;

(vi) Each domestic beneficial owner of an interest equal to or greater than 10 percent in the applicant;

(vii) Each foreign owner of an interest equal to or greater than 5 percent in the applicant;

(viii) Each foreign lender and amount of debt where foreign indebtedness exceeds 25 percent of an applicants total indebtedness;

(ix) A person upon whom service of all documents may be made.

(2) A description of any significant or substantial agreements between the applicant, its affiliates and subsidiaries, with foreign nation or person, including copies if available;

(3) A copy of the charter or other authorizing instrument certified by the jurisdiction in which the applicant is incorporated or organized and authorized to do business.

Sec. II—*Launch Segment Information*

Provide the characteristics of the launch segment to include:

(1) proposed launch schedule;

(2) proposed launch vehicle source;

(3) proposed launch site;

(4) anticipated operational date;

(5) the range of orbits and altitudes (nominal apogee and perigee);

(6) inclination angle;

(7) orbital period;

Sec. III—*Space Segment*

(1) the number of satellites which will compose this system;

(2) provide technical space system information at the level of detail typical of a request for proposal specification;

(3) Anticipated best theoretical resolution (show calculation);

(4) Swath width of each sensor (typically at nadir);

(5) the various fields of view for each sensor (IFOV, in-track, cross-track);

(6) on-board storage capacity;

(7) navigation capabilities—GPS, star tracker accuracies;

(8) time-delayed integration with focal plane;

(9) oversampling capability;

(10) image motion parameters—linear motion, drift; aggregation modes;

(11) anticipated system lifetime.

Sec. IV—*Ground Segment*

(1) The system data collection and processing capabilities proposed including but not limited to: tasking procedures; scheduling plans; data format (downlinked and distributed data); timeliness of delivery; ground segment information regarding the location of proposed operations centers and stations, and tasking, telemetry and control; data distribution and archiving plans;

(2) The command (uplink and downlink) and mission data (downlink) transmission frequencies and system transmission (uplink and downlink) footprint, the downlink data rate, any plans for communications crosslinks;

(3) The plans for protection of uplink, downlink and any data links;

(4) The methods applicant will use to ensure the integrity of its operations, including plans for: positive control of the remote sensing space system and relevant operations centers and stations; denial of unauthorized access to data transmissions to or from the remote sensing space system; and restriction of collection and/or distribution of unenhanced data from specific areas at the request of the U.S. Government.

Sec. V—Other Information

A. The applicant's plans for providing access to or distributing the unenhanced data generated by the system including:

(1) a description of the plan for the sale and distribution of such data;

(2) the method for making the data available to governments whose territories have been sensed;

(3) a description of the plans for making data requested and purchased by the Department of the Interior available to the Archive for inclusion in the basic data set; and

(4) the licensee's plans to make the data available for non-commercial scientific, educational, or other public benefit purposes, such as the study of the changing global environment.

B. If the applicant is proposing to follow a commercial data distribution and pricing policy as provided for by § 960.12, the application shall include the following additional financial information:

(1) the extent of the private investment in the system;

(2) the extent of any direct funding or other direct assistance which the applicant or its affiliates or subsidiaries have received or anticipate receiving from any agency of the U.S. Government for the development, fabrication, launch, or operation of the system including direct financial support, loan guarantees, or the use of U.S. Government equipment or services;

(3) any existing or anticipated contract(s) between the applicant, affiliate, or subsidiary and U.S. Government agencies for the purchase of data, information, or services from the proposed system;

(4) any other relationship between the applicant, affiliate, or subsidiary and the U.S. Government which has supported the development, fabrication, launch, or operation of the system; and

(5) any plans to provide preferred or exclusive access to the unenhanced data to any particular user or class of users.

C. The applicant will submit a plan for post-mission disposition of any remote-sensing satellites owned or operated by the applicant. If the satellite disposition involves an atmospheric re-entry the applicant must provide an estimate of the total debris casualty area of the system's components and structure likely to survive re-entry.

Appendix 2 to Part 960—Fact Sheet Regarding the Memorandum of Understanding Concerning the Licensing of Private Remote Sensing Satellite Systems Dated February 2, 2000

The White House, Office of Science and Technology Policy and National Security Council

February 2, 2000.

FACT SHEET REGARDING THE MEMORANDUM OF UNDERSTANDING CONCERNING THE LICENSING OF PRIVATE REMOTE SENSING SATELLITE SYSTEMS

A Memorandum of Understanding (MOU) has been concluded between the Departments of Commerce, State, Defense, Interior and the Intelligence Community regarding interagency procedures on commercial remote sensing systems.

Background

The Secretary of Commerce, through the National Oceanic and Atmospheric Administration, is responsible for administering the licensing of private remote sensing satellite systems pursuant to the Land Remote Sensing Policy Act of 1992. The Act also grants to the Secretaries of State and Defense the authority to determine conditions necessary to protect international obligations, foreign policy concerns, and national security concerns. The purpose of the MOU is to establish interagency procedures concerning the process for handling remote sensing licensing actions, and consultation regarding interruption of normal commercial operations consistent with the President's policy on remote sensing.

In consultation with affected agencies, limitations on commercial remote sensing systems will be imposed by the Secretary of Commerce when necessary to meet international obligations and national security and foreign policy concerns and will be in accord with the determinations of the Secretary of Defense and the Secretary of State and with applicable law. Procedures for implementing this policy are set out below.

Procedures

A. Consultation during Review of Licensing Actions.

Pursuant to section 5621(c) of the Land Remote Sensing Policy Act of 1992, the Secretary of Commerce shall review any application and make a determination thereon within 120 days of receipt of such application. If final action has not occurred within such time, then the Secretary shall inform the applicant of any pending issues and of actions required to resolve them. Copies of requests for licensing actions received by the Department of Commerce (DOC) will be provided by DOC to the Department of State (DOS), the Department of Defense (DOD), the Department of the Interior (DOI), and the Intelligence Community (IC) within 3 working days.

DOC will defer its decision on such licensing actions until the other Parties concerned have had a reasonable time to review them, as provided in this section.

(1) Within 10 working days of receipt, DOS, DOD, DOI, or IC shall notify the Department of Commerce, in writing, of any additional information it believes is necessary to properly evaluate the licensing action, or notify DOC in writing of the additional time, not to exceed 10 working days, necessary to complete the review. This notification shall state the specific reasons why the additional information is sought.

(2) After receiving a complete license package or the information requested in paragraph (1), DOS, DOD, DOI, and IC will complete their review of the license package within 30 days or notify DOC in writing of additional time necessary to complete the review. If DOS, DOD, or IC conclude that imposition of conditions on the actions being reviewed may be necessary to protect international obligations, foreign policy concerns, or national security concerns, the agency identifying the concern will promptly notify DOC in writing with a copy to other

interested agencies. Such notification shall: (i) describe the national security interests, or the international obligations or specific foreign policies at risk if the applicant's system is approved as proposed; (ii) set forth in detail the basis for the conclusion that operation of the applicant's system as proposed will not preserve the national security interests or the international obligations or specific foreign policies identified; and (iii) specify the additional conditions necessary to preserve the relevant United States interests or set forth in detail why denial is required to preserve such interests.

(3) Within 10 days of sending this notification, representatives of DOS, DOD, DOC, DOI, and IC will meet to discuss and resolve any issues with regard to these proposed conditions.

(4) If, after such discussions, DOS or DOD conclude that such conditions are necessary but DOC does not concur, the Secretary of State or the Secretary of Defense may make such a determination of necessary conditions in writing. This function may not be delegated below the acting Secretary or the Deputy Secretary. Such determinations will be promptly forwarded to DOC and a copy will be provided to the Assistant to the President for National Security Affairs and the Assistant to the President for Science and Technology.

(5) Upon notification of such a determination, DOC will suspend any further action on the license that would be inconsistent with the DOS or DOD determination. If the Secretary of Commerce believes the limits defined by another Secretary are inappropriate, the Secretary of Commerce or Deputy Secretary shall then consult with his or her counterpart in the relevant department within 10 days regarding any unresolved issues. If the relevant Secretaries are unable to resolve any issues, the Secretary of Commerce will so notify the Assistant to the President for National Security Affairs, who, in coordination with the Assistant to the President for Science and Technology, will seek to achieve a consensus within the interagency, or failing that, by referral to the President. All efforts will be taken to resolve the dispute within 3 weeks of its submission to the Assistant to the President for National Security Affairs and the Assistant to the President for Science and Technology.

B. Consultation Regarding Interruption of Normal Commercial Operations

(1) This section establishes the process for requiring the licensee to limit data collection and/or distribution by the system during periods when national security or international obligations and/or foreign policies may be compromised, as determined by the Secretary of Defense or the Secretary of State. DOC will provide to the other Parties copies of licensee correspondence and documents that describe how the licensee will comply with such interruptions of its commercial operations.

(2) Conditions should be imposed for the smallest area and for the shortest period necessary to protect the national security, international obligations, or foreign policy concerns at issue. Alternatives to prohibitions on collection and/or distribution shall be considered such as delaying the transmission or distribution of data, restricting the field of view of the system, encryption of the data if available, or other means to control the use of the data.

(3) Except where urgency precludes it, DOS, DOD, DOC and IC will consult to attempt to come to an agreement concerning appropriate conditions, if any, to be imposed on the licensee in accordance with determinations made by DOS or DOD. Consultations shall be constructed so that, in the event an agreement cannot be reached at the staff level, sufficient time will remain to allow the Secretary of Commerce to consult personally with the Secretary of State or the Secretary of Defense, as appropriate, prior to the issuance of a determination by the Secretary of State or the Secretary of Defense in accordance with (4) below. That function shall not be delegated below the acting Secretary.

(4) After such consultations, or when the Secretary of State or the Secretary of Defense specifically determines that urgency precludes consultation with the Secretary of Commerce, the Secretary of State or the Secretary of Defense, shall determine the conditions necessary to meet international obligations, significant foreign policy concerns, or significant national security concerns, especially where those interests identified in the National Security Strategy would be put at risk. This function shall not be delegated below the acting Secretary. The Secretary of State or the Secretary of Defense will provide to the Secretary of Commerce his or her determination regarding the conditions required to be imposed on the licensee. The determination will describe the international obligations, specific foreign policy, or national security interest at risk. Upon receipt of the determination, DOC shall immediately notify the licensee of the imposition of limiting conditions on commercial operations. Copies of the determination and any implementing DOC action will be provided promptly to the Assistant to the President for National Security Affairs and the Assistant to the President for Science and Technology.

(5) If the Secretary of Commerce believes the conditions determined by another Secretary are inappropriate, he or she will, simultaneous with notification of, and imposition of such conditions on, the licensee, so notify the Secretary of Defense or the Secretary of State, as appropriate, the Assistant to the President for National Security Affairs, and the Assistant to the President for Science and Technology. The Assistant to the President for National Security Affairs, in coordination with the Assistant to the President for Science and Technology, will initiate as soon as possible a Principals-level consultative process to achieve a consensus within the interagency, or, failing that, refer the matter to the President for decision. All efforts will be taken to resolve the disagreement within 7 working days of its submission to the Assistant to the President for National Security Affairs and the Assistant to the President for Science and Technology.

C. Coordination Before Release of Information Provided or Generated by Other Agencies

Before releasing any information provided or generated by another agency to a licensee or potential licensee, to the public, or to an administrative law judge, each agency agrees to consult with the agency that provided or generated the information. The purpose of such consultations will be to review the propriety of any proposed release of information that may be privileged because it is classified, pre-decisional, deliberative, contain proprietary information, or is protected for other reasons. No information shall be released without the approval of the agency that provided or generated it unless required by law.

D. No Legal Rights or Remedies, or Legally Enforceable Causes of Action, are Created or Intended to be Created by the MOU.

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Federal Register

Monday,
July 31, 2000

Part V

Department of the Interior

Fish and Wildlife Servce

50 CFR Part 20

Migratory Bird Hunting; Proposed Framework for Early-Season Migratory Bird Hunting Regulations and Regulatory Alternatives for the 2000–01 Duck Hunting Season; Notice of Meeting; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN: 1018–AG08

Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations and Regulatory Alternatives for the 2000–01 Duck Hunting Season; Notice of Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: We, the U.S. Fish and Wildlife Service, are proposing to establish the 2000–01 early-season hunting regulations for certain migratory game birds. We annually prescribe frameworks, or outer limits, for dates and times when hunting may occur and the maximum number of birds that may be taken and possessed in early seasons. Early seasons generally open prior to October 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands. These frameworks are necessary to allow State selections of final seasons and limits and to allow recreational harvest at levels compatible with population status and habitat conditions. This supplement to the proposed rule of April 25, 2000, also provides the regulatory alternatives for the 2000–01 duck hunting season.

DATES: You must submit comments on the proposed migratory bird hunting-season frameworks for Alaska, Hawaii, Puerto Rico, the Virgin Islands, and other early seasons by August 10, 2000, and for the forthcoming proposed late-season frameworks by September 8, 2000.

ADDRESSES: Send your comments on these proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634-Arlington Square, 1849 C Street, NW, Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jonathan Andrew, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2000

On April 25, 2000, we published in the **Federal Register** (65 FR 24260) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 20, 2000, we published in the **Federal Register** (65 FR 38400) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the proposed regulatory alternatives for the 2000–01 duck hunting season. The June 20 supplement also provided detailed information on the 2000–01 regulatory schedule and announced the Service Migratory Bird Regulations Committee and Flyway Council meetings.

This document, the third in a series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations, deals specifically with proposed frameworks for early-season regulations and the final regulatory alternatives for the 2000–01 duck hunting season. It will lead to final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 2000–01 season. We have considered all pertinent comments received through July 7, 2000, on the April 25 and June 20, 2000, rulemaking documents in developing this document. In addition, new proposals for certain early-season regulations are provided for public comment. Comment periods are specified above under **DATES**. We will publish final regulatory frameworks for early seasons in the **Federal Register** on or about August 20, 2000.

Service Migratory Bird Regulations Committee Meetings

Participants at the June 21–22, 2000, meetings reviewed information on the current status of migratory shore and upland game birds and developed 2000–01 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the U.S. Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2000–01 regular waterfowl seasons. Participants at the previously announced August 2–3, 2000, meetings will review information on the current status of waterfowl and develop 2000–01 migratory game bird regulations recommendations for regular waterfowl seasons and other species and seasons not previously discussed at the early season meetings. In accordance with Department of the Interior policy, these meetings are open to public observation and you may submit written comments to the Director of the Service on the matters discussed.

Population Status and Harvest

The following paragraphs provide preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds.

May Breeding Waterfowl and Habitat Survey

In the Western or Traditional survey area, conditions were much drier this spring than the previous 6 years. These dry conditions are reflected in the Prairie May ponds estimate of 3.9 ±0.1 million, down 41 percent from 1999 and 20 percent below the 1974–99 average. Conditions ranged from poor in much of Alberta and parts of Montana and Saskatchewan to fair to good in most other areas. Only portions of northern Manitoba and the Dakotas were in excellent condition. In June, much of the prairie received heavy rains. While this may have increased breeding habitat quantity and quality, heavy rains in the Dakotas may have caused flooding and loss of nests. Southern Saskatchewan and Manitoba were in generally fair condition, and the Dakotas were in generally good condition, while most of Northern Saskatchewan and Manitoba were in good to excellent condition. In Alaska, a significant cooling down changed an early warm spring into a cool, late spring, resulting in a 2–3 week later-than-normal ice breakup. In Alaska, a later spring generally results in lower production. Overall, May habitat conditions in the traditional survey area were poor to good, improving to the north and east. July surveys will help determine if recent rain helped duck production.

Winter and spring were also warm and dry in the Eastern survey area. A seemingly early spring cooled down markedly, especially in Labrador, Newfoundland, and Eastern Quebec. In these easternmost regions, spring was 2–3 weeks behind normal. Water levels in southwestern Ontario, Maine, Nova Scotia, and New Brunswick are higher this year than last year. However, southern Ontario and southern Quebec are drier than normal. In southwest Ontario, Maine, and the Maritimes.

heavy thunderstorms in May caused severe flooding and may have caused much renesting. Overall, habitat conditions in the east are generally good, with the exception of some areas of southern Ontario and southern/central Quebec, where low water levels resulted in fair to poor habitat conditions. Overall, the survey area was in generally good condition, and production is expected to be good this year.

The 2000 total duck population estimate for the traditional survey area was 41.8 ±0.7 million birds. This was similar to last year's record estimate of 43.4 ±0.7 million birds, and still 27 percent above the 1955–99 average. Mallard abundance was 9.5 ±0.3 million, which is 12 percent below last year's record estimate but still 27 percent above the 1955–99 average. Blue-winged teal abundance was estimated at a record high of 7.4 ±0.4 million. This was similar to last year's estimate of 7.1 million, and 69 percent above the 1955–99 average. Gadwall (3.2 ±0.2, +100 percent), green-winged teal (3.2 ±0.2 million, +80 percent), northern shovelers (3.5 ±0.2 million, +73 percent), and redheads (0.9 ±0.1 million, +50 percent) were all above their long-term averages, while northern pintails (2.9 ±0.2 million, −33 percent) and scaup (4.0 ±0.2 million, −25 percent) were again below their long-term averages. Green-winged teal was the only species that increased over 1999, an increase of 21 percent.

This year, new areas have again been included in the Eastern survey area. In addition, we have redefined the total duck composition of this area to include scoters and mergansers, because they are important breeding species in this survey area. Therefore, the eastern 1999 total duck estimate used this year is not the same as that published last year. The 2000 total duck population estimate for the eastern survey area was 2.6 ±0.3 million birds, similar to last year's total duck estimate of 2.9 ±0.2 million birds. Abundances of individual species were similar to last year, with the exception of scaup (116.1 ±32 thousand, +296 percent), scoters (182.1 ±59 thousand, +288 percent), and green-winged teal (201.6 ±28.7 thousand, −52 percent).

Status of Teal

Blue-winged teal abundance this spring was a record high of 7.4 ±0.4 million, which is similar to last year's estimate of 7.1 million and 69 percent above the 1955–99 average. This population size is well above the 4.6 million trigger level needed for the liberal 16-day teal season in the Central and Mississippi Flyways and a 9-day teal season in the Atlantic Flyway. Green-winged teal abundance was estimated at 3.2 ±0.2 million, which is 21 percent above last year's estimate and 80 percent above the long-term average.

The 1999–2000 season was the second consecutive year of an extended (16 days vs. 9 days) September teal season in the Central and Mississippi Flyways. Preliminary harvest estimates from last year's September teal season in the Mississippi Flyway indicate that harvest increased from 266,000 to 413,000 teal, an increase of 55 percent over the 1998 September teal season. Preliminary estimates in the Central Flyway indicate that harvest decreased from 160,000 to 126,000 birds, a decrease of 23 percent over the 1998 September teal season. The total estimated harvest in the Mississippi and Central Flyways was 539,000 cinnamon, blue- and green-winged teal, which is 26 percent more than the 1998 September teal season harvests.

Last year, the Atlantic Flyway also participated in the second year of its 3-year experimental September teal season. Six States harvested an estimated 32,000 blue- and green-winged teal, an increase of 33 percent over the 1998 September teal season harvest of 24,000. Additionally, the Atlantic Flyway completed the second year of its required spy blind assessment of attempt rates at nontarget species. Results indicate that the average nontarget attempt rates for 1999 were virtually identical to those in 1998 (19 percent in 1998 vs. 20 percent in 1999). Since only 2 years of the required 3-year study have been completed, results are incomplete at this time. However, we note that a few individual States have exceeded the maximum acceptable nontarget attempt rate of 25 percent. After the third year, we will conduct a full assessment of nontarget attempt rates and review the further continuation of the season.

Sandhill Cranes

The Mid-Continent Population of Sandhill Cranes appears to have stabilized following dramatic increases in the early 1980's. The Central Platte River Valley 2000 preliminary spring index, uncorrected for visibility, was 488,000. The photo-corrected 3-year average for the 1997–99 period was 450,126, which was within the established population-objective range of 343,000–465,000 cranes. All Central Flyway States, except Nebraska, elected to allow crane hunting in portions of their respective States in 1999–2000. About 6,700 hunters participated in these seasons, which was 18 percent lower than the previous year's seasons. About 19,800 cranes were harvested in 1999–2000 in the Central Flyway, a 7 percent decrease from the previous year's high estimate. Harvests from the Pacific Flyway, Canada, and Mexico are estimated to be about 13,800 for the 1999–2000 sport-hunting seasons. The total North American sport harvest, including crippling losses, was estimated to be about 37,207 for the Mid-Continent Population.

The fall 1999 premigration survey estimate for the Rocky Mountain Population was 19,501, which is similar to the 1998 estimate of 18,202. Limited special seasons were held during 1999 in portions of Arizona, Idaho, Montana, New Mexico, Utah, and Wyoming, resulting in an estimated harvest of 658 cranes.

Woodcock

Singing-ground and Wing-collection surveys were conducted to assess the population status of the American woodcock (*Scolopax minor*). Singing-ground Survey data from 2000 indicate that the number of displaying woodcock in the Eastern Region decreased 11.0 percent ($P<0.1$) from 1999 levels. In the Central Region, there was a 10.4 percent increase in the number of woodcock heard displaying ($P<0.1$) compared to 1999 levels. Trends from the Singing-ground Survey during 1990–00 were negative (−3.5 and −3.1 percent per year for the Eastern and Central regions, respectively; $P<0.01$). There were long-term (1968–00) declines ($P<0.01$) of 2.3 percent per year in the Eastern Region and 1.6 percent per year in the Central Region.

The 1999 recruitment index for the Eastern Region (1.1 immatures per adult female) was 35 percent below the long-term regional average; the recruitment index for the Central Region (1.2 immatures per adult female) was 29 percent below the long-term regional average. The index of daily hunting success in the Eastern Region increased from 1.9 woodcock per successful hunt in 1998 to 2.0 woodcock per successful hunt in 1999, and seasonal hunting success increased 3 percent, from 7.2 to 7.4 woodcock per successful hunter in 1998 and 1999, respectively. In the Central Region, the daily success index in 1999 was unchanged from the 1998 index (2.1 woodcock per successful hunt) but the seasonal success index decreased 11 percent from 11.3 to 10.0 woodcock per successful hunter.

Band-Tailed Pigeons and Doves

The status of the Coastal population of band-tailed pigeons appears to be improving. While a significant decline

occurred between 1968–99 as indicated by the Breeding Bird Survey (BBS), no trend was indicated over the most recent 10 years. Additionally, mineral site counts at 10 selected sites in Oregon indicate a steady increase over the past 10 years. The count in 1999 was 65 percent above the previous 31-year average. Call-count surveys conducted in Washington showed a nonsignificant decline between the 1975–99 and 1995–99 periods. Washington has opted not to select a hunting season for bandtails since 1991. The harvest of Coastal pigeons is estimated to be about 23,000 birds out of a population of about 3 million. The Interior band-tailed pigeon population is stable with no trend indicated by the BBS over the short- or long-term periods. Harvest estimates range from 1,300 to 1,900 birds. Analyses of Mourning Dove Call-count Survey data indicated significant declines in doves heard over the most recent 10 years and the entire 35 years of the survey in all three management units. A project has been funded recently to develop mourning dove population models for each unit to provide guidance in what needs to be done to improve our decision-making process with respect to harvest management. White-winged doves in Arizona are maintaining a fairly stable population since the 1970's. Between 1999 and 2000, the average number of doves heard per route doubled from 25 to 50. A low harvest (142,000 in 1999) is being maintained compared with birds taken several decades ago. In Texas, the phenomenon of the white-winged dove expansion continues. The population in the Lower Rio Grande Valley increased 19 percent from 1999 to an estimated 507,000 birds; in Upper South Texas, the count increased 7 percent to 999,000; and, in West Texas, the count increased 94 percent to 33,000. The whitewing population may reach epidemic proportions in 5–10 years and could begin causing substantial damage to agricultural crops being grown near cities that have a large population of whitewings. Hunting does not appear to be having any effect upon these norther urban nesters.

Review of Public Comments

The preliminary proposed rulemaking, which appeared in the April 25 **Federal Register**, opened the public comment period for migratory game bird hunting regulations. The supplemental proposed rule, which appeared in the June 20 **Federal Register**, defined the public comment period for the proposed regulatory alternatives for the 2000–01 duck hunting season. The public comment period for the proposed regulatory alternatives ended July 7, 2000. Early-season comments and comments pertaining to the proposed alternatives are summarized below and numbered in the order used in the April 25 **Federal Register** document. Only the numbered items pertaining to early-seasons issues and the proposed regulatory alternatives for which written comments were received are included. Consequently, the issues do not follow in direct numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the April 25, 2000, **Federal Register** document.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) Harvest Strategy Considerations, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

A. Harvest Strategy Considerations

Council Recommendations: The Atlantic Flyway Council recommended that duck hunting regulations in the Atlantic Flyway for the 2000–01 season be based on the optimal harvest strategy for eastern mallards.

Service Response: In the June 20, 2000, **Federal Register** document, we proposed to modify the existing Adaptive Harvest Management (AHM) protocol to account for the status of mallards breeding in eastern North America. Based on a technical assessment completed in January 2000 (available on the Internet at http://migratorybirds.fws.gov/reports/reports.html), there appear to be two possible approaches to modifying the current AHM protocol. The first would involve a single joint optimization of midcontinent and eastern mallard harvests. This approach would result in optimal regulatory choices for the Atlantic Flyway and for the remaining Flyways as a group for each possible combination of midcontinent population size, pond numbers in Canada, and eastern mallard population size. The characteristic feature of this approach is that all regulatory choices, regardless of harvest area, would be predicated on the status of both midcontinent and eastern mallards (with the degree of dependence based on each harvest area's unique combination of mallard populations). The second alternative would entail two separate harvest optimizations, in which the Atlantic Flyway regulation would be based solely on the status of eastern mallards, and the regulatory choice for the remainder of the country would be based solely on the status of midcontinent mallards. Both alternatives would be expected to significantly increase the frequency of liberal regulations in the Atlantic Flyway.

The recent technical assessment of AHM for eastern mallards formally considered only the large-scale status of mallard populations, and not the status of local breeding populations or segments of populations with affinities for certain wintering areas. Thus, it is not clear how AHM for eastern mallards might affect mallards at relatively small spatial scales. Some concern has been expressed regarding potential impacts of a modified AHM protocol on midcontinent mallards breeding in the Great Lakes States, and for midcontinent mallards that winter in the southern Atlantic Flyway. For those mallards breeding in the Great Lakes States and wintering in the Mississippi Flyway, a single, joint optimization of midcontinent and eastern mallards could result in a higher frequency of more liberal regulations in the Mississippi Flyway than would be the case in the absence of an accounting for eastern mallards. Only a small proportion (about 4 percent based on recent analyses) of Great Lakes' mallards winter in the Atlantic Flyway, so regulations there should have minimal impact on this population segment. On the other hand, the southern Atlantic Flyway derives a relatively high proportion of its wintering mallards from the midcontinent population, and it's not clear how a modified AHM protocol might affect this population segment.

Also, the recent assessment of AHM for eastern mallards did not formally consider potential impacts on species

other than mallards. Although the concern for other species is heightened by the prospect of more frequent liberal regulations in the Atlantic Flyway, the issue is no less a concern under the existing AHM protocol. Therefore, it is imperative to move quickly to consider how other key species might be incorporated into the AHM protocol. However, we reiterate that a full-featured AHM approach for all species is not realistic, and that concerns over many species necessarily will be handled on an as-needed basis.

The decision about how to account for eastern mallards in AHM would not affect the specification of the regulatory alternatives. The prescribed regulatory alternative for the Atlantic Flyway would consist of one of the existing regulatory alternatives. The only change is that the regulatory alternative prescribed for the Atlantic Flyway might differ from that prescribed for the remainder of the country. The Atlantic Flyway Council will have the opportunity to consider changes to the set of regulatory alternatives at the same time as the other Flyway Councils. The AHM technical working group is currently developing a recommended schedule and criteria for such changes.

We support appropriate modifications to the existing AHM protocol to account for eastern mallards, and will consider the implications discussed in the referenced technical report, as well as all public comment, in proposing a regulatory alternative for the Atlantic Flyway for the 2000–01 hunting season. In the meantime, we seek further discussion and review of this issue among the Flyway Councils at their joint meeting in July 2000. Modifications, if any, to the current AHM protocol will be proposed along with the late-season regulatory frameworks.

B. Regulatory Alternatives

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the regulations alternatives from 1999 be used in 2000, except that the framework opening and closing dates in all alternatives should be the Saturday nearest September 23 to the Sunday nearest January 28, with appropriate offsets (*e.g.*, reduction in season length) as determined by the Service.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the framework opening and closing dates in all regulatory alternatives should be the Saturday nearest September 23 to the Sunday nearest January 28, with no penalties in season length.

The Central Flyway Council recommended the continued use of the 1999 regulatory alternatives for the 2000–01 season, but with modifications. The Council recommended a framework opening date of the Saturday closest to September 24 in the "liberal" and "moderate" regulatory alternatives with no offsets, and a framework closing date of the Sunday closest to January 25. Additionally, the Council recommended that no additional changes be allowed to the alternatives for a 5-year period.

The Pacific Flyway Council recommended that the set of regulatory alternatives for the 2000–01 hunting season remain unchanged from those adopted in 1999.

Service Response: Due to the continuing absence of agreement among States and Flyways about how best to modify framework dates, no changes were made to the regulatory alternatives proposed in the June 20, 2000 **Federal Register**. We reiterate that our desire is to maintain current framework-date specifications through the 2002–03 hunting season, or until such time that the Flyway Councils can develop an approach that adequately addresses the concerns of the Service and a majority of States.

For the 2000–01 regular duck hunting season, we will use the four regulatory alternatives detailed in the accompanying table. Alternatives are specified for each Flyway and are designated as "VERY RES" for the very restrictive, "RES" for the restrictive, "MOD" for the moderate, and "LIB" for the liberal alternative. We will propose a specific regulatory alternative in early August when survey data on waterfowl population and habitat status are available.

D. Special Seasons/Species Management

iii. September Teal Seasons

Council Recommendations: The Central Flyway Council recommended that Nebraska be allowed to have an experimental 9-day teal season in the nonproduction area of the State.

Service Response: We concur with the Central Flyway Council's recommendation for an experimental 9-day special September teal season in the nonproduction area of Nebraska. The State would be required to evaluate the impacts to nontarget waterfowl species by conducting hunter performance surveys. This season will be experimental for a 3-year period but must include a pre-sunrise evaluation in order to have shooting hours begin ½-hour before sunrise.

iv. September Teal/Wood Duck Seasons

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council requested that the Service and the Council's Wood Duck Technical Committee move forward during the current year (2000) to allow for implementation of a wood duck Flyway harvest management strategy by the year 2001 as scheduled. The Committee further recommended that September seasons remain an option for delineated wood duck reference areas (population units), provided that specified data-collection requirements are met.

Written Comments: Three individuals questioned the rationale for the Service's decision to terminate September teal/wood duck seasons when information indicating that such seasons are detrimental to wood duck populations seems to be lacking.

Service Response: September teal/wood duck seasons in Florida, Kentucky, and Tennessee have been in an experimental status since their inception in 1981. We have consistently requested that States collect information to evaluate these special seasons, including hunter and harvest surveys, banding, and population surveys. In 1986, due to decreases in wood duck survival rates in Kentucky and Tennessee, we restricted the bag limit during Experimental September teal/wood duck seasons to include no more than two wood ducks. At that time, we also noted that preseason wood duck banding in Florida was not sufficient to allow assessment of the impacts associated with the Experimental September season (51 FR 24418). On March 13, 1987 (52 FR 7997), we indicated that although September teal/wood duck seasons are in principle a feasible harvest management strategy, the situation with regard to their evaluation, including flyway-wide aspects of the management of target species, and their suitability for widespread application was under review. At that time, we also reaffirmed the need for cooperative studies that are flyway-oriented in scope to better understand and manage wood ducks. On June 6, 1990 (55 FR 23179), we noted that preseason banding programs were not meeting the regional requirements for sample size and distribution necessary to evaluate special seasons for wood ducks on a State-by-State basis. We stated that unless arrangements could be made to initiate regional banding programs and facilitate widespread data collection, experimental seasons may be modified or suspended (55 FR 23179). During

1991–96, a cooperative Wood Duck Population Monitoring-Initiative was undertaken by the Atlantic and Mississippi Flyway Councils and the Service to improve population-monitoring programs. We agreed not to discontinue or expand Experimental September teal/wood duck seasons until the Initiative was completed. Results from the Initiative indicated that wood duck population-monitoring programs at geographic scales below the flyway level were not meeting requisite sample sizes. Our evaluation of September teal/wood duck seasons in Florida, Kentucky, and Tennessee indicated that estimates of population parameters for individual States are usually imprecise, which precludes drawing meaningful conclusions about State or regional wood duck harvest-management experiments (63 FR 13751).

On August 28, 1998 (63 FR 46126), we stated our intent to discontinue September teal/wood duck seasons in Florida, Kentucky, and Tennessee after September 2000, due to our inability to adequately evaluate such seasons. We also stated that, without adequate regional population monitoring, wood duck harvest management should be approached at the flyway level during the regular season. During the interim, a flyway-wide harvest strategy was to be developed and ready for implementation during the 2001–02 regular season. We met with representatives from the Atlantic and Mississippi Flyway Council Technical Sections in September 1999 to discuss technical aspects of flyway wood duck harvest strategies. Development of the technical foundation for the strategy commenced following the working group meeting. A progress report of this work will be made at the Flyway Council meetings in July 2000. It is likely that several Technical Section representatives will be asked to attend a follow-up meeting in the Fall to address Council concerns and suggestions for a flyway wood duck harvest strategy. A draft harvest strategy will be distributed to Technical Sections prior to their February 2001 meetings. A final harvest strategy will be forwarded to the Flyway Councils for their consideration prior to their March 2001 meeting.

September wood duck seasons remain an option for delineated wood duck population units, provided that regional data-collection requirements are met. Such seasons should not be approached on a State-by-State basis. The final report of the Wood Duck Population-Monitoring Initiative outlined many of the sample size requirements needed for regional monitoring programs. We point out that the Initiative represented a period when Federal and State cooperators made special efforts to improve regional wood duck monitoring programs. The final report of the Initiative indicated that this goal was not achieved. Before a proposal for regional September wood duck seasons is considered in the future, we request that the Flyway Councils review the results of the Initiative and indicate how failure to achieve requisite regional sample sizes in the past will be avoided in the future.

v. Youth Hunt

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended a special 2-day youth waterfowl hunt for the 2000–01 season.

The Central Flyway Council recommended expansion of the special youth waterfowl hunt to 2 days.

The Pacific Flyway Council recommended that the Service allow States the opportunity to select up to 2 consecutive days for a youth waterfowl hunt outside the general season and frameworks in 2000.

Service Response: In light of the continuing interest from the Flyway Councils, we have decided to expand the special youth waterfowl hunt to 2 consecutive days. Anecdotal data suggest that the special hunt has proven to be very popular and has provided an excellent opportunity to introduce youth hunters to the sport of waterfowling and waterfowl and wetland conservation. Expansion of the special hunt to 2 consecutive days should reduce travel difficulties and scheduling conflicts inherent with the current 1-day hunt.

Based on the limited number of youths participating, we do not expect any significant increase in harvest due to the expansion of the opportunity, and thus no significant impact on waterfowl populations.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the three counties near Saginaw Bay in Michigan (Huron, Saginaw, and Tuscola), which previously have been closed in the special early Canada goose season, be allowed an experimental special early season with a two-bird daily bag limit.

The Lower-Region Regulations Committee of the Mississippi Flyway Council urged the Service to use caution in changing or expanding special goose seasons.

The Central Flyway Council recommended that the framework closing date for operational September Canada goose seasons in the Central Flyway be extended to September 30 with no additional evaluation required.

The Pacific Flyway Council recommended that Wyoming's daily bag and season limits be increased from 2 and 4, to 3 and 6 birds, respectively, and that the bag and possession limits for Washington's September season increase from 3 and 6, to 5 and 10, respectively.

Service Response: Results of the previous experimental season in the three Saginaw-Bay Counties in Michigan indicated a substantial proportion of migrant Canada geese in the special-season harvest. The current proposal for a repetition of the experiment documents a significant increase in the number of resident Canada geese in the area since that time, but information concerning the population composition during the first half of September is sketchy. We agree that the change in resident Canada goose numbers warrants another experiment, but because of the small amount of information about the proportion of migrants in early September, we feel that the season should not extend beyond September 10.

We do not support the Central Flyway recommendation to remove evaluation requirements (August 29, 1995 **Federal Register**) for Special September Canada goose seasons for the period between September 16–30. Past experience with these special seasons has shown seasons during September 1–15 generally achieve the objective of targeting resident Canada geese and this period has been designated as operational. In contrast, harvests during the period of September 16–30 has indicated an increasing proportional take of migrant stocks of geese. We have no experience with special seasons in the Central Flyway during September 16–30, and the impacts on nontarget populations of Canada geese have not been determined. Although impacts to nontarget populations of Canada geese that are over objective levels may not be of immediate concern, we believe that evaluation during this period is necessary to insure that the objective of targeting resident geese is maintained. According to established special season guidelines, Central Flyway States have the option to conduct an experimental hunt during the late-September period with an appropriate evaluation. Although collection of neck collar data may not be possible due to low numbers of marked geese, current guidelines

allow for the use of morphological information of harvested geese to access the proportion of migrant geese during this period. Because migrant Canada geese are limited to small subspecies of the Tall Grass Prairie Population in the East-Tier States and the Short Grass Prairie Population in the West-Tier States, we believe that tail fan measurements of harvested geese will be sufficient to determine the proportion of harvested migrant geese. In the event that States are interested in conducting an experimental season during this period, we will cooperatively work with State personnel to determine appropriate sample sizes necessary to access proportional harvests of migrant Canada geese as required by existing guidelines for the experimental seasons.

Regarding the Lower-Region Regulation Committee's concern for cumulative impacts of special-season harvests on migrant Canada goose populations of concern, we are aware of the Committee's concern and are monitoring the harvests occurring during these seasons.

We concur with the Pacific Flyway Council recommendation.

B. Regular Seasons

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the 1999 regular-goose-season opening date be as early as September 16 in Michigan and Wisconsin. The Committee further recommended that the framework opening date for regular goose seasons in the Mississippi Flyway be September 16.

The Central Flyway Council recommended that the framework opening date for regular dark-goose seasons in the East and West Tiers be fixed at September 1, rather than the current opening date of the Saturday nearest October 1.

Service Response: We do not support the Central Flyway's recommendation for changing the dark-goose framework opening dates from the Saturday nearest October 1 to September 1 or the Mississippi Flyway's light-and dark-goose seasons from the Saturday nearest October 1 to September 16. We have minimal experience with regular goose seasons that begin prior to the Saturday nearest October 1 and believe that management of several migratory goose populations would require complex spacial and temporal considerations within this period to address needs of various populations. The change in the framework opening date to earlier in September would require the movement of goose frameworks from the late-to the early-season process and, for some populations, would result in a serious timing problem in that decisions would have to be made prior to having breeding-ground information. We are also developing a management strategy for resident Canada geese that will allow for States to have more flexibility in addressing human/goose conflicts caused by growing populations of resident geese, and we believe that changes such as this may impede progress.

9. Sandhill Cranes

Council Recommendations: The Central Flyway Council recommended a 95-day season with the option for a two-way split season for the hunting of Mid-Continent sandhill cranes. This change would result in a 37-day season length increase in North Dakota, South Dakota, Nebraska, Kansas, Montana, Wyoming, and Colorado and a 2-day season length increase in Oklahoma, Texas, and New Mexico.

The Council further recommended that the open area for the hunting of Mid-Continent sandhill cranes be extended eastward to the Mississippi Flyway. The Council recommends a season length of 37 days with outside framework dates of September 1 and February 28, and a daily bag/possession limit of 3 and 9, respectively, for this expanded area.

The Pacific Flyway Council recommended a boundary modification in Box Elder County, Utah, to exclude that portion of the County known to be used by greater sandhill cranes affiliated with the Lower Colorado River Population.

Service Response: We do not support the Central Flyway Council's recommendations to liberalize hunting seasons on the Mid-Continent Population of sandhill cranes. We believe that last year's hunting regulations should be maintained until ongoing satellite-transmitter tracking studies are completed. Recent genetic information on subspecies composition has further complicated management of the two identified subpopulations. We believe that information regarding the population status and harvests of the two subpopulations must be further refined before additional changes are implemented. Annual indices to the total Mid-Continent Population remain stable; however, harvests continue to increase. The proposed regulations changes along the eastern portion of the Mid-Continent range in the Flyway would affect the Gulf Coast Subpopulation, which contains almost all of the greater sandhill cranes in this population.

We concur with the Pacific Flyway Council recommendation.

12. Rails

Council Recommendations: The Pacific Flyway Council recommended that those States divided between the Central and Pacific Flyways be allowed to select rail-season frameworks, on a statewide basis, that conform with the Central Management Unit frameworks.

Service Response: We concur.

13. Snipe

Council Recommendations: The Pacific Flyway Council recommended that those States divided between the Central and Pacific Flyways be allowed to select snipe-season frameworks, on a statewide basis, that conform with the Central Management Unit frameworks.

Service Response: We concur.

14. Woodcock

Written Comments: An individual from Minnesota felt that the daily bag limit for woodcock should be four birds, and that the framework opening date for the Mississippi Flyway should be September 1, rather than the Saturday nearest September 22.

Service Response: In response to long-term population declines, we implemented several framework changes in 1997 to reduce the harvest of woodcock. In the Central Region, the bag limit was reduced from five to three birds, season length was reduced from 65 to 45 days, and the framework opening date was changed to the Saturday nearest September 22 (rather than September 1). Based on harvest information for various bag limits, it was determined that a reduction from five to three birds was necessary to achieve a meaningful reduction in harvest. Furthermore, a framework opening date of the Saturday nearest September 22 was contained in an interim woodcock harvest strategy proposed by the Mississippi Flyway Council in 1997 (62 FR 44232). The framework date we adopted reflected the opening date proposed in the Flyway Council strategy.

15. Band-tailed Pigeons

Council Recommendations: The Pacific Flyway Council recommended a change in frameworks for Pacific Coast band-tailed pigeons from 1999 to increase the possession limit from two to four birds.

Service Response: We concur.

16. Mourning Doves

Council Recommendations: The Pacific Flyway Council recommended that those States divided between the

Central and Pacific Flyways be allowed to select dove season frameworks, on a statewide basis, that conform with the Central Management Unit frameworks.

Service Response: We concur.

18. Alaska

Council Recommendations: The Pacific Flyway Council recommended a reduction in sandhill crane bag limits from three to two in that portion of the State associated with the Pacific Flyway Population of lesser sandhill cranes.

Service Response: We concur.

Public Comment Invited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. We intend that adopted final rules be as responsive as possible to all concerned interests and, therefore, seek the comments and suggestions of the public, other concerned governmental agencies, nongovernmental organizations, and other private interests on these proposals. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations to the address indicated under the caption **ADDRESSES.**

Special circumstances involved in the establishment of these regulations limit the amount of time that we can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow comment periods past the dates specified is contrary to the public interest.

Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. However, as in the past, we will summarize all comments received during the comment period and respond to them after the closing date in the final rule.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). Copies are available from the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

Prior to issuance of the 2000–01 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and that the proposed action is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemakings.

Executive Order 12866

While this individual supplemental rule was not reviewed by the Office of Management and Budget (OMB), the migratory bird hunting regulations are economically significant and are annually reviewed by OMB under Executive Order 12866. Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail and issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1,084 million at small businesses in 1998. Copies of the Analysis are available upon request from the address indicated under the caption **ADDRESSES.**

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 9/30/2001). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 9/30/2000). The information from this survey is used to estimate the

magnitude and the geographical and temporal distribution of harvest, and the portion it constitutes of the total population. A Federal 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not "significantly or uniquely" affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this proposed rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise otherwise unavailable privileges, and, therefore, reduces restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2000–01 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: July 24, 2000.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Proposed Regulations Frameworks for 2000–01 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following proposed frameworks, which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select for certain migratory game birds between September 1, 2000, and March 10, 2001.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways:

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

Mourning Dove Management Units:

Eastern Management Unit—All States east of the Mississippi River, and Louisiana.

Central Management Unit—Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit—Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Woodcock Management Regions:

Eastern Management Region—Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Central Management Region—Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin.

Other geographic descriptions are contained in a later portion of this document.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by the following States in areas delineated by State regulations:

Atlantic Flyway—Delaware, Georgia, Maryland, North Carolina, Pennsylvania, South Carolina, Virginia,

and West Virginia. All seasons are experimental.

Mississippi Flyway—Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Ohio, and Tennessee.

Central Flyway—Colorado (part), Kansas, Nebraska (part), New Mexico (part), Oklahoma, and Texas. The season in Nebraska is experimental.

Hunting Seasons and Daily Bag Limits: Not to exceed 9 consecutive days in the Atlantic Flyway and 16 consecutive days in the Mississippi and Central Flyways, except in Nebraska where the season is not to exceed 9 consecutive days. The daily bag limit is 4 teal.

Shooting Hours:

Atlantic Flyway—One-half hour before sunrise to sunset, if evaluated; otherwise sunrise to sunset.

Mississippi and Central Flyways—One-half hour before sunrise to sunset, except in the States of Arkansas, Illinois, Indiana, Missouri, and Ohio, where the hours are from sunrise to sunset.

Special September Duck Seasons

Florida: A 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate.

Kentucky and Tennessee: In lieu of a special September teal season, a 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Iowa: Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks that are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 23). The daily bag and possession limits will be the same as those in effect last year, but are subject to change during the late-season regulations process. The remainder of the regular duck season may not begin before October 10.

Special Youth Waterfowl Hunting Days

Outside Dates: States may select 2 consecutive days per duck-hunting zone, designated as "Youth Waterfowl Hunting Days," in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limit may include ducks, geese, mergansers, coots, moorhens, and gallinules and would be the same as that allowed in the regular season. Flyway species and area restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult could not duck hunt but may participate in other seasons that are open on the special youth day.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 20.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate of the listed sea-duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated, and designated as special sea-duck hunting areas under the hunting regulations adopted by the respective States.

Special Early Canada Goose Seasons

Atlantic Flyway

General Seasons: Canada goose seasons of up to 15 days during September 1–15 may be selected for the Montezuma Region of New York, the Lake Champlain Region of New York and Vermont, the Eastern Unit of Maryland, and Delaware. Seasons not to exceed 20 days during September 1–20 may be selected for the Northeast Hunt Unit of North Carolina. Seasons not to exceed 30 days during September 1–30 may be selected by New Jersey. Seasons may not exceed 25 days during September 1–25 in the remainder of the Flyway, except Georgia and Florida, where the season is closed. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 5 Canada geese.

Experimental Seasons: Experimental Canada goose seasons of up to 20 days during September 1–20 may be selected by New York (Montezuma Region). Experimental seasons of up to 30 days during September 1–30 may be selected by New York (Long Island Zone), North Carolina (except in the Northeast Hunt Unit), and South Carolina. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 5 Canada geese.

Mississippi Flyway

General Seasons: Canada goose seasons of up to 15 days during September 1–15 may be selected, except in the Upper Peninsula in Michigan, where the season may not extend beyond September 10. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Experimental Seasons: An experimental Canada goose season of up to 7 consecutive days during September 16—22 may be selected by Minnesota, except in the Northwest Goose Zone. The daily bag limit may not exceed 5 Canada geese.

An experimental Canada goose season of up to 10 consecutive days during September 1—10 may be selected by Michigan for Huron, Saginaw, and Tuscola Counties, except that the Shiawassee National Wildlife Refuge, Shiawassee River State Game Area Refuge, and the Fish Point Wildlife Area Refuge will remain closed. The daily bag limit may not exceed 2 Canada geese.

Central Flyway

General Seasons: Canada goose seasons of up to 15 days during September 1–15 may be selected. The

daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Pacific Flyway

General Seasons: Wyoming may select an 8-day season on Canada geese between September 1–15. This season is subject to the following conditions:

1. Where applicable, the season must be concurrent with the September portion of the sandhill crane season.
2. All participants must have a valid State permit for the special season.
3. A daily bag limit of 3, with season and possession limits of 6 will apply to the special season.

Oregon may select a special Canada goose season of up to 15 days during the period September 1–15. In addition, in the NW goose management zone, a 15-day season may be selected during the period September 1–20. Any portion of the season selected between September 16 and 20 will be considered experimental. Daily bag limits may not exceed 5 Canada geese. In the NW goose zone, at a minimum, Oregon must provide an annual evaluation of the number of dusky Canada geese present in the hunt zone during the period September 16–20 and agree to adjust seasons as necessary to avoid any potential harvest of dusky Canada geese.

Washington may select a special Canada goose season of up to 15 days during the period September 1–15. Daily bag limits may not exceed 5 Canada geese.

Idaho may select a 15-day season in the special East Canada Goose Zone, as described in State regulations, during the period September 1–15. All participants must have a valid State permit, and the total number of permits issued is not to exceed 110 for this zone. The daily bag limit is 2.

Idaho may select a 7-day Canada Goose Season during the period September 1–15 in Nez Perce County, with a bag limit of 4.

California may select a 9-day season in Humboldt County during the period September 1–15. The daily bag limit is 2.

Areas open to hunting of Canada geese in each State must be described, delineated, and designated as such in each State's hunting regulations.

Regular Goose Seasons

Regular goose seasons may open as early as September 16 in Wisconsin and Michigan. Season lengths, bag and possession limits, and other provisions will be established during the late-season regulations process.

Sandhill Cranes

Regular Seasons in the Central Flyway:

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag Limits: 3 sandhill cranes.

Permits: Each person participating in the regular sandhill crane seasons must have a valid Federal sandhill crane hunting permit and/or, in those States where a Federal sandhill crane permit is not issued, a State-issued Harvest Information Survey Program (HIP) certification for game bird hunting, in their possession while hunting.

Special Seasons in the Central and Pacific Flyways:

Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (RMP) subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 days.

Bag limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils with the following exceptions:

(1) In Utah, the requirement for monitoring the racial composition of the harvest in the experimental season is waived, and 100 percent of the harvest will be assigned to the RMP quota;

(2) In Arizona, the annual requirement for monitoring the racial composition of the harvest is changed to once every 3 years; and

(3) In Idaho, seasons are experimental, and the requirement for monitoring the racial composition of the harvest is waived; 100 percent of the harvest will be assigned to the RMP quota.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and January 20 in the Atlantic Flyway, and between September 1 and the Sunday nearest January 20 (January 21) in the Mississippi and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks, and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into 2 segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Rails

Outside Dates: States included herein may select seasons between September 1 and January 20 on clapper, king, sora, and Virginia rails.

Hunting Seasons: The season may not exceed 70 days, and may be split into 2 segments.

Daily Bag Limits: Clapper and King Rails—In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the two species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails—In the Atlantic, Mississippi, and Central Flyways and the Pacific-Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

Common Snipe

Outside Dates: Between September 1 and February 28, except in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, where the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

American Woodcock

Outside Dates: States in the Eastern Management Region may select hunting seasons between October 6 and January 31. States in the Central Management Region may select hunting seasons between the Saturday nearest September 22 (September 23) and January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 30 days in the Eastern Region and 45 days in the

Central Region. The daily bag limit is 3. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 24 days.

Band-Tailed Pigeons

Pacific Coast States (California, Oregon, Washington, and Nevada)

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with bag and possession limits of 2 and 4 band-tailed pigeons, respectively.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 4.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah)

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Mourning Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. The hunting seasons in the South Zones of Alabama, Florida, Georgia, Louisiana, and Mississippi may commence no earlier than September 20. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between September 20 and January 25.

C. Each zone may have a daily bag limit of 12 doves (15 under the alternative) in the aggregate, no more than 2 of which may be white-tipped doves, except that during the special white-winged dove season, the daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit

Hunting Seasons and Daily Bag Limits: Idaho, Nevada, Oregon, Utah, and Washington—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves (in Nevada, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate).

Arizona and California—Not more than 60 days, which may be split between two periods, September 1–15 and November 1–January 15. In Arizona, during the first segment of the season, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During the remainder of the season, the daily bag limit is restricted to 10 mourning doves. In California, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

White-Winged and White-Tipped Doves

Hunting Seasons and Daily Bag Limits: Except as shown below, seasons in Arizona, California, Florida, Nevada, New Mexico, and Texas must be concurrent with mourning dove seasons.

Arizona may select a hunting season of not more than 30 consecutive days, running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In Florida, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate, of which no more than 4 may be white-winged doves.

In the Nevada Counties of Clark and Nye, and in the California Counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In New Mexico, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate.

In Texas, the daily bag limit may not exceed 12 doves (15 under the alternative) in the aggregate, of which not more than 2 may be white-tipped doves.

In addition, Texas may also select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of five zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. The hunting season is closed on Aleutian Canada geese, emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession Limits: Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone, they are 8 and 24, respectively. The basic limits may include no more than 1 canvasback daily and 3 in possession.

In addition to the basic duck limits, there is a sea duck daily bag limit of 10, with a possession limit of 20, scoter, common and king eiders, and common and red-breasted mergansers, singly or in the aggregate. Alaska may choose to allow these sea duck limits in addition to regular duck bag limits. However, the total daily bag limit for any duck species may not exceed 10.

Light Geese—A basic daily bag limit of 3 and a possession limit of 6.

Dark Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark-goose seasons are subject to the following exceptions:

1. In Units 5 and 6, the taking of Canada geese is permitted from September 28 through December 16. A special, permit-only Canada goose season may be offered on Middleton Island. No more than 10 permits can be issued. A mandatory goose identification class is required.

Hunters must check-in and check-out. Bag limit of 1 daily and 1 in possession. Season to close if incidental harvest includes 5 dusky Canada geese. A dusky Canada goose is any dark-breasted Canada goose (Munsell 10 YR color value five or less) with a bill length between 40 and 50 millimeters.

2. In Unit 10 (except Unimak Island), the taking of Canada geese is prohibited.

3. In Unit 9(D) and the Unimak Island portion of Unit 10, the limits for dark geese are 6 daily and 12 in possession.

Brant—A daily bag limit of 2.

Common snipe—A daily bag limit of 8.

Sandhill cranes—Bag and possession limit of 2 and 4, respectively, in the Southeast, Gulf Coast, Kodiak, Aleutian, and Unit 17 in the Northern Zone. In the remainder of the Northern Zone (outside Unit 17), bag and possession limits of 3 and 6, respectively.

Tundra Swans—Open seasons for tundra swans may be selected subject to the following conditions:

1. All seasons are by registration permit only.

2. All season framework dates are September 1—October 31.

3. In Game Management Unit (GMU) 18, no more than 500 swans may be harvested during the operational season. Up to 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

4. In GMU 22, no more than 300 swans may be harvested during the operational season. Each permittee may be authorized to take up to 3 tundra swan per permit. No more than 1 permit may be issued per hunter per season.

5. In GMU 23, no more than 300 swans may be harvested during the experimental season. No more than 3 tundra swans may be authorized per permit with no more than 1 permit issued per hunter per season. The experimental season evaluation must adhere to the guidelines for experimental seasons as described in the Pacific Flyway Management Plan for the Western Population of (Tundra) Swans.

Hawaii

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 65 days (75 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida, mourning, and white-winged doves in the aggregate. Not to exceed 5 scaly-naped pigeons.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe:

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits:

Ducks—Not to exceed 6.

Common moorhens—Not to exceed 6.

Common snipe—Not to exceed 8.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; Common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 6.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Mourning and White-Winged Doves

Alabama

South Zone—Baldwin, Barbour, Coffee, Conecuh, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone—Remainder of the State.

California

White-winged Dove Open Areas—Imperial, Riverside, and San Bernardino Counties.

Florida

Northwest Zone—The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone—Remainder of State.

Georgia

Northern Zone—That portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County; thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County, to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the western border of Evans to Candler County; thence east along the northern border of Evans County to U.S. Highway 301; thence northeast along U.S. Highway 301 to the South Carolina line.

South Zone—Remainder of the State.

Louisiana

North Zone—That portion of the State north of Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

South Zone—The remainder of the State.

Mississippi

South Zone—The Counties of Forrest, George, Greene, Hancock, Harrison, Jackson, Lamar, Marion, Pearl River, Perry, Pike, Stone, and Walthall.

North Zone—The remainder of the State.

Nevada

White-winged Dove Open Areas—Clark and Nye Counties.

Texas

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I–10 at Fort Hancock; east along I–10 to I–20; northeast along I–20 to I–30 at Fort Worth; northeast along I–30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to San Antonio; then east on I–10 to Orange, Texas.

Special White-winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to Uvalde; south on U.S. 83 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to TX 285 at Hebbronville; east along TX 285 to FM 1017; southwest along FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Area with additional restrictions—Cameron, Hidalgo, Starr, and Willacy Counties.

Central Zone—That portion of the State lying between the North and South Zones.

Band-tailed Pigeons

California

North Zone—Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone—The remainder of the State.

New Mexico

North Zone—North of a line following U.S. 60 from the Arizona State line east to I–25 at Socorro and then south along I–25 from Socorro to the Texas State line.

South Zone—Remainder of the State.

Washington

Western Washington—The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone—That portion of the State north of NJ 70.

South Zone—The remainder of the State.

Special September Canada Goose Seasons

Atlantic Flyway

Connecticut

North Zone—That portion of the State north of I–95.

Maryland

Eastern Unit—Anne Arundel, Calvert, Caroline, Cecil, Charles, Dorchester, Harford, Kent, Queen Annes, St. Marys, Somerset, Talbot, Wicomico, and Worcester Counties, and those portions of Baltimore, Howard, and Prince George's Counties east of I–95.

Western Unit—Allegany, Carroll, Frederick, Garrett, Montgomery, and Washington Counties, and those portions of Baltimore, Howard, and Prince George's Counties west of I–95.

Massachusetts

Western Zone—That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone—That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone—That portion of Massachusetts east and south of the Central Zone.

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone—That area consisting of Nassau County, Suffolk

County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone—That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border, except for the Montezuma Zone.

Montezuma Zone—Those portions of Cayuga, Seneca, Ontario, Wayne, and Oswego Counties north of U.S. Route 20, east of NYS Route 14, south of NYS Route 104, and west of NYS Route 34.

Northeastern Zone—That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone—The remaining portion of New York.

North Carolina

Northeast Hunt Unit—Counties of Bertie, Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

South Carolina

Early-season Hunt Unit—Clarendon County and those portions of Orangeburg County north of SC Highway 6 and Berkeley County north of SC Highway 45 from the Orangeburg County line to the junction of SC Highway 45 and State Road S–8–31 and west of the Santee Dam.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: The remaining portion of Vermont.

Mississippi Flyway

Illinois

Northeast Canada Goose Zone—Cook, Du Page, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties.

North Zone: That portion of the State outside the Northeast Canada Goose Zone and north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana border.

Central Zone: That portion of the State outside the Northeast Canada Goose Zone and south of the North Zone to a line extending east from the Missouri border along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I–70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I–70, then east along I–70 to the Indiana border.

South Zone: The remainder of Illinois.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

Minnesota

Twin Cities Metropolitan Canada Goose Zone—

A. All of Hennepin and Ramsey Counties.

B. In Anoka County, all of Columbus Township lying south of County State Aid Highway (CSAH) 18, Anoka County; all of the cities of Ramsey, Andover, Anoka, Coon Rapids, Spring Lake Park, Fridley, Hilltop, Columbia Heights, Blaine, Lexington, Circle Pines, Lino Lakes, and Centerville; and all of the city of Ham Lake except that portion lying north of CSAH 18 and east of U.S. Highway 65.

C. That part of Carver County lying north and east of the following described line: Beginning at the northeast corner of San Francisco Township; thence west along the north boundary of San Francisco Township to the east boundary of Dahlgren Township; thence north along the east boundary of Dahlgren Township to U.S. Highway 212; thence west along U.S. Highway 212 to State Trunk Highway (STH) 284; thence north on STH 284 to County State Aid Highway (CSAH) 10; thence north and west on CSAH 10 to CSAH 30; thence north and west on CSAH 30 to STH 25; thence east and north on STH 25 to CSAH 10; thence north on CSAH 10 to the Carver County line.

D. In Scott County, all of the cities of Shakopee, Savage, Prior Lake, and Jordan, and all of the Townships of Jackson, Louisville, St. Lawrence, Sand Creek, Spring Lake, and Credit River.

E. In Dakota County, all of the cities of Burnsville, Eagan, Mendota Heights, Mendota, Sunfish Lake, Inver Grove Heights, Apple Valley, Lakeville, Rosemount, Farmington, Hastings, Lilydale, West St. Paul, and South St. Paul, and all of the Township of Nininger.

F. That portion of Washington County lying south of the following described line: Beginning at County State Aid Highway (CSAH) 2 on the west boundary of the county; thence east on CSAH 2 to U.S. Highway 61; thence south on U.S. Highway 61 to State Trunk Highway (STH) 97; thence east on STH 97 to the intersection of STH 97 and STH 95; thence due east to the east boundary of the State.

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Two Goose Zone—That portion of the State lying east of Interstate Highway 35 and south of the Twin Cities Metropolitan Canada Goose Zone.

Five Goose Zone—That portion of the State not included in the Twin Cities Metropolitan Canada Goose Zone, the Northwest Goose Zone, or the Two Goose Zone.

West Zone—That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota border.

Tennessee

Middle Tennessee Zone—Those portions of Houston, Humphreys, Montgomery, Perry, and Wayne Counties east of State Highway 13; and Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Moore, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, and Wilson Counties.

East Tennessee Zone—Anderson, Bledsoe, Bradley, Blount, Campbell, Carter, Claiborne, Clay, Cocke, Cumberland, DeKalb, Fentress, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren, Warren, Washington, and White Counties.

Wisconsin

Early-Season Subzone A—That portion of the State encompassed by a line beginning at the intersection of U.S. Highway 141 and the Michigan border near Niagara, then south along U.S. 141 to State Highway 22, west and southwest along State 22 to U.S. 45, south along U.S. 45 to State 22, west and south along State 22 to State 110, south along State 110 to U.S. 10, south along U.S. 10 to State 49, south along State 49 to State 23, west along State 23 to State 73, south along State 73 to State 60, west along State 60 to State 23, south along State 23 to State 11, east along State 11 to State 78, then south along State 78 to the Illinois border.

Early-Season Subzone B—The remainder of the State.

Central Flyway

Kansas

September Canada Goose Unit—That part of Kansas bounded by a line from the Kansas-Missouri State line west on KS–68 to its junction with KS–33, then north on KS–33 to its junction with US–56, then west on US–56 to its junction with KS–31, then west-northwest on KS–31 to its junction with KS–99, then north on KS–99 to its junction with US–24, then east on US–24 to its junction with KS–63, then north on KS–63 to its junction with KS–16, then east on KS–16 to its junction with KS–116, then east on KS–116 to its junction with US–59, then northeast on US–59 to its junction with the Kansas-Missouri line, then south on the Kansas-Missouri line to its junction with KS–68.

North Dakota

Special Early Canada Goose Unit—Richland and Sargent Counties.

South Dakota

September Canada Goose Unit—Brookings, Clark, Codington, Day, Deuel, Grant, Hamlin, Kingsbury, Lake, Marshall, McCook, Moody Counties, and Miner County east of SD 25, and that portion of Minnehaha County north and west of a line beginning at the junction of County 130 (Renner Road) and the Minnesota border, then west on County 130 to I–29 and along I–29 to the Lincoln County line.

Pacific Flyway

Idaho

East Zone—Bonneville, Caribou, Fremont, and Teton Counties.

Oregon

Northwest Zone—Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties.

Southwest Zone—Coos, Curry, Douglas, Jackson, Josephine, and Klamath Counties.

East Zone—Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union, and Wasco Counties.

Washington

Southwest Zone—Clark, Cowlitz, Pacific, and Wahkiakum Counties.

East Zone—Asotin, Benton, Columbia, Garfield, Klickitat, and Whitman Counties.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Farson-Edon Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

Teton Area—Those portions of Teton County described in State regulations.

Bridger Valley Area—The area described as the Bridger Valley Hunt Unit in State regulations.

Ducks

Atlantic Flyway

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Mississippi Flyway

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Central Flyway

Colorado

Special Teal Season Area: Lake and Chaffee Counties and that portion of the State east of a line extending east from the Wyoming border, south along U.S. 85 to I–76, south along I–76 to I–25, south along I–25 to the New Mexico border.

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That portion of the State east of the High Plains Zone and west of a line extending south from the Nebraska border along KS 28 to U.S. 36, east along U.S. 36 to KS 199, south along KS 199 to Republic County Road 563, south along Republic County Road 563 to KS 148, east along KS 148 to Republic County Road 138, south along Republic County Road 138 to Cloud County Road 765, south along Cloud County Road 765 to KS 9, west along KS 9 to U.S. 24, west along U.S. 24 to U.S. 281, north along U.S. 281 to U.S. 36, west along U.S. 36 to U.S. 183, south along U.S. 183 to U.S. 24, west along U.S. 24 to KS 18, southeast along KS 18 to U.S. 183, south along U.S. 183 to KS 4, east along KS 4 to I–135, south along I–135 to KS 61, southwest along KS 61 to KS 96, northwest on KS 96 to U.S. 56, west along U.S. 56 to U.S. 281, south along U.S. 281 to U.S. 54, then west along U.S. 54 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Nebraska

Special Teal Season Area: That portion of the State south of a line beginning at the Wyoming State line; east along U.S. 26 to Nebraska Highway 92; east along Nebraska Highway 92 to Nebraska Highway 61; south along Nebraska Highway 61 to U.S. 30; east along U.S. 30 to the Iowa border.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

Pacific Flyway

California

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I–5 at the town of Weed; south along I–5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Canada Geese

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

Sandhill Cranes

Central Flyway

Colorado

Regular-Season Open Area—The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande, and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas

Regular Season Open Area—That portion of the State west of a line beginning at the Oklahoma border, north on I–35 to Wichita, north on I–135 to Salina, and north on U.S. 81 to the Nebraska border.

New Mexico

Regular-Season Open Area—Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area—The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Southwest Zone—Sierra, Luna, and Dona Ana Counties.

Oklahoma

Regular-Season Open Area—That portion of the State west of I–35.

Texas

Regular-Season Open Area—That portion of the State west of a line from the International Toll Bridge at

Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Austin; I–35 to the Texas-Oklahoma border.

North Dakota

Regular-Season Open Area—That portion of the State west of U.S. 281.

South Dakota

Regular-Season Open Area—That portion of the State west of U.S. 281.

Montana

Regular-Season Open Area—The Central Flyway portion of the State except that area south of I–90 and west of the Bighorn River.

Wyoming

Regular-Season Open Area—Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties.

Riverton-Boysen Unit—Portions of Fremont County.

Park and Big Horn County Unit—Portions of Park and Big Horn Counties.

Pacific Flyway

Arizona

Special-Season Area—Game Management Units 30A, 30B, 31, and 32.

Montana

Special-Season Area—See State regulations.

Utah

Special-Season Area—Rich and Cache Counties and that portion of Box Elder County beginning on the Utah-Idaho State line at the Box Elder-Cache County line; west on the State line to the Pocatello Valley County Road; south on the Pocatello Valley County Road to I–15; southeast on I–15 to SR–83; south on SR–83 to Lamp Junction; west and south on the Promontory Point County Road to the tip of Promontory Point; south from Promontory Point to the Box Elder-Weber County line; east on the Box Elder-Weber County line to the Box Elder-Cache County line; north on the Box Elder-Cache County line to the Utah-Idaho State line.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Eden-Farson Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

All Migratory Game Birds in Alaska

North Zone—State Game Management Units 11–13 and 17–26.

Gulf Coast Zone—State Game Management Units 5–7, 9, 14–16, and 10—Unimak Island only.

Southeast Zone—State Game Management Units 1–4.

Pribilof and Aleutian Islands Zone—State Game Management Unit 10—except Unimak Island.

Kodiak Zone—State Game Management Unit 8.

All Migratory Birds in the Virgin Islands

Ruth Cay Closure Area—The island of Ruth Cay, just south of St. Croix.

All Migratory Birds in Puerto Rico

Municipality of Culebra Closure Area—All of the municipality of Culebra.

Desecheo Island Closure Area—All of Desecheo Island.

Mona Island Closure Area—All of Mona Island.

El Verde Closure Area—Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for 1 kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas—All of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of the beginning.

BILLING CODE 4310–55–P

FINAL REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2000-01 SEASON

	ATLANTIC FLYWAY				MISSISSIPPI FLYWAY (a)				CENTRAL FLYWAY (b)				PACIFIC FLYWAY (c)(d)			
	VERY RES	RES	MOD	LIB	VERY RES	RES	MOD	LIB	VERY RES	RES	MOO	LIB	VERY RES	RES	MOO	LIB
Beginning Shooting Time	1/2 hr. before sunrise	1/2 hr before sunrise	1/2 hr. before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr. before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr before sunrise
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Opening Date	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1
Closing Date	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20
Season Length (in days)	20	30	45	60	20	30	45	60	25	39	60	74	38	60	86	107
Daily Bag/ Possession	3 6	3 6	6 12	6 12	3 6	3 6	6 12	6 12	3 6	3 6	6 12	6 12	4 8	4 8	7 14	7 14
Species/Sex Limits within the Overall Daily Bag Limit																
Mallard (Total/Female)	3/1	3/1	4/2	4/2	2/1	2/1	4/1	4/2	3/1	3/1	5/1	5/2	3/1	3/1	5/2	7/2
Pintail	ACCORDING TO THE PINTAIL INTERIM HARVEST STRATEGY															
Black Duck	1	1	1	1	1	1	1	1	-	-	-	-	-	-	-	-
Scaup (e)	TO BE DETERMINED BASED ON CURRENT SCAUP STATUS INFORMATION															
Canvasback	0 OR 1, ACCORDING TO THE CANVASBACK HARVEST STRATEGY															
Redhead	2	2	2	2	1	1	2	2	1	1	2	2	2	2	2	2
Wood Duck	2	2	2	2	2	2	2	2	2	2	2	2	-	-	-	-
Whistling Ducks	1	1	1	1	-	-	-	-	-	-	-	-	-	-	-	-
Harlequin	Closad	Closed	Closed	Closad	-	-	-	-	-	-	-	-	-	-	-	-
Mottled Duck	1	1	1	1	3	3	3	3	1	1	1	1	-	-	-	-

(a) In the States of Alabama, Mississippi, and Tennessee, the season length will be 51 days in the liberal alternative and 38 days in the moderate alternative with a framework closing date in both alternatives of January 31.

(b) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway with the exception of season length. Additional days would be allowed under the various alternatives as follows: very restrictive - 8, restrictive - 12, moderate and liberal - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.

(c) In the Columbia Basin Mallard Mangement Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.

(d) In Alaska, framework dates, bag limits, and season length would be different than the remainder of the Pacific Flyway. The bag limit would be 5-7 under the very restrictive and restrictive alternatives, and 8-10 under the moderate and liberal alternatives. There would be no restrictions on pintails, and canvasback limits would follow those for the remainder of the Pacific Flyway. Under all alternatives, season length would be 107 days and framework dates would be Sep 1 - Jan 26.

(e) Scaup daily bag limits will be based on current scaup status information until an agreed upon harvest strategy is completed and implemented.

[FR Doc. 00–19192 Filed 7–28–00; 8:45 am]
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Federal Register

Vol. 65, No. 147

Monday, July 31, 2000

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FEDERAL REGISTER PAGES AND DATE, JULY

40967–41320 3
41321–41550 5
41551–41864 6
41865–42272 7
42273–42596 10
42597–42854 11
42855–43212 12
43213–43676 13
43677–43960 14
43961–44402 17
44403–44640 18
44641–44944 19
44945–45274 20
45275–45510 21
45511–45700 24
45701–45830 25
45831–46084 26
46085–46334 27
46335–46566 28
46567–46858 31

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7325 41313
7326 41547
7327 41865
7328 42595
7329 43673
7330 44641
7331 45701

Executive Orders:
13129 (See Notice of June 30, 2000) 41549
13161 41543
13162 43211
13163 46563
13164 46565

Administrative Orders:
Memorandums:
July 5, 2000 43213
July 17, 2000 45511
Notices:
June 30, 2000 41549
Presidential Determinations:
No. 2000-25 of June 29, 2000 42273
No. 2000-26 of July 7, 2000 44403

5 CFR

3 41867
177 44945
178 40967
213 41867
315 41867
532 ..... 42597, 43215
550 ..... 41868, 44643
591 ..... 44099, 44100
890 44644
892 44644

7 CFR

1 46335
29 46085
272 ..... 41321, 41752
273 ..... 41321, 41752
274 41321
723 41551
929 42598
931 41557
947 42275
958 40967
982 40970
985 40973
989 ..... 40975, 44405
1140 44408
1218 43961
1230 43498
1464 41551
1735 42615

Proposed Rules:
51 46114
205 43259
215 45725
225 45725
226 45725
245 45725
905 ..... 41608, 42642
920 46658
927 41018
944 46658
1424 46115
4280 45319

8 CFR

103 43528
214 43528
236 43677
274a 43677
299 43677

Proposed Rules:
3 44476
103 43527
212 44477
214 43527
248 43527
264 43527

9 CFR

74 45275
94 ..... 43680, 43682
130 44947
590 44948

Proposed Rules:
1 42304
2 42304
391 45545
590 45545

10 CFR

2 44649
50 44649
170 44574
171 44574

Proposed Rules:
50 46661
54 42305
55 41021
71 44360
72 42647
490 44988

11 CFR

104 42619

12 CFR

5 41559
563b 43088
575 43088
622 46087
700 44950
701 44974
702 44950
900 ..... 43969, 44414

915.....41560
917.....44414
925.....40979
926.....44414
940.....43969
944.....44414
950 .....40979, 43969, 44414
952.....44414
955.....43969
956.....43969
961.....44414
966.....43969
980.....44414

Proposed Rules:
205.....44481
226.....42092, 45547
563b.....43092
575.....43088
614.....45933
619.....45933
917.....43408
925.....43408
930.....43408
931.....43408
932.....43408
933.....43408
956.....43408
960.....43408
Ch. XVII 46119

13 CFR

120.....42624
121 .....44574, 45143, 45831
125.....45831

Proposed Rules:
123.....43261

14 CFR

35.....42278
39 .....40981, 40983, 40985, 40988, 41326, 41869, 41871, 42281, 42855, 43215, 43217, 43219, 43221, 43223, 43228, 43406, 44432, 44661, 44662, 44663, 44667, 44670, 44672, 44977, 45277, 45513, 45515, 45517, 45703, 45705, 45835, 46200, 46567, 46569, 46571, 46573, 46575
71 .....40990, 40991, 41328, 41329, 41330, 41576, 42856, 42858, 42859, 42860, 43406, 43683, 43684, 43686, 44435, 45425, 45519, 45520, 45521, 45707, 45708, 45837, 45838, 45839, 45840, 45841, 45842
95.....41578
97 .....43230, 43232, 46088, 46090

Proposed Rules:
Ch. 1 43265
13.....41528
21.....42796
36.....42796
39 .....41381, 41385, 41884, 42306, 43265, 43720, 44013, 44991, 44994, 44995, 44997, 45319, 45323, 45934, 45936, 46119, 46203, 46204, 46206, 46210, 46211, 46214, 46216, 46218, 46221, 46223, 46378, 46666, 46667, 46671, 46672
71 .....41387, 41388, 43406, 43722
255.....45551

15 CFR

30.....42556
732.....42556
740.....42556, 43130
743.....42556
744.....45842
746.....46091
748.....42556
750.....42556
752.....42556
758.....42556
762.....42556
772.....42556, 43130
774 .....42556, 43130, 43406
902.....43687, 45844
960.....46822

16 CFR

Proposed Rules:
436.....44484
1500.....44703

17 CFR

1.....46578
5.....46578
143.....45709
211.....40992
241.....46581
271.....46581

Proposed Rules:
4.....46122
210.....43148
240.....43148

18 CFR

35.....45854
157.....45856
270.....45859
284 .....41581, 41873, 43688
375.....45859
381.....45859

Proposed Rules:
35.....45938
284.....41885

19 CFR

Ch. I.....42634
4.....44432
12.....45873
132.....43689
163.....43689

Proposed Rules:
4.....42893
19.....42893
122.....42893
123.....42893
127.....42893
141.....42893
142.....42893

20 CFR

404.....42283, 42772
416.....42283, 42772
655.....43539

Proposed Rules:
655.....43547
656.....46082

21 CFR

73.....41581, 41584
74.....46342
173.....45522
178.....41874
179.....45280
314.....43233
510.....45875
520.....45876, 45877
522 .....45876, 45877, 45878, 45879
524.....41587, 45282
556.....41588
558 .....41589, 41876, 45522, 45711, 45879, 45880, 45881
801.....44432
821.....43690
884.....41330
895.....43690
900.....43690
1300.....44673
1301.....44673, 45829
1304.....44673
1306.....45712
1307.....44673, 45829
1308.....43690

Proposed Rules:
20.....43269
58.....43269
101.....41029
170.....43269
171.....43269
174.....43269
179.....43269
315.....46674
601.....46674
1271.....44485

22 CFR

124.....45282
125.....45282
126.....45282, 45286

23 CFR

140.....45882, 45883
1313.....46344
1325.....45713
1327.....45713

Proposed Rules:
1.....45941
172.....44486
450.....41891
655.....45942
771.....41892
940.....45942
1410.....41891
1420.....41892
1430.....41892

24 CFR

960.....42518
964.....42512
982.....42508

Proposed Rules:
15.....42578
27.....41538
290.....41538
990.....42488

25 CFR

Proposed Rules:
15.....43874
84.....43874
114.....43874
115.....43874
162.....43874
166.....43874
580.....45558

26 CFR

1 .....40993, 41332, 44436, 44437, 44574, 44679, 46588
31.....44679
602.....44437

Proposed Rules:
1 .....41610, 42900, 43723, 44491, 44709, 46677

27 CFR

275.....45523

Proposed Rules:
9.....45739

28 CFR

0.....44682
2.....45885

Proposed Rules:
540.....44400
544.....44400

29 CFR

4.....45903
1910.....46798
4022.....43694
4044.....43694

Proposed Rules:
4.....45943
4022.....41610
4044.....41610

30 CFR

3.....42769
250.....41000, 46092

Proposed Rules:
70.....42122, 45742
72.....42068, 45743
75.....42122, 45742
90.....42122, 45742
250.....41892, 46126
934.....44015
946.....43723

31 CFR

103.....46356
501.....41334
598.....41334

32 CFR

199 .....41002, 45288, 45425

33 CFR

100.....41003, 46596
117.....45523, 45716
165 .....41004, 41005, 41007, 41009, 41010, 41342, 41590, 42287, 42289, 43236, 43244, 43695, 43697, 45289, 45290, 45292, 45293, 45525, 45908, 45910, 45911
167.....46603

Proposed Rules:
100.....45326
165.....45328
167.....46378

34 CFR

99.....41852

Proposed Rules:
674.....46127
682.....46316
685.....46324
692.....46324

36 CFR

Proposed Rules:
800.....42834
1191.....45331

37 CFR

Proposed Rules:
1 42309
102 41903
201 41612

38 CFR

3 43699
21 44979

Proposed Rules:
1 45332
3 45952
9 44999
39 45333

39 CFR

20 44438
111 ..... 41877, 46361, 46363
775 41011

40 CFR

9 ..... 43586, 43840
50 45182
51 45526
52 ..... 41344, 41346, 41350, 41352, 41355, 41592, 42290, 42861, 43700, 43986, 43994, 44683, 44685, 44981, 45294, 45297, 45718, 45912, 45915, 45918
60 ..... 42292, 46364, 46365
62 43702
63 ..... 41594, 42292
81 ..... 45182, 45829
112 43840
122 ..... 43586, 43840
123 ..... 43586, 43840
124 ..... 43586, 43840
130 ..... 43586, 43840
180 ..... 41365, 41594, 41601, 42863, 43704, 44448, 44454, 44470, 44473, 44689, 44693, 44696, 45920, 45922
261 42291
270 42292
271 ..... 42871, 43246, 45925, 46607
300 ..... 41369, 46096, 46366
430 46104
712 ..... 41371, 45535

Proposed Rules:
50 45953
52 ..... 41389, 41390, 41391, 42312, 42649, 42900, 42907, 42913, 42919, 43726, 43727, 44709, 44710, 45002, 45003, 45335, 45566, 45743, 45953, 45955, 45956, 46131, 46383
62 43730
63 ..... 43730, 44616
80 42920
81 ..... 42312, 45953
82 42653
125 42936
131 ..... 41216, 45569
136 41391
141 41031
142 41031
146 42248
180 45569
260 42937
261 ..... 42937, 44492
268 42937
271 ..... 42937, 42960, 43284, 45955, 46681
300 ..... 41392, 45014, 46131
434 41613

41 CFR

Ch. 301 45299
60–741 45174
101–49 45539
102–42 45539

42 CFR

59 41268
409 41128
410 41128
411 ..... 41128, 46770
413 ..... 41128, 46770
424 41128
484 41128
489 46770

Proposed Rules:
410 444176
414 444176

43 CFR

2 46366

Proposed Rules:
4 46389

45 CFR

96 45301
1159 46371
1635 41879

46 CFR

298 45146
356 44860

Proposed Rules:
15 45955
67 46137
110 46143
111 46143

47 CFR

0 43713
1 ..... 43995, 44576, 46108
2 43995
15 43995
21 46612
24 46109
27 42879
51 44699
52 43251
54 44699
64 ..... 43251, 45929
73 ..... 41012, 41013, 41375, 41376, 41377, 44010, 44011, 44476, 44984, 44985, 44986, 45720, 45721, 45722, 45723, 46376
74 46612
80 43713
90 ..... 43713, 43716, 43995
95 43995
101 41603

Proposed Rules:
1 41613
2 41032
21 46681
24 41034
27 42960
54 44507
73 ..... 41035, 41036, 41037, 41393, 41401, 41620, 41621, 44017, 44018, 44507, 45016, 45017, 45743, 45744, 46684
74 ..... 41401, 46681
87 41032

48 CFR

Ch. 1 (2 documents) 46052, 46074
2 46053
4 46074
5 ..... 46053, 46055
7 46053
10 46053
11 46064
12 ..... 46055, 46068
15 46053,
19 ..... 46053, 46055, 46069
22 ..... 46064, 46074
23 46055
28 46069
31 46071
36 46064
43 46072
49 46064
50 46073
52 ..... 46055, 46064, 46068, 46069, 46072
53 46055
208 46625
212 46625
213 46625
214 46625
215 46625
232 46625
250 46627
252 46625
501 41377
511 41377
512 41377
525 41377
532 41377
537 41377
552 41377
1801 46627
1804 43717
1807 45305
1808 46627
1811 46627
1813 46627
1815 45305
1816 46627
1819 46627
1825 45305
1827 45306
1835 ..... 45306, 46627
1842 ..... 45308, 46627
1851 46627
1852 ..... 43717, 45306, 46627

Proposed Rules:
2 ..... 42852, 46558
3 42852
4 46558
8 41264
14 ..... 42852, 46558
15 ..... 41264, 42852
28 42852
30 44710
32 46558
35 42852
42 46332
44 41264
52 ..... 41264, 42852, 46332
215 45574
225 41037
242 41038
252 41038
538 44508
552 44508
1837 43730

49 CFR

1 41282
80 44936
209 42529
211 42529
215 41282
220 41282
238 41282
260 41838
571 46629
821 42637

Proposed Rules:
571 ..... 44710, 46228
594 44713
613 41891
621 41891
622 41892
623 41892
1247 44509

50 CFR

17 46643
223 ..... 42422, 42481
600 45308
622 ..... 41015, 41016, 41379
635 ..... 42883, 46654
648 ..... 41017, 43687, 45543, 45844, 46655
660 45308
679 ..... 41380, 41883, 42302, 42641, 42888, 44011, 44699, 44700, 44701, 45316, 45723, 45745, 45930, 46376, 46377, 46655, 46656, 46657

Proposed Rules:
17 ..... 41404, 41405, 41782, 41812, 41917, 42316, 42662, 42962, 42973, 43450, 43730, 44509, 44717, 45336, 45956, 46391, 46684
20 ..... 45957, 46840
25 42318
32 42318
600 41622
622 ..... 41041, 42978, 46398
635 44753
648 42979
660 ..... 41424, 41426
679 ..... 41044, 44018, 45579

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JULY 31, 2000

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Summer flounder; published 7-31-00

COMMODITY FUTURES TRADING COMMISSION
Contract markets:
Contract market designation applications—
Fee schedule; published 7-31-00

DEFENSE DEPARTMENT
Acquisition regulations:
Reporting requirements repeal; published 7-31-00
Streamlined payment practices; published 7-31-00

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Ohio; published 5-30-00
Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
Colorado; published 5-30-00
Water programs:
Oil pollution prevention and response; non-transportation-related facilities
Correction; published 6-30-00

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
California; published 7-20-00
Iowa; published 7-5-00
Louisiana; published 7-5-00
Various States; published 7-20-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Human drugs:
Investigational new drugs and new drug applications—
Products intended for life-threatening diseases and conditions; clinical hold regulations; published 6-1-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare:
Medicare+Choice program—
Establishment; changes; published 6-29-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Compassionate payments:
Ricky Ray Hemophilia Relief Fund Program; published 5-31-00

INTERIOR DEPARTMENT
Land Management Bureau
Land resource management:
Disposition; occupancy and use—
Alaska occupancy and use; Alaska Native veterans allotments; published 6-30-00

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Acquisition regulations:
Awards resulting from broad agency announcements; procedural revisions; published 7-31-00

NUCLEAR REGULATORY COMMISSION
Domestic licensing and related regulatory functions; environmental protection regulations:
Emergency core cooling system evaluation models; published 6-1-00

SECURITIES AND EXCHANGE COMMISSION
Securities:
Mini-tender offers and limited partnership tender offers; commission guidance; published 7-31-00

SOCIAL SECURITY ADMINISTRATION
Supplemental security income:
Aged, blind, and disabled—
Benefits for fugitive felons and probation and parole violaters; published 6-30-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Rolls-Royce Ltd.; published 6-26-00

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Loans from qualified employer plan to plan participants or beneficiaries; published 7-31-00

TREASURY DEPARTMENT
Currency and foreign transactions; financial reporting and recordkeeping requirements:
Bank Secrecy Act; implementation—
Currency transactions reporting requirement; exemptions; published 7-28-00

COMMENTS DUE NEXT WEEK

ADVISORY COUNCIL ON HISTORIC PRESERVATION
Historic Preservation, Advisory Council
Protection of historic and cultural properties; comments due by 8-10-00; published 7-11-00

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Meats, prepared meats, and meat products; grading, certification, and standards:
Livestock and poultry products; equipment used in slaughter, processing, and packaging; certification of sanitary design and fabrication; comments due by 8-7-00; published 6-6-00
Oranges, grapefruit, tangerines, and tangelos grown in—
Florida; comments due by 8-7-00; published 7-6-00

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, foreign:
Mexican Hass avocados; comments due by 8-9-00; published 5-11-00

AGRICULTURE DEPARTMENT
Food and Nutrition Service
Child nutrition programs:
National school lunch and school breakfast programs—
Blended beef, pork, poultry, or seafood products; identification; comments due by 8-7-00; published 6-8-00

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Gulf of Alaska groundfish; comments due by 8-10-00; published 6-26-00
Caribbean, Gulf of Mexico, and South Atlantic fisheries—
Gulf of Mexico reef fish; comments due by 8-11-00; published 7-12-00
Marine mammals:
Humpback whales in Alaska; approach prohibition; comments due by 8-10-00; published 6-26-00

COMMERCE DEPARTMENT
Patent and Trademark Office
Freedom of Information Act and Privacy Act; implementation; comments due by 8-7-00; published 7-7-00
Patent cases:
Treatment of unlocatable application and patent files; comments due by 8-9-00; published 7-10-00

COMMODITY FUTURES TRADING COMMISSION
Commodity Exchange Act:
Clearing organizations; regulatory framework; comments due by 8-7-00; published 6-22-00
Exemption for bilateral transcations; regulatory framework; comments due by 8-7-00; published 6-22-00
Intermediaries of commodity interest transactions; regulatory framework; comments due by 8-7-00; published 6-22-00
Multilateral transaction execution facilities, intermediaries and clearing organizations; regulatory framework; comments due by 8-7-00; published 6-22-00

EDUCATION DEPARTMENT
Special education and rehabilitative services:
Assistance to States for education of children with disabilities; comments due by 8-8-00; published 5-10-00

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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S. 986/P.L. 106–249

Griffith Project Prepayment and Conveyance Act (July 26, 2000; 114 Stat. 619)

Last List July 27, 2000

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–038–00001–3)	6.50	Apr. 1, 2000
3 (1997 Compilation and Parts 100 and 101)	(869–042–00002–1)	22.00	[1] Jan. 1, 2000
4	(869–042–00003–0)	8.50	Jan. 1, 2000
5 Parts:			
1–699	(869–042–00004–8)	43.00	Jan. 1, 2000
700–1199	(869–042–00005–6)	31.00	Jan. 1, 2000
1200–End, 6 (6 Reserved)	(869–042–00006–4)	48.00	Jan. 1, 2000
7 Parts:			
1–26	(869–042–00007–2)	28.00	Jan. 1, 2000
27–52	(869–042–00008–1)	35.00	Jan. 1, 2000
53–209	(869–042–00009–9)	22.00	Jan. 1, 2000
210–299	(869–042–00010–2)	54.00	Jan. 1, 2000
300–399	(869–042–00011–1)	29.00	Jan. 1, 2000
400–699	(869–042–00012–9)	41.00	Jan. 1, 2000
700–899	(869–042–00013–7)	37.00	Jan. 1, 2000
900–999	(869–042–00014–5)	46.00	Jan. 1, 2000
1000–1199	(869–042–00015–3)	18.00	Jan. 1, 2000
1200–1599	(869–042–00016–1)	44.00	Jan. 1, 2000
1600–1899	(869–042–00017–0)	61.00	Jan. 1, 2000
1900–1939	(869–042–00018–8)	21.00	Jan. 1, 2000
1940–1949	(869–042–00019–6)	37.00	Jan. 1, 2000
1950–1999	(869–042–00020–0)	38.00	Jan. 1, 2000
2000–End	(869–042–00021–8)	31.00	Jan. 1, 2000
8	(869–042–00022–6)	41.00	Jan. 1, 2000
9 Parts:			
1–199	(869–042–00023–4)	46.00	Jan. 1, 2000
200–End	(869–042–00024–2)	44.00	Jan. 1, 2000
10 Parts:			
1–50	(869–042–00025–1)	46.00	Jan. 1, 2000
51–199	(869–042–00026–9)	38.00	Jan. 1, 2000
200–499	(869–042–00027–7)	38.00	Jan. 1, 2000
500–End	(869–042–00028–5)	48.00	Jan. 1, 2000
11	(869–042–00029–3)	23.00	Jan. 1, 2000
12 Parts:			
1–199	(869–042–00030–7)	18.00	Jan. 1, 2000
200–219	(869–042–00031–5)	22.00	Jan. 1, 2000
220–299	(869–042–00032–3)	45.00	Jan. 1, 2000
300–499	(869–042–00033–1)	29.00	Jan. 1, 2000
500–599	(869–042–00034–0)	26.00	Jan. 1, 2000
600–End	(869–042–00035–8)	53.00	Jan. 1, 2000
13	(869–042–00036–6)	35.00	Jan. 1, 2000
14 Parts:			
1–59	(869–042–00037–4)	58.00	Jan. 1, 2000
60–139	(869–042–00038–2)	46.00	Jan. 1, 2000
140–199	(869–038–00039–1)	17.00	[4] Jan. 1, 2000
200–1199	(869–042–00040–4)	29.00	Jan. 1, 2000
1200–End	(869–042–00041–2)	25.00	Jan. 1, 2000
15 Parts:			
0–299	(869–042–00042–1)	28.00	Jan. 1, 2000
300–799	(869–042–00043–9)	45.00	Jan. 1, 2000
800–End	(869–042–00044–7)	26.00	Jan. 1, 2000
16 Parts:			
0–999	(869–042–00045–5)	33.00	Jan. 1, 2000
1000–End	(869–042–00046–3)	43.00	Jan. 1, 2000
17 Parts:			
1–199	(869–042–00048–0)	32.00	Apr. 1, 2000
200–239	(869–042–00049–8)	38.00	Apr. 1, 2000
240–End	(869–038–00050–4)	44.00	Apr. 1, 1999
18 Parts:			
1–399	(869–042–00051–0)	54.00	Apr. 1, 2000
400–End	(869–042–00052–8)	15.00	Apr. 1, 2000
19 Parts:			
1–140	(869–042–00053–6)	40.00	Apr. 1, 2000
*141–199	(869–042–00054–4)	40.00	Apr. 1, 2000
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700–1699	(869–038–00074–1)	40.00	Apr. 1, 1999
1700–End	(869–042–00075–7)	18.00	[5] Apr. 1, 2000
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§§ 1.851–1.907	(869–042–00085–4)	43.00	Apr. 1, 2000
§§ 1.908–1.1000	(869–042–00086–2)	41.00	Apr. 1, 2000
§§ 1.1001–1.1400	(869–042–00087–1)	45.00	Apr. 1, 2000
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600–End	(869–042–00095–1)	12.00	Apr. 1, 2000
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Title	Stock Number	Price	Revision Date
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 1999, through January 1, 2000. The CFR volume issued as of January 1, 1999 should be retained.

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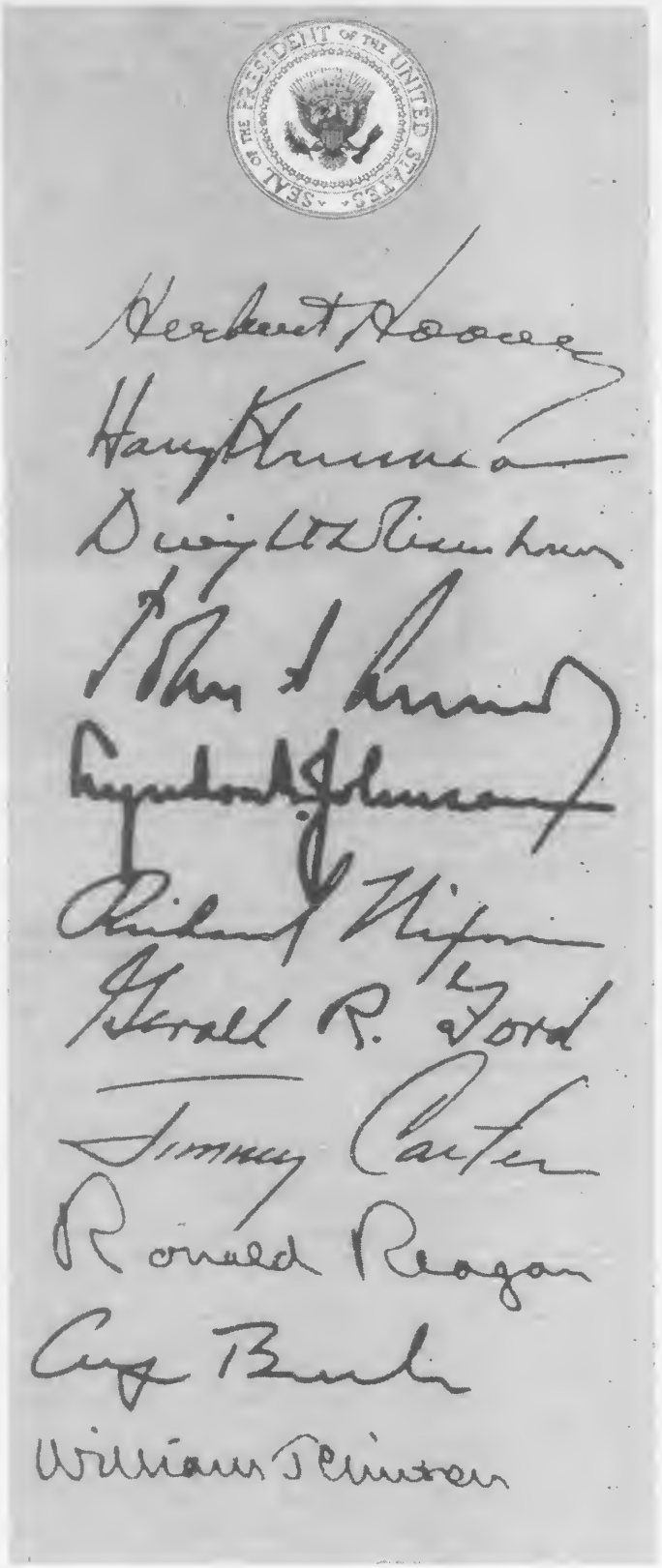

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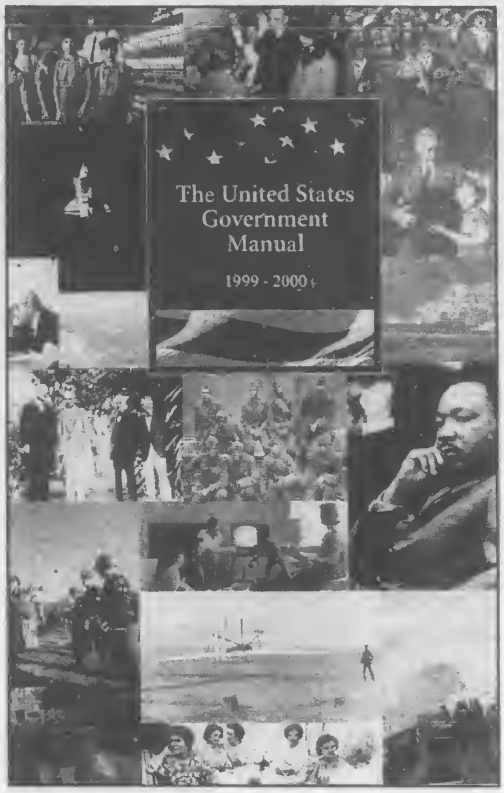

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