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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: July 11, 2000, at 9:00 a.m.

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV00–916–1 FIR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is adopting, as a final rule, with minor changes, the provisions of an interim final rule that revised the handling requirements for California nectarines and peaches by modifying the grade, size, maturity, and container marking requirements for fresh shipments of these fruits, beginning with 2000 season shipments. This rule also continues in effect the modification of the requirements for placement of Federal-State Inspection Service lot stamps for the 2000 season only. The marketing orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative and Peach Commodity Committees (committees). This rule enables handlers to continue shipping fresh nectarines and peaches meeting consumer needs in the interest of producers, handlers, and consumers of these fruits.

EFFECTIVE DATE: June 28, 2000.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 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 compliance 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 rule is issued under Marketing Agreement Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the "orders." The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

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

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

Under the orders, lot stamping, grade, size, maturity, container, and pack requirements are established for fresh shipments of California nectarines and peaches. Such requirements are in effect on a continuing basis. The Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC), which are responsible for local administration of the orders, met on November 30, 1999, and unanimously recommended that these handling requirements be revised for the 2000 season, which began April 1. The changes: (1) Revise the lot stamping requirements for the 2000 season only; (2) authorize shipments of "CA Utility" quality fruit to continue during the 2000 season; (3) eliminate the minimum letter height of maturity marking requirements for all containers; (4) provide a tolerance for the "Peento" or "donut" types of peaches for healed, non-serious, blossom-end growth cracks; and (5) revise varietal maturity, quality, and size requirements to reflect recent changes in growing conditions. These changes continue in effect as published in the interim final rule.

The committees meet prior to and during each season to review the rules and regulations effective on a continuing basis for California nectarines and peaches under the orders. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

No official crop estimate was available at the time of the committees' meetings because the nectarine and peach trees were dormant. The committees recommended a crop estimate at their meetings in early spring. Preliminary estimates indicate that the 2000 crop will be slightly larger in size with characteristics similar to the 1999 crop which totaled 20,405,000 boxes of nectarines and 20,460,000 boxes of peaches. The 2000 crop is estimated to be 22,000,000 boxes of nectarines and 21,000,000 boxes of peaches.

Lot Stamping Requirements

Sections 916.55 and 917.45 of the orders require inspection and certification of nectarines and peaches, respectively, handled by handlers. Sections 916.115 and 917.150 of the nectarine and peach orders' rules and regulations, respectively, require that all exposed or outside containers of nectarines and peaches, and at least 75 percent of the total containers on a pallet, be stamped with the Federal-State Inspection Service (inspection service) lot stamp number after inspection and prior to shipment to show that the fruit has been inspected. These requirements apply except for containers that are loaded directly onto railway cars, exempted, or mailed directly to consumers in consumer packages.

Lot stamp numbers are assigned to each handler by the inspection service, and are used to identify the handler and the date on which the container was packed. The lot stamp number is also used by the inspection service to identify and locate the corresponding inspector's working papers or notes. Working papers are the documents each inspector completes while performing an inspection on a lot of nectarines or peaches. Information contained in the working papers supports the grade levels certified by the inspector at the time of inspection.

The lot stamp number has value for the industries, as well. The committees utilize the lot stamp numbers and date codes to trace fruit in the container back to the orchard where harvested. This information is essential in providing quick information for a crisis management program instituted by the industries. Without the lot stamp information on each container, the "trace-back" effort, as it is called, would be jeopardized.

Recently, several new containers have been introduced for use by nectarine and peach handlers. The boxes are returnable plastic containers which retailers send back to a central clearinghouse after use. Use of these boxes may represent substantial savings to retailers for storage and disposal, as well as for handlers who do not have to pay for traditional containers. Fruit is packed in the boxes by the handler, delivered to the retailer, emptied, and returned to the clearinghouse for cleaning and redistribution. However, because they were designed to be reused, these boxes do not support markings that are permanently affixed to the container. All markings must be printed on cards which slip into tabs on the front or sides of the containers. The cards are easily inserted and removed, and further contribute to the efficient use of the container.

The cards are a concern for the inspection service and the industries, however. Because of their unique portability, there is some concern that the cards on pallets of inspected containers could easily be moved to pallets of uninspected containers, thus permitting a handler to avoid inspection on a lot or lots of nectarines or peaches. This would also jeopardize the use of the lot stamp numbers for the industries' "trace-back" program.

To address this concern, the committees have recommended that pallets of inspected fruit be identified with a USDA-approved pallet tag containing the lot stamp number, in addition to the lot stamp number printed on the card on the container. In this way, an audit trail is created, confirming that the lot stamp number on the containers on each pallet correspond to the lot stamp number on the pallet tag.

The inspection service and the committees have presented their concerns to the manufacturers of these types of boxes. One manufacturer has indicated a willingness to address the problem by offering an area on the principle display panel where the container markings will adhere to the box, which will meet the needs of the industries, the inspection service, and the manufacturer. However, the manufacturer expressed the belief that this change may not be available in time for the 2000 season. For that reason, the committees further recommended that the proposed modification of the lot stamping requirements be put into place for the 2000 season only.

This rule continues in effect revisions to §§ 916.115 and 917.150 which require the lot stamp number to be adhered to a USDA-approved pallet tag, in addition to the requirement that the number be applied to cards on all exposed or outside containers, and not less than 75 percent of the total containers on a pallet.

This rule also continues in effect a conforming change to § 917.150 that changed the word "but" to "and," making the language in this section similar to that in § 916.115.

Grade and Quality Requirements

Sections 916.52 and 917.41 of the orders authorize the establishment of grade and quality requirements for nectarines and peaches, respectively. Prior to the 1996 season, § 916.356 required nectarines to meet a modified U.S. No. 1 grade. Specifically, nectarines were required to meet U.S. No. 1 grade requirements, except there was a slightly tighter requirement for scarring and a more liberal allowance for misshapen fruit. Prior to the 1996 season, § 917.459 required peaches to meet the requirements of a U.S. No. 1 grade, except for a more liberal allowance for open sutures that were not "serious damage."

This rule continues in effect a revision of § 916.350, § 916.356, § 917.442, and § 917.459 to permit shipments of nectarines and peaches meeting "CA Utility" quality requirements during the 2000 season. ("CA Utility" fruit is lower in quality than that meeting the modified U.S. No. 1 grade requirements.) Shipments of nectarines and peaches meeting "CA Utility" quality requirements were permitted during the 1996 and 1997 seasons, and also during the 1998 and 1999 seasons with slight modifications.

Studies conducted by the NAC and PCC indicate that some consumers, retailers, and foreign importers found the lower quality fruit acceptable in some markets. When shipments of "CA Utility" nectarines were first permitted in 1996, they only represented 1.1 percent of all nectarine shipments, or approximately 210,000 boxes. Shipments of "CA Utility" peaches represented 1.9 percent of all peach shipments, or 366,000 boxes. By 1998 and 1999, shipments of "CA Utility" nectarines represented 4.5 percent and 4.0 percent, respectively, of all nectarine shipments; or approximately 760,000 boxes and 819,600 boxes, respectively. In 1998 and 1999, shipments of "CA Utility" peaches represented 3.3 percent and 3.4 percent, respectively, of all peach shipments; or approximately 602,000 boxes and 689,800 boxes, respectively.

For these reasons, the committees unanimously recommended that shipments of "CA Utility" quality nectarines and peaches be permitted for the 2000 season with a continuing in-house statistical review. This rule continues in effect a revision to paragraphs (d) of §§ 916.350 and 917.442, and paragraphs (a)(1) of §§ 916.356 and 917.459 to permit shipments of nectarines and peaches meeting "CA Utility" quality requirements during the 2000 season, on the same basis as last season.

In addition, this rule continues in effect a revision of paragraph (a)(1) of § 917.459 to provide a 10 percent tolerance for healed, non-serious, blossom-end growth cracks for the "Peento" or "donut" varieties of peaches, such as the "Saturn" and "Jupiter" varieties.

These varieties of peaches characteristically suffer blossom-end (calyx basin) cracks during development. These cracks heal as the growth continues and as the fruit gains size. Generally, the cracks are completely healed by harvest. Peaches with unhealed or serious blossom-end growth cracks at the time of inspection would not be included in U.S. No. 1 or "CA Utility" packages. Such a relaxation will permit handlers of the Peento type of peaches to utilize more of these fruit in boxes of U.S. No. 1 peaches, benefitting both handlers and growers of these varieties.

The PCC unanimously recommended this additional tolerance of 10 percent for healed, non-serious, blossom-end growth cracks for the Peento type of peaches, beginning in the 2000 season.

Container Marking Requirements

Sections 916.52 and 917.41 of the nectarine and peach orders, respectively, authorize container marking requirements. Requirements for container markings are specified in §§ 916.350 and 917.442 of the orders' rules and regulations. Container marking requirements include marking of the commodity and variety (*e.g.*, Fay Elberta peaches), the size of the fruit in the box (*e.g.*, 88 size), the net weight, and the maturity (either U.S. Mature (US MAT) or California Well Matured (CA WELL MAT)), on each container of nectarines or peaches.

As innovative containers enter the marketplace, especially those preferred by retailers, the configuration of display panels changes. This is true for both retail and consumer-size containers. As a result, handlers are forced to make adjustments in their container markings to accommodate the differences in display panels. Some containers, such as those intended for purchase by individual consumers, are smaller and have less display-panel surface area, and meeting all the minimum size labeling requirements is difficult. Some handlers requested a relaxation in the container labeling requirements with regard to the fruit maturity marking, and the committees agreed that a modification would be appropriate. This relaxation eliminates the minimum lettering height in favor of a requirement that fruit maturity markings be clear and legible. Therefore, the revision to §§ 916.350 and 917.442, paragraphs (a)(3) continues in effect.

Maturity Requirements

Both orders provide (in §§ 916.52 and 917.41) authority to establish maturity requirements for nectarines and peaches, respectively. The minimum maturity level currently specified for nectarines and peaches is "mature" as defined in the standards. Additionally, both orders" rules and regulations provide for a higher, "well matured" classification. For most varieties, "well-matured" fruit determinations are made using maturity guides (*e.g.*, color chips). These maturity guides are reviewed each year by the Shipping Point Inspection Service (SPI) to determine whether they need to be changed based on the most recent information available on the individual characteristics of each variety.

These maturity guides established under the handling regulations of the California tree fruit marketing orders have been codified in the Code of Federal Regulations as TABLE 1 in §§ 916.356 and 917.459, for nectarines and peaches, respectively.

The requirements in the 2000 handling regulation are the same as those that appeared in the 1999 handling regulation with a few exceptions. Those exceptions are explained in this rule.

Nectarines: Requirements for "well-matured" nectarines are specified in § 916.356 of the order's rules and regulations. While SPI made no recommendation with regard to changes to the NAC regarding maturity guides, the committee recommended removal of several varieties of nectarines from the maturity guides.

This rule continues in effect a revision of TABLE 1 of paragraph (a)(1)(iv) of § 916.356 by removing 12 nectarine varieties which are no longer in production. The NAC routinely reviews the status of nectarine varieties listed in these maturity guides. The most recent review revealed that 12 of the nectarine varieties currently listed in the maturity guide have not been in production since the 1997 season. Typically, the NAC recommends removing a variety after non-production for three seasons, or if trees of that variety are known to have been pulled out, because a maturity guide for an obsolete variety is no longer needed. The varieties removed include the Apache, Arm King, Bob Grand, Flavor Grand, Flavortop I, Maybelle, Mike Grand, Pacific Star, Son Red, Summer Star, Sunfre, and Tasty Gold nectarine varieties.

Peaches: Section 917.459 of the order's rules and regulations specifies maturity requirements for fresh peaches being inspected and certified as being "well matured."

This rule continues in effect a revision of TABLE 1 of paragraph (a)(1)(iv) of § 917.459 to add maturity guides for 2 peach varieties and revise the maturity guide for 1 variety. Specifically, SPI recommended adding the maturity guides for the Earli Rich peach variety to be regulated at the H maturity guide, and the Late Ito Red peach variety to be regulated at the L maturity guide. SPI also recommended a modification to the current maturity guide for the Autumn Rose peach variety, changing the maturity guide from the I to the H maturity guide.

This rule also continues in effect a correction of the reference to the Ambercrest peach variety listed in TABLE 1 of paragraph (a)(1)(iv). The correct name of the variety is "Amber Crest."

The PCC recommended these maturity requirements based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the "well-matured" level of maturity for peach varieties in production.

TABLE 1 of paragraph (a)(1)(iv) of § 917.459 was also revised to remove 15 peach varieties which are no longer in production, and this rule continues in effect that revision. The PCC routinely reviews the status of peach varieties listed in these maturity guides. The most-recent review revealed that 15 of the peach varieties currently listed in the maturity guide have not been in production since the 1997 season. Typically, the PCC recommends removing a variety after non-production for three seasons, or if trees of that variety are known to have been pulled out, because a maturity guide for an obsolete variety is no longer needed. The varieties removed include the August Sun, Autumn Crest, Belmont (Fairmont), Berenda Sun, Fayette, Golden Crest, Golden Lady, June Sun, Mary Anne, Parade, Pat's Pride, Prima Lady, Red Cal, Scarlet Lady, and Springold peach varieties.

Size Requirements

Both orders provide (in §§ 916.52 and 917.41) authority to establish size requirements. Size regulations encourage producers to leave fruit on the tree longer. This increased growing time not only improves the size of the fruit, but also increases its maturity. In addition, increased size results in an increased number of packed boxes of nectarines or peaches per acre. Acceptable size fruit also provides greater consumer satisfaction and more repeat purchases; and, therefore, increases returns to producers and handlers. Varieties recommended for specific size regulation have been reviewed and such recommendations are based on the specific characteristics

of each variety. The NAC and PCC conduct studies each season on the range of sizes reached by the regulated varieties and determine whether revisions in the size requirements are appropriate.

Nectarines: Section 916.356 of the order's rules and regulations specifies minimum size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). This rule continues in effect a revision of § 916.356 to establish variety-specific minimum size requirements for 14 nectarine varieties that were produced in commercially-significant quantities of more than 10,000 packages for the first time during the 1999 season. This rule also continues in effect a modification of the variety-specific minimum size requirements for 6 varieties of nectarines whose shipments fell below 5,000 packages during the 1999 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Diamond Jewel nectarine variety. Studies of the size ranges attained by the Diamond Jewel variety revealed all but one box of that variety met minimum sizes 50, 60, 70, and 80 during the 1999 season. The one box reportedly met a minimum size 88. While the size distribution peaked on the size 70, 100 percent of the fruit sized at a minimum of size 88.

A review of other varieties with the same harvesting period indicated that Diamond Jewel was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to handle the variety confirmed this information regarding minimum size and harvesting period, as well. Thus, the recommendation to place the Diamond Jewel nectarine variety in the variety-specific size regulation at a size 88 is appropriate.

Historical variety data such as this provides the NAC with the information necessary to recommend the appropriate sizes at which to regulate various nectarine varieties. In addition, producers and handlers of the varieties affected are personally invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at both NAC and subcommittee meetings when such comments are received by the staff.

For reasons similar to those discussed in the preceding paragraph, the revision of the introductory text of paragraph (a)(4) of § 916.356 continues in effect to include the Diamond Jewel, Kay Sweet, and White Sun nectarine varieties; and the revision of the introductory text of paragraph (a)(6) in § 916.356 continues in effect to include the Arctic Blaze, Arctic Gold, Arctic Jay, Cole Red, Fire Sweet, Honey Blaze, Kay Bright, Prima Diamond XVIII, Regal Pearl, Ruby Sweet, and White September nectarine varieties.

This rule continues in effect the revision of the introductory text of paragraph (a)(4) of § 916.356 to remove 2 nectarine varieties from the variety-specific minimum size requirements specified in the section because less than 5,000 packages of each of these varieties were produced during the 1999 season. Thus, the revision of the introductory text of paragraph (a)(4) continues in effect the removal of the Early May and Prima Diamond VI nectarine varieties.

This rule also continues in effect the revision of the introductory text of paragraph (a)(6) of § 916.356 to remove 4 nectarine varieties from the variety-specific minimum size requirements specified in the section because less than 5,000 packages of each of these varieties were produced during the 1999 season. Thus, the revision of the introductory text of paragraph (a)(6) continues in effect the removal of the Flavortop, Flavortop I, How Red (Sunectnineteen) and the 491–48 nectarine varieties.

The Grand Sun nectarine variety had 1999 shipments of 2,939 packages, but was not recommended for removal from variety-specific size requirements because the variety is expected to increase in commercial significance during the 2000 season. Inclement weather, including the cool spring and frost damage, is considered to be a factor in the decreased production during the 1999 season. However, in the interim final rule, this variety was inadvertently omitted from paragraph (a)(3) of § 916.356. This rule corrects that omission. This rule also corrects the name of the variety from "Gran Sun" to "Grand Sun."

Nectarine varieties removed from the nectarine variety-specific list become subject to the non-listed variety size requirements specified in paragraphs (a)(7), (a)(8), and (a)(9) of § 916.356.

The NAC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these nectarine varieties, and consumer acceptance levels for various sizes of fruit. This rule is designed to establish minimum size requirements for fresh nectarines consistent with expected crop and market conditions.

Peaches: Section 917.459 of the order's rules and regulations specifies minimum size requirements for fresh peaches in paragraphs (a)(2) through (a)(6), and paragraphs (b) and (c). This rule continues in effect the revision of § 917.459 to establish variety-specific minimum size requirements for 16 peach varieties that were produced in commercially-significant quantities of more than 10,000 packages for the first time during the 1999 season. This rule also continues in effect the modification of the variety-specific minimum size requirements for 4 varieties of peaches whose shipments fell below 5,000 packages during the 1999 season.

One of the varieties recommended for addition to the variety-specific size requirements is the Brittany Lane variety. Studies of the size ranges attained by the Brittany Lane variety revealed that while the size distribution peaked on size 50, all of the boxes of that variety met at least the size 80 requirement.

A review of other varieties of the same harvesting period indicated that Brittany Lane was also comparable to those varieties in its size ranges. Discussions with handlers known to handle the variety confirmed this information regarding minimum size and harvesting period, as well. Thus, the recommendation to place the Brittany Lane variety in the variety-specific size regulation at a size 80 is appropriate.

Historical variety data such as this provides the PCC with the information necessary to recommend the appropriate sizes at which to regulate various peach varieties. In addition, producers of the affected varieties are invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at both PCC and subcommittee meetings when such comments are received by staff of CTFA.

In § 917.459 of the order's rules and regulations, the revision of the introductory text of paragraph (a)(5) continues in effect to include the Brittany Lane, Snow Prince, Zee Diamond, 012–094, and 172LE White Peach (Crimson Snow/Sunny Snow) peach varieties; and the revision of the introductory text of paragraph (a)(6) continues in effect to include the Country Sweet, Earli Rich, Full Moon, Late September Snow, N117, Queen Lady, Red Sun, Sierra Gem, Snow Blaze, Sweet Kay, and Sweet September peach varieties.

This rule also continues in effect the revision of § 917.459 to remove 4 peach varieties from the variety-specific size requirements specified in that section, because less than 5,000 packages of this variety were produced during the 1999 season. In § 917.459, the revision of the

introductory text of paragraph (a)(5) continues in effect to remove the Golden Crest (Supechthree) peach variety and the revision of the introductory text of paragraph (a)(6) of § 917.459 continues in effect to remove the Snow Diamond, Sparkle, and 1–01–505 peach varieties.

The Super Rich peach variety had 1999 shipments of 3,941 packages, but was not recommended for removal from variety-specific size requirements because the variety is expected to increase in commercial significance during the 2000 season. Inclement weather, including the cool spring and frost damage, is considered to be a factor in the decreased production during the 1999 season.

In paragraph (a) (6) of § 917.459, this action corrects the name of the peach variety "Prima Gattie" to "Prima Gattie 8", and the variety "Yukon King" to "Autumn Snow" These corrections are based on the comment received.

Peach varieties removed from the variety-specific list become subject to the non-listed variety size requirements specified in paragraphs (b) and (c) of § 917.459.

The PCC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these peach varieties, and the consumer acceptance levels for various fruit sizes. This rule continues in effect the minimum size requirements for fresh peaches consistent with expected crop and market conditions.

This rule reflects the committees' and the Department's appraisal of the need to continue in effect the revision to the handling requirements for California nectarines and peaches, as specified. The Department has determined that this rule will have a beneficial impact on producers, handlers, and consumers of California nectarines and peaches.

This rule continues in effect handling requirements for fresh California nectarines and peaches consistent with expected crop and market conditions, and will help ensure that all shipments of these fruits made each season will meet acceptable handling requirements established under each of these orders. This rule will also help the California nectarine and peach industries provide fruit desired by consumers. This rule is designed to maintain orderly marketing conditions for these fruits in the interest of producers, handlers, and consumers.

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

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

There are approximately 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural service firms, which includes handlers, have been defined as those whose annual receipts are less than $5,000,000. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.201] as those having annual receipts of less than $500,000. A majority of these handlers and producers may be classified as small entities.

The committees' staff have estimated that there are less than 20 handlers in the industry who could be defined as other than small entities. If the average handler price received were $9.00 per box or box equivalent of nectarines or peaches, a handler would have to ship at least 555,000 boxes to have annual receipts of $5,000,000. Small handlers represent approximately 94 percent of the handlers within the industry. If the average producer price received were $6.00 per box or box equivalent for nectarines and $5.65 per box or box equivalent for peaches, producers would have to produce approximately 84,000 boxes or box equivalents of nectarines and approximately 89,000 boxes or box equivalents of peaches to have annual receipts of $500,000. Therefore, small producer entities are estimated to represent approximately 78 percent of the producers within the industry. For those reasons, a majority of the handler and producers may be classified as small entities, excluding receipts from other sources.

Under §§ 916.52 and 917.41 of the orders, lot stamping, grade, size, maturity, and container and pack requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis. This rule continues in effect the revision to the handling requirements to: (1) Revise the lot stamping requirements for the 2000 season only; (2) authorize shipments of "CA Utility" quality fruit to continue during the 2000 season; (3) eliminate the minimum size of maturity marking requirements for all containers; (4) provide a tolerance for the "Peento" or "donut" types of peaches for healed, non-serious, blossom-end growth cracks; and (5) revise varietal maturity, quality, and size requirements to reflect recent changes in growing conditions.

In §§ 916.115 and 917.150 of the orders' rules and regulations, respectively, handlers are required to stamp containers of nectarines and peaches with the Federal-State Inspection Service lot stamp number after inspection and prior to shipment. New, returnable containers, which do not support permanent markings, utilize printed cards which contain the lot stamp number, date codes, and other container marking requirements. The printed cards are easily inserted into tabs on the front or sides of the containers. The ease of portability of these cards creates problems for both the inspection service and the industries in tracking the containers. Cards on a pallet of inspected fruit could be easily moved to a pallet of uninspected fruit, thus permitting a handler to circumvent inspection requirements. The inspection service and the committees have recommended that each pallet of inspected nectarines and peaches be marked with a pallet tag containing the lot stamp number, in addition to the lot stamp number provided on the card on the containers.

The committees believe that this recommendation should be limited to the 2000 season only, since at least one manufacturer anticipates the availability of an area on the principle display panel where the container markings will adhere to the box, which will meet the needs of the industries, inspection service, and the manufacturer. However, the manufacturer expressed the belief that this change may not be available in time for the 2000 season. For that reason, the committees further recommended that the proposed modification of the lot stamping requirements be put into place for the 2000 season only.

In 1996, §§ 916.350 and 917.442 were revised to permit shipments of lower-quality nectarines and peaches, known as "CA Utility," as an experiment for the 1996 season only. Such authorization was continued during the 1997, 1998, and 1999 seasons. This rule continues in effect the authority to permit the continued use of "CA Utility" quality fruit for the 2000 season with a continued in-house statistical review to be conducted by the NAC and PCC. During the 1996 season, the Department authorized the shipment of nectarines and peaches which were of a

lower quality than the minimum permitted for previous seasons. During 1996, there were 210,443 boxes of nectarines and 365,761 boxes of peaches packed as "CA Utility," or 1.1 percent and 1.9 percent of fresh shipments, respectively. During 1997, there were 230,275 boxes of nectarines and 216,562 boxes of peaches packed as "CA Utility," or 1.1 percent and 1.0 percent of fresh shipments, respectively. In 1998, there were 760,000 boxes of nectarines and 602,000 boxes of peaches packed as "CA Utility," or 4.5 percent and 3.3 percent of fresh shipments, respectively. In 1999, there were 819,600 boxes of nectarines and 689,800 boxes of peaches packed as "CA Utility," or 4.0 percent and 3.4 percent of fresh shipments, respectively.

Continued availability of "CA Utility" quality fruit is expected to have a positive impact on producers, handlers, and consumers by permitting more nectarines and peaches to be shipped into fresh market channels, without adversely impacting the market for higher quality fruit.

Sections 916.356 and 917.442 establish minimum maturity levels. This rule continues in effect the annual adjustments to the maturity requirements for several varieties of nectarines and peaches. Maturity requirements are based on maturity measurements generally using maturity guides (e.g., color chips), as reviewed by SPI. Such maturity guides provide producers, handlers, and SPI with objective tools for measuring the maturity of different varieties of nectarines and peaches. Such maturity guides are reviewed annually by SPI to determine the appropriate guide for each nectarine and peach variety. These annual adjustments reflect changes in the maturity patterns of nectarines and peaches as experienced over the previous seasons' inspections. Adjustments in the guides ensure that fruit has met an acceptable level of maturity, thus ensuring consumer satisfaction while benefitting nectarine and peach producers and handlers.

In § 916.356 of the order's rules and regulations for nectarines and § 917.459 of the order's rules and regulations for peaches, minimum sizes for various varieties of nectarines and peaches are established. This rule continues in effect the adjustments to the minimum sizes authorized for various varieties of nectarines and peaches for the 2000 season. Minimum size regulations are put in place to allow fruit to stay on the tree for a greater length of time. This increased growing time not only improves maturity, but also improves fruit size. Increased fruit size increases the number of packed boxes per acre. Increased fruit size and maturity also provide greater consumer satisfaction and, therefore, more repeat purchases by consumers. Repeat purchases and consumer satisfaction benefit producers and handlers alike. Such adjustments to minimum sizes of nectarines and peaches are recommended each year by the NAC and PCC based upon historical data, and producer and handler information regarding sizes which the different varieties attain.

The recommendations with regard to maturity markings on containers, continuation of authority to ship nectarines and peaches which meet the "CA Utility" quality requirements, and an increased tolerance for Peento type of peaches, are relaxations which continue in effect. These regulations are intended to provide increased flexibility for handlers of nectarines and peaches.

The committees made recommendations regarding these revisions in handling requirements after considering all available information, including comments of persons at three subcommittee meetings. The Grade and Size Subcommittee met on November 9, 1999, the Management Services Committee met on November 17, 1999, and the Returnable Plastic Container Task Force met on November 23, 1999. At the meetings, the impact of and alternatives to these recommendations were discussed.

At the Grade and Size Subcommittee, the members discussed recommendations of SPI with regard to maturity guides, and recommendations of staff with regard varietal sizing and grades. SPI recommended maturity guides for two varieties of peaches and also recommended a change in maturity guides for an established variety. SPI made no recommendations to add or change any maturity guides for nectarines. The staff made recommendations to remove varieties of nectarines and peaches from the maturity listings which are no longer in commercial production.

The staff also made recommendations to add nectarine and peach varieties to the variety-specific size requirements, based upon internal studies of the sizing characteristics of those nectarines and peaches. These nectarine and peach varieties were packed in commercially-significant quantities of 10,000 packages or more during the 1999 season. Also, the staff made recommendations to remove nectarine and peach varieties from the variety-specific sizing requirements, based upon information indicating that less than 5,000 packages of those varieties were packed in the 1999 season and that the shipments of those varieties are expected to continue to decline in commercial significance. The committees routinely review their regulations and add varieties of which more than 10,000 packages are packed in a season; or remove varieties of which less than 5,000 packages are packed in a season. The alternative to these requirements would be for the more popular varieties to be subject to the less-precise general sizing regulations. This alternative was rejected since it would ultimately increase the amount of less-acceptable fruit being marketed to consumers. Such a result would be contrary to the long-term interests of producers, handlers, and consumers.

At the Grade and Size Subcommittee meeting, a handler recommended eliminating the required minimum letter height for maturity markings for all types of containers. The handler noted that some boxes preferred by retailers have limited amounts of space on the display panels, especially consumer boxes. He suggested that the lettering height minimum for the maturity markings be eliminated in favor of clear and legible markings. Any alternatives, he noted, would fall short of the need to provide handlers the necessary maturity marking flexibility. He added that with all the required markings for variety, commodity, etc., very little room is left on the display panel and markings may nearly overlap. His recommendation and those of SPI and the staff were approved unanimously.

At the Returnable Plastic Container Task Force meeting, the participants discussed the most expedient method to ensure that lot stamp numbers and date codes could be affixed to containers of nectarines and peaches to allow such containers to be adequately tracked, which would meet the needs of the inspection service and the industries. The members also met with a manufacturer of one of the returnable boxes, who expressed a willingness to cooperate with the industries in finding a solution to the problem of the highly-portable cards on the containers.

Alternatives offered included leaving container marking requirements unchanged, eliminating lot stamp numbers as a required marking, and permitting shipments of nectarines and peaches in these containers without restrictions on the cards. By leaving container marking requirements unchanged, handlers would be precluded from providing nectarines and peaches in containers advocated by receiving retailers. Eliminating lot stamp numbers as a required marking is unacceptable to both the inspection service and the industry. Allowing

returnable, plastic containers to be shipped with the highly portable cards is also unacceptable since the portability of the cards could enable a handler to evade inspection on a lot or lots of nectarines or peaches by moving the cards to uninspected containers, and could jeopardize the industries' "trace back" program. All of these alternatives were, therefore, rejected.

At the Management Services Committee meeting, the members reviewed all subcommittee recommendations available to them. The members of the Management Services Committee include the chairpersons and vice-chairpersons of the committees, who generally have many years experience working in the industries. They, too, discussed recommendations of subcommittees and were free to make alternative recommendations or revise recommendations to the committees, as they reviewed such recommendations.

Like committee meetings, subcommittee meetings are open to the public and comments are widely solicited.

This rule does not impose any additional reporting and recordkeeping requirements on either small or large handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

However, as previously stated, nectarines and peaches under the orders have to meet certain requirements set forth in the standards issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary.

In addition, the committees' meetings were widely publicized throughout the nectarine and peach industries and all interested parties were invited to attend the meetings and participate in committee deliberations on all issues. These meetings are held annually during the last week of November or first week of December. Like all committee meetings, the November 30, 1999, meetings were public meetings and all entities, both large and small, were able to express views on these issues. The committees themselves are composed of producers.

An interim final rule concerning this action was published in **Federal Register** on March 22, 2000 (65 FR 15205). Copies of the rule were mailed to all committee members and handlers by the committee staff on March 22, 2000. Finally, the rule was made available through the Internet by the Office of the Federal Register. A 60-day comment period ending May 22, 2000, was provided to allow interested persons to respond to the proposal. One comment was received during the comment period in response to the proposal.

The commenter submitted several clarifications to the interim final rule. One clarification dealt with the inadvertent omission of the "Grand Sun" nectarine variety from the variety specific size designations in paragraph (a)(3) of § 916.356. The clarification also noted that the interim final rule listed the variety as "Gran Sun." As noted earlier, these corrections relative to the Grand Sun nectarine variety have been made.

The commenter also requested name corrections for two peach varieties. According to the commenter, the name "Prima Gattie" should be corrected to read "Prima Gattie 8," and the name "Yukon King" should be corrected to read "Autumn Snow."

Accordingly, appropriate changes are made based upon the comment received.

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

After consideration of all relevant material presented, the information and recommendations submitted by the committees, and other information, it is found that finalizing the interim final rule, with appropriate changes, as published in the **Federal Register** (65 FR 15205, March 22, 2000) will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) Handlers are already shipping nectarines and peaches from the 2000 crop; (2) handlers are already aware of this rule, which was unanimously recommended at a public meeting; and (3) a 60-day comment period was provided for in the interim final rule.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

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

Accordingly, the interim final rule amending 7 CFR parts 916 and 917, which was published at 65 FR 15205 on March 22, 2000, is adopted as a final rule with the following changes:

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

Authority: 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

§ 916.356 [Amended]

2. Section 916.356, paragraph (a)(3) is amended by adding the words "Grand Sun" between the words "Early Diamond" and "Johnny's Delight."

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

§ 917.459 [Amended]

3. Section 917.459, paragraph (a)(6) is amended by revising the words "Prima Gattie" to read "Prima Gattie 8," removing the words "Yukon King," and adding the words "Autumn Snow" between the words "Autumn Rose" and "Cal Red."

Dated: June 21, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–16151 Filed 6–26–00; 8:45 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3 and 292

[EOIR No. 112F; A.G. Order No. 2309–2000]

RIN 1125–AA13

Professional Conduct for Practitioners—Rules and Procedures

AGENCY: Executive Office for Immigration Review and Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the rules and procedures concerning professional conduct for attorneys and

representatives (practitioners) who appear before the Executive Office for Immigration Review (EOIR) and/or the Immigration and Naturalization Service (the Service). This final rule also includes a provision that was promulgated as an interim rule on April 6, 1992, pursuant to section 545 of the Immigration Act of 1990, concerning sanctions against attorneys or representatives who engage in frivolous behavior in immigration proceedings. This final rule outlines the authority EOIR has to investigate complaints and impose disciplinary sanctions against practitioners who appear before its tribunals, and clarifies the authority of the Service to investigate complaints regarding practitioners who conduct business with the Service. This final rule permits EOIR and the Service to investigate allegations of ethical misconduct and initiate disciplinary proceedings more effectively and efficiently while ensuring the due process rights of the practitioner. The final rule also reinstates the Board of Immigration Appeals as the reviewing body for disciplinary decisions, instead of the Disciplinary Committee, as was set forth in the proposed rule. Both the public comments and the Department of Justice's (Department) reassessment of the appellate review process resolved that, as is presently established, Board review of disciplinary decisions is more efficient and practical and should therefore remain unchanged. Additionally, this final rule enables efficient resolution of frivolous complaints and meritorious cases, a consideration critical to, and in the best interests of, all parties involved.

EFFECTIVE DATE: July 27, 2000.

FOR FURTHER INFORMATION CONTACT: Charles Adkins-Blanch, Acting General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia, 22041, telephone (703) 305–0470, or Julia A. Doig, Chief Appellate Counsel, Immigration and Naturalization Service, 5113 Leesburg Pike, Suite 200, Falls Church, Virginia 22041, telephone (703) 756–6257.

SUPPLEMENTARY INFORMATION: Currently, the regulations at 8 CFR 292.3 require the Service to investigate complaints filed regarding the conduct of attorneys and representatives (referred to in the final rule as practitioners) practicing before both the Service and EOIR. If the investigation establishes, to the satisfaction of the Service, that disciplinary proceedings should be instituted, the General Counsel of the Service serves a copy of the written charges upon the attorney or representative and upon the Office of the Chief Immigration Judge. The present procedure provides for the government to be represented by a Service attorney in disciplinary proceedings before an Immigration Judge. The decision of the Immigration Judge may be appealed to the Board of Immigration Appeals (Board) by either party.

On January 20, 1998, the Service and EOIR published a proposed rule in the **Federal Register** (63 FR 2901) amending parts 3 and 292 of the rules and procedures governing professional conduct for practitioners who appear before EOIR, which includes the Board and the Immigration Courts, as well as the rules and procedures governing professional conduct for practitioners who conduct business before the Service. The proposed rule included various grounds of discipline and procedures for hearings and appeals, which, although somewhat more sophisticated, were in many ways similar to the approach of the current regulations. The proposed rule was neither written on a clean slate nor did it propose to institute a new form of professional discipline; in fact, it was merely intended to clarify and improve the existing procedures and, in particular, to remove the Service from the enforcement role with respect to professional misconduct occurring before the Board and the Immigration Courts. The proposed rule did contain a new procedure for adjudicating disciplinary complaints. The proposed process included a hearing by an adjudicating official appointed by the Director of EOIR and a report by that adjudicating official to a three-member Disciplinary Committee appointed by the Deputy Attorney General.

This final rule retains the Service's investigative and prosecutorial responsibilities only in disciplinary proceedings for those practitioners who conduct business before the Service as an adjudicative body, *e.g.*, in asylum proceedings, adjustment interviews, and visa petition cases, but transfers these same investigative and prosecutorial responsibilities to EOIR for practitioners appearing before the Board and the Immigration Courts. This change allows each agency to maintain separate jurisdictions over practitioners based upon which agency they appear before, while permitting both agencies to utilize the same hearing and appeal process. This change will result in a fair and consistent application of the rules.

In response to the proposed rulemaking, EOIR and the Service received 491 comments. Identical form letters from South Florida practitioners totaled 130, with 17 additional individual letters from the same region. These letters account for approximately 30% of the total comments received. Another 277 names were signed to one petition-style letter prepared by the national office of the American Immigration Lawyers Association (AILA), accounting for approximately 57% of the total comments received. Some of the public comments were supportive; one in particular recounted the detrimental effect that one practitioner's negligence had on two unsuspecting immigrants. Many others, however, were opposed to any rule that would regulate practitioners' professional conduct. EOIR and the Service gave full consideration to each and every public comment submitted during the comment period. We first submit some general authorities and then address the concerns expressed in the comments in the following passages.

In exercising its plenary powers over immigration, Congress has granted express authority to the Attorney General to "establish such regulations * * * as (s)he deems necessary for carrying out (her) authority" under the laws relating to the immigration and naturalization of aliens. 8 U.S.C. 1103(a)(3). Congress also provided that aliens in immigration proceedings "shall have the privilege of being represented (at no expense to the government) by such counsel, *authorized to practice in such proceedings,* as he shall choose." 8 U.S.C. 1362 (emphasis added). In so doing, Congress vested implied authority with the Attorney General to prescribe standards of conduct and rules of procedure that are applicable to practitioners who appear before the Board, the Immigration Courts, and the Service.

In the proposed rule, EOIR and the Service noted that the primary purpose of prescribing rules and setting standards for determining who may practice before the Board, the Immigration Courts, and the Service, and for adopting procedures for disciplining those practitioners who fail to conform to such standards, includes the protection of the public, the preservation of the integrity of the Immigration Courts, and the maintenance of high professional standards. EOIR and the Service are committed to these important public interest objectives through the fair and efficient administration of this final rule.

While most practitioners adequately represent their clients in immigration matters, a small minority of practitioners do not meet the minimum

standards set forth in this rule and an even smaller minority may take unfair advantage of the very clients they have promised to help. Others have engaged in conduct that has rendered them unfit to practice law, as determined by the state courts which originally licensed them to practice. The practitioners who should not, and in fact cannot, be permitted to continue to practice before EOIR and the Service are the practitioners who will primarily be affected by this rule.

General Comments

A chief concern of many commenters was that this rule would have a chilling effect on an immigration practitioner's ability to advocate zealously for his or her client, suggesting that both the First Amendment right to freedom of speech and the Sixth Amendment right to counsel were implicated by such a rule. A similar majority argued that it is not the function of EOIR or the Service to control the conduct of attorneys who have been admitted to the practice of law by state courts. Many commenters expressed concern that sanctions imposed pursuant to this rule could cut off a practitioner's livelihood or jeopardize his or her professional reputation, although some acknowledged a need to protect clients from unscrupulous immigration practitioners, citing incompetent and/or unethical conduct by practitioners. One commenter was particularly concerned with protecting non-profit agencies from the burdens of potentially higher professional liability policies, more staff training, and better case-screening procedures.

Several commenters suggested that EOIR and the Service pattern the proposed disciplinary rule after the disciplinary process applicable to representatives who appear before Administrative Law Judges in the Social Security Administration (SSA) and the Internal Revenue Service (IRS). Under such advisement, EOIR and the Service consulted SSA and IRS regulations in drafting this disciplinary rule and adopted many of the provisions promulgated by those agencies.

The following paragraphs provide a section-by-section summary of the comments received, followed by the Department's response. Many of the comments were lengthy and we have attempted to summarize the commenters' views as accurately as possible. We have responded to all of the relevant issues raised in the comments and have highlighted where revisions have been made to the proposed rule. Please note that section numbering in the final rule has been revised.

Sections 3.101(a) and 3.106(a)—Adjudicating Officials and Composition of the Disciplinary Committee

Comments. Some commenters suggested that an inherent conflict exists given that adjudicating officials and the Disciplinary Committee have a connection to EOIR that taints the entire disciplinary process. Comments regarding the composition of the Disciplinary Committee included the following: The composition of the Committee is vague; the pool of possible members should be specified with term limits; no qualifications for the Committee have been specified; the Committee should be independent of the Department; the Committee should include a non-lawyer; the Committee should include a member of the private bar; and the EOIR representative should not serve on the Committee if he or she is also the complainant in a particular case. Several commenters also suggested that an Immigration Judge should not serve as the adjudicating official in a case where he or she is also the complainant, an Immigration Judge should not serve as the adjudicating official in any case involving a practitioner who regularly appears before him or her, and the disciplinary hearing should be conducted by an Administrative Law Judge (ALJ) pursuant to the Administrative Procedure Act (APA).

Other commenters assumed that Immigration Judges would be prejudiced against aliens while favoring the government and, therefore, would not be fair adjudicating officials. Some commenters noted that the rule provides no guidelines for appointing adjudicating officials and no opportunity to submit briefs or arguments to the Disciplinary Committee.

Response. Although some commenters concluded that the connection between adjudicating officials and EOIR taints the disciplinary process, there was no specific suggestion of how such a connection causes conflict or unfairness. Moreover, there is little merit to the argument of inherent conflict, since the Board and Immigration Judges are all part of the Department and yet act independently in fairly adjudicating the nation's immigration laws. A connection between EOIR and the proposed disciplinary process is not inherently unfair nor does it create an inherent conflict. Precedent for such a process exists within the disciplinary system used by the Social Security Administration, which uses its own ALJs as hearing officers and its own Appeals Council as a reviewing panel.

However, EOIR and the Service have revised several of the provisions in this section in response to the comments that we received. The rule has been revised to provide that an Immigration Judge shall not serve as the adjudicating official in cases where he or she is also the complainant in a case (§ 3.106(a)(1)(i)). Also, an Immigration Judge shall not serve as the adjudicating official in any case involving a practitioner who regularly appears before him or her (§ 3.106(a)(1)(i)). In the final rule, the Chief Immigration Judge will appoint the adjudicating official in most cases (§ 3.106(a)(1)(i)).

More significantly, in light of the comments received, EOIR and the Service have, in the final rule, replaced the proposed Disciplinary Committee with the Board in all respects. Since the Board already has the authority to implement the existing disciplinary system under § 3.1(d)(3), and to hear appeals of disciplinary sanctions under § 292.3(b)(1)(vi), revising the final rule to have appeals go to the Board results in no change in the Board's current (and long-standing) role.

We have identified a number of reasons for retaining the Board as the appellate body for disciplinary decisions made by adjudicating officials. First, the Board provides practitioners subject to these proceedings with an established appeal process. All of the procedural practices concerning briefing schedules, transcripts, motions, and oral arguments will be consistent for both immigration proceedings and disciplinary proceedings. Most practitioners know the Board's appeal procedures and will be familiar with them when appealing any disciplinary decision. Second, the Board has the immigration expertise which may prove critical where a practitioner's conduct is intricately intertwined with the legal issues in an underlying immigration case. Third, the Board, unlike the Disciplinary Committee, has the ability to publish precedent decisions, thereby providing practitioners and the public with authoritative interpretations of the regulations. Fourth, it is logical for the Board to exercise ultimate control over practitioners who appear before EOIR, and also consistent with state court practice of having the highest appellate level oversee the ultimate discipline of practitioners. Finally, the Board is structured to hear cases on a regular, consistent basis and has the support resources (attorney staff, paralegals,

clerks) to fully staff a disciplinary system.

By retaining the Board's review authority, we anticipate the issuance of timely decisions by members possessing the requisite legal and procedural expertise, as well as adjudicatory experience. This assumption is based on the fact that the Board has reviewed disciplinary cases on appeal throughout the existence of the current disciplinary program. Some of the comments to the proposed rule raised opposition to the "in-house" nature of the Disciplinary Committee. However, given that the Board is an established independent adjudicator within the Department, the revised appeal structure should dispel any concerns about an "in-house" review.

One commenter suggested disciplinary hearings should be conducted pursuant to the Administrative Procedure Act (APA) (codified at 5 U.S.C. 551 *et seq.*), which primarily regulates the processes of rulemaking and adjudication by agencies with substantial independent authority in the exercise of specific functions. Determining whether the APA applies to disciplinary proceedings conducted under this rule requires careful consideration of several factors.

As stated above, Congress has granted authority to the Attorney General to set standards for determining who may practice before the Board, the Immigration Courts, and the Service, and to prescribe rules of procedure for disciplining those who fail to conform to such standards. An agency with the power to admit practitioners has the authority to disbar or discipline them for professional misconduct.

Also, since deportation proceedings are not subject to the APA, see *Marcello* v. *Bonds*, 349 U.S. 302, 309 (1955) (Administrative Procedure Act is not applicable to deportation proceedings under the Immigration and Nationality Act); *Castillo-Villagra* v. *INS*, 972 F.2d 1017, 1025 (9th Cir. 1992) (Immigration and Nationality Act, rather than Administrative Procedure Act, controls exclusively in deportation proceeding), disciplinary proceedings pursuant to 8 U.S.C. 1362 historically have not been conducted under the APA, see *Herman* v. *Dulles*, 205 F.2d 715, 717 (D.C. Cir. 1953) (existing powers of administrative agencies to control practice by counsel who appear before them are not changed by the Administrative Procedure Act, citing Attorney General's Manual on the Administrative Procedure Act, 1947, p.66). Furthermore, no statutory provision exists which requires the adjudication of such disciplinary proceedings under the APA. See *United States* v. *Independent Bulk Transport, Inc.*, 480 F. Supp. 474, 477 (S.D.N.Y. 1979) (provisions of APA apply only if another statute requires that they be utilized); see also *Amalgamated Meat Cutters and Butcher Workmen* v. *Connally*, 337 F. Supp. 737, 761–62 (D. D.C.1971).

Moreover, this rule provides ample protections for practitioners subject to discipline, analogous to procedures provided in the APA and consistent with the delineated public interest objectives of the Department. Such protections include timely notice of hearings and the opportunity to be heard with respect to the charges lodged.

In addition, subjecting disciplinary proceedings to the strictures of the APA is unnecessary, and it would also be impractical and burdensome given that Immigration Judges (who comprise the largest pool of potential adjudicating officials) do not adjudicate cases pursuant to the APA. Finally, as stated in the supplementary information to the proposed rule, practitioners subject to discipline may avail themselves of judicial review pursuant to 28 U.S.C. 1331 upon issuance of a final administrative order.

Therefore, in light of the above considerations and in order to maintain consistency with, among other things, the current disciplinary rule, Board disciplinary decisions that have been upheld by the Federal courts, and established Immigration Court practices, the Department has determined that disciplinary hearings will be conducted in the same manner as immigration proceedings.

The proposed rule contained no provision for briefs to be submitted or oral arguments to be heard before the Disciplinary Committee. However, now that the rule retains the Board as the appellate body in disciplinary proceedings, the regulations that govern oral argument (*see* 8 CFR 3.1(e)) and the submission of briefs on appeal (*see* 8 CFR 3.3(c)) are incorporated by reference in the final rule.

Sections 3.103 and 292.3(c)—Immediate Suspension and Summary Proceeding

Comments. Several commenters suggested that an immediate suspension provision could create an unfair and prejudicial result based on "a skeletal complaint filed by a disgruntled client." The commenters expressed concern that a practitioner could be suspended based on mere allegations of misconduct. This presumption is incorrect, as explained below. Others felt that a criminal conviction or state bar disciplinary action should be "final" before an administrative decision is rendered; otherwise "a practitioner will have been deprived of his or her livelihood during that period" should the conviction or disciplinary action be overturned or vacated.

Response: The disciplinary rule provides that a practitioner may be subject to immediate suspension and a summary proceeding based *only* upon either (i) disbarment, suspension, or resignation with an admission of misconduct as found by a state or Federal court or (ii) a conviction for a serious crime. The language in this provision is similar to that found in the Rules for Disciplinary Enforcement for the United States Court of Appeals for the District of Columbia Circuit, the District of Columbia Court of Appeals' Rules Governing the Bar, and the California Rules of Professional Conduct.

The immediate suspension provision, therefore, is designed to protect the public from practitioners who have a criminal conviction, are no longer in "good standing" as set forth in 8 CFR 1.1(f), or who have otherwise forfeited or encumbered their law license. Such misconduct does not arise from "a skeletal complaint filed by a disgruntled client." Rather, based upon facts proven by the requisite high standard of proof ("clear and convincing evidence" in most disciplinary matters and "beyond a reasonable doubt" in criminal matters) and applicable law, a state or Federal court has already made a determination that the practitioner has engaged in serious misconduct. As amplified in the final rule, such a determination, as evidenced by a certified copy of a court record or order, brings "title deeds of high respect" and must be accorded great deference.

Furthermore, a rule that would permit a practitioner who has been criminally convicted of a serious crime to continue to practice before the Board, the Immigration Courts, or the Service pending all appeals of the underlying matter would expose the court's proceedings to the intervention of disqualified, unfit practitioners and subject clients to unnecessary risk. However, recognizing that a practitioner may seek to appeal such a conviction during the period of his immediate suspension, the rule has been amended so that no final administrative disciplinary order may be entered until all direct appeals of the underlying conviction have been exhausted. Additionally, the final rule provides that the Board may set aside an immediate suspension order "when it appears in the interest of justice to do so."

The final rule provides an attorney with an opportunity to rebut the presumed validity of the underlying disciplinary order in a summary proceeding by demonstrating that: (1) The underlying disciplinary proceeding was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; (2) there was such an infirmity of proof establishing the attorney's professional misconduct as to give rise to the clear conviction that the adjudicating official could not, consistent with his or her duty, accept as final the conclusion on that subject; or (3) the imposition of discipline by the adjudicating official would result in grave injustice. The proposed rule denied an attorney admitted in only one jurisdiction the opportunity to rebut the presumption of professional misconduct. This provision has been eliminated in the final rule. This procedure comports in part with, among other jurisdictions, the United States Supreme Court's practice in imposing reciprocal discipline.

Additionally, the proposed rule made the rebuttable presumption safeguards available to practitioners in summary proceedings premised on either reciprocal discipline for professional misconduct or conviction of a serious crime. However, consistent with the practice of state bars, we have limited the rebuttable presumption safeguards so that they apply in reciprocal discipline matters only, rather than extend them to criminal conviction matters, and amended the rule accordingly. Thus, upon filing a certified copy of a court record evidencing a criminal conviction in a summary proceeding based thereon, the only issue to be determined shall be the nature of the discipline to be imposed. Under the final rule, absent extraordinary circumstances, practitioners will be prevented from launching collateral attacks on criminal convictions in a summary proceeding.

Section 3.102—Grounds

General Comments. Several commenters suggested that the rules for sanctions are too vague and do not contain the level of detail, specificity, and explanation provided by the American Bar Association Model Rules of Professional Conduct (ABA Model Rules). However, others agreed that since the rule closely tracks the ABA Model Rules and that those rules are undergoing revision, this Federal rule should undergo the same revision. Still other commenters suggested that EOIR and the Service use the IRS disciplinary rules as a guide.

Commenters suggested that the rule be expanded to allow for disciplining lawyers who assist in the unauthorized practice of law, *e.g.*, attorneys who sign their names to forms prepared by non-lawyers without any attorney input or oversight. Some commenters went on to suggest that the rule should reach beyond disciplining lawyers only and expand to discipline visa consultants and *notarios* who engage in the unauthorized practice of immigration law, such that any fee collected by a *notario* would be considered "excessively gross" and any application, petition, or brief prepared by a *notario* would be considered negligence *per se*.

Response. As stated in the supplementary information to the proposed rule, the revised grounds for disciplinary sanctions include language, wherever possible, that is similar, if not identical to, the ABA Model Rules. EOIR and the Service gave serious consideration to the suggestion that a ground for disciplinary sanctions that addresses the problem of the unauthorized practice of law be included in the final rule. The difficulty in addressing this problem involves a jurisdictional issue. The jurisdiction of this rule is limited to practitioners, *i.e.*, attorneys, accredited representatives, and other persons described in 8 CFR 292.1(a). It cannot reach to persons who are not within one of these categories, such as visa consultants or *notarios*, because the statutory language at 8 U.S.C. 1362, which establishes the framework for the attorney discipline process, refers only to counsel "authorized to practice in (removal and appeal) proceedings." However, in response to the comments, EOIR and the Service have added an additional ground for discipline in the final rule which renders a practitioner subject to discipline if he or she assists a non-practitioner in the performance of any activity that constitutes the unauthorized practice of law.

Section 3.102(a)—Grossly Excessive Fees

Comments. Many commenters expressed concerns that EOIR and the Service would be "second-guessing the amount of work attorneys dedicate to their cases or the fees they charge." They stated that fees depend on many subjective factors and further concluded that only private practitioners have the experience to know how to appropriately set fees. Other commenters pointed out that since fees are negotiated with a client up front, the client has the option to go to a different attorney if he or she finds that the fees are too high. Some commenters noted that making a determination of what is "grossly excessive" will require probing into confidential client information, while others inquired as to how much weight will be given to the different factors used in determining what is "grossly excessive." While some commenters concluded that state bar associations generally do not involve themselves in financial arrangements between lawyers and clients, others suggested that federal regulation is unnecessary because state bar associations can review fee disputes. Still others suggested this was a means by which EOIR and the Service would punish a practitioner who has been successful in defending an immigration client.

Response. It is important to note that the primary purpose of this provision is to protect clients, not to interfere with attorney-client fee arrangements. The "grossly excessive fees" standard, which exists in the current rule and was retained in the proposed rule, is higher than the "reasonable fees" measure set out under the ABA Model Rules. The "grossly excessive" standard is similar to the "unconscionable" standard used by the IRS in its regulations. *See* 31 CFR 10.28.

Unlike the general provision in the existing regulation, the provision in the final rule enumerates factors to be considered in determining if a fee is grossly excessive that are virtually identical to those found in the ABA Model Rules. These factors include: The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the practitioner; the fee customarily charged in the locality for similar legal services; the amount involved and the results obtained; the time limitations imposed by the client or by the circumstances; the nature and length of the professional relationship with the client; and the experience, reputation, and ability of the practitioner or practitioners performing the services. As other jurisdictions have done, a balancing test may be crafted based upon the various factors in deciding whether a practitioner has violated the rule. These factors will improve the fair assessment of fees by providing practitioners with notice of the variables to be used in determining if a fee is grossly excessive. Investigating allegations of grossly excessive fees may require probing into confidential client information where absolutely necessary,

and then only with the client's permission.

It is important to note that this rule is not designed to set fee schedules or arbitrate fee disputes between practitioners and their clients. Neither EOIR nor the Service intends to engage in "second-guessing" negotiated fee arrangements. Expert jurists in immigration law who command higher fees for their services than other immigration practitioners would not be in violation of the regulations based solely on their fee. However, we are aware of instances in which practitioners have preyed on unsuspecting clients by charging them exorbitant fees for handling relatively routine immigration matters, or worse yet, have charged clients for services that were never rendered at all. Protecting clients from practitioners who charge such grossly excessive fees is the purpose of this provision.

Section 3.102(b)—Bribes

Comment. One commenter suggested that expanding the rule to include "attempt to bribe" as well as bribery was unnecessary and that proving "attempt to bribe" would be difficult and should not be included in the rule.

Response. This basic language is in the current rule. Moreover, it would be inadvisable to limit this rule to only those persons who successfully bribe an individual, but not include those who engage in conduct that constitutes an attempt to bribe. The act of attempted bribery is as serious as the act of bribery itself and certainly compromises the integrity of the practitioner who engages in such behavior. Therefore, we did not adopt this suggestion. It should be noted that the SSA regulations also have a similar provision which prohibits any "attempt to influence, directly or indirectly, the outcome of a decision, determination or other administrative action by offering or granting a loan, gift, entertainment or anything of value to a presiding official, Agency employee or witness who is or may reasonably be expected to be involved in the administrative decisionmaking process." 20 CFR 404.1740(c)(6).

Section 3.102(c)—False Statements and Willful Misrepresentation

Comments. Several commenters stated that this provision is too vague and that the Department should provide more guidance. Another commenter suggested that a ground for discipline should be included to deal with preparation of documents, pleadings, papers, etc., that are false and misleading and are prepared by attorneys who fail to disclose their names and addresses as preparers.

Response. The language in this provision closely resembles the language in the current regulation, combined with language from ABA Model Rule 3.3. The language in the rule would not preclude pursuing a practitioner who prepares false or misleading unsigned documents, although the ability to prove who prepared such documents might be difficult. Immigration Judges across the country have indicated that the filing of false or fraudulent documents is a growing problem. This problem includes the submission of once valid documents that have been altered (*e.g.*, foreign birth certificates), falsely created documents (*e.g.*, visas or letters from religious or political groups), and valid documents that contain false information (*e.g.*, asylum applications). This provision as written is broad enough to deal with these types of fraud. It should be noted that the SSA regulations have a similar provision which states that an individual may not "(k)nowingly make or present, or participate in the making or presentation of, false or misleading oral or written statements, assertions, or representations about a material fact or law." 20 CFR 404.1740(c)(3).

Section 3.102(d)—Soliciting Professional Employment

Comment. One commenter suggested that the language in the rule concerning solicitation may conflict with state bar solicitation regulations already in place, creating difficulties for practitioners who may wish to advertise in more than one area.

Response. The language in this provision closely resembles the language in ABA Model Rule 7.3 and in the IRS regulations at 31 CFR 10.30. This provision is designed to deal with a growing number of instances that have been brought to our attention concerning the use of "runners" in and around the Immigration Courts. These persons are not authorized to practice immigration law themselves but approach potential clients on behalf of individuals who are licensed professionals. As noted in the Comment to ABA Model Rule 7.3:

> There is a potential for abuse inherent in direct in-person or live telephone contact by a lawyer with a prospective client known to need legal services. These forms of contact between lawyer and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, who may already be overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

Model Rules of Professional Conduct Rule 7.3 cmt. (1993).

Section 3.102(g)—Contumelious or Obnoxious Conduct

Comments. Many commenters registered their objections to this provision. They argued that subjecting practitioners to discipline based upon the concept of "obnoxious behavior" would result in practitioners being unable to represent or defend their clients zealously and would require them to be subdued or "nice" in order not to offend EOIR or the Service. As one commenter put it: "(O)ne person's obnoxious behavior is another person's zealous representation." Another commenter feared that "(a) practitioner could be disciplined if, in the opinion of the Disciplinary Committee, he talks too fast or too slow, uses his hands too much when speaking, or has some nervous habit."

Still another commenter concluded that the threat of discipline based on this ground would impair the attorney/client relationship because practitioners would be afraid to advocate zealously on behalf of their clients for fear that such representation would be perceived as obnoxious. Some commenters suggested that it would be impossible for EOIR and the Service to apply this rule in a consistent and fair manner, while others noted that state bars already deal with "contumelious" or "obnoxious" conduct of practitioners. Several commenters concluded that such a disciplinary ground would lead to frivolous complaints and unnecessary litigation.

Response: Nothing in this provision is intended to impinge upon a practitioner's zealous representation of his or her client. However, even zealous representation does not entitle a practitioner to engage in contumelious or obnoxious conduct. Any suggestion that this provision will be used, as one commenter suggests, if a practitioner "talks too fast or too slow, uses his hands too much when speaking, or has some nervous habit" is without basis. Behavior disciplined under this provision will be necessarily extreme and without any acceptable premise.

This provision is in the current rule and is retained in the final rule. This provision is included primarily to address the type of conduct that would rise to the level of contempt in a court

of general jurisdiction. IRS regulations contain a similar provision for contemptuous conduct. *See* 31 CFR 10.51(i). Until recently, Immigration Judges have not had the authority to issue contempt citations for the type of behavior described in this provision. The only alternative for a judge was to file a disciplinary complaint with the Service. Immigration Judges were recently given contempt authority in section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208 (IIRIRA), 8 U.S.C. 1229a(b)(1); however, this authority will be exercised only after the Department issues regulations. It is expected that the contempt regulations, once published, will provide that a practitioner can be disciplined under the Professional Conduct Rules when the practitioner has been sanctioned for contemptuous conduct by an Immigration Judge pursuant to 8 U.S.C. 1229a(b)(1). A finding of contempt will become a prerequisite to the imposition of disciplinary action pursuant to this subsection. Therefore, the current language will be retained in the final rule, pending amendment by the contempt regulations, which will be published in the near future.

Section 3.102(h)—Convictions/Crimes

Comments. Some commenters found the definition of "serious crime" to be overly broad. While some commenters argued that a practitioner might lose his or her livelihood for committing a minor offense, others concluded that the conviction that forms the basis for disciplinary action might have no bearing on the practitioner's ability to practice immigration law. Several commenters found the retroactivity aspect of this provision to be unfair, as well as the notion that a practitioner who has filed a timely appeal from a criminal conviction or state disciplinary finding would still be subject to discipline under the rule. Several commenters pointed out that practitioners in each state will be held to different standards of conduct because the definitions of crimes vary from state to state.

Response: The definition of "serious crime" is taken from the Rules of Disciplinary Enforcement for the United States Court of Appeals for the District of Columbia. A "serious crime" as defined in the rule includes "any felony." Any practitioner who has been convicted of a felony has seriously undermined his professional integrity and reputation and, as a result, has jeopardized his ability to continue to represent aliens before the Board, the Immigration Courts, and the Service. Lesser offenses included within the definition of a "serious crime" are offenses that involve moral turpitude, such as fraud, bribery, extortion, deceit, theft, misappropriation, and false swearing. A conviction for any of these crimes calls into question a practitioner's ability to perform his or her duties in a manner which upholds the integrity of the profession.

Moreover, the magnitude of interests to be affected by the decisions of EOIR and/or the Service requires that those who represent individuals before either agency be persons whose qualities as practitioners will secure proper service to their clients and assist in the discharge of important agency duties. Additionally, there is no requirement in the authorities or by practice that an incident for which the disciplinary authority seeks to bring charges must relate to a proceeding or pending proceedings.

One commenter noted that the regulation requiring a practitioner to notify EOIR of any conviction for a serious crime is prospective while the actual ground for disciplinary action based on a conviction for a serious crime may be retroactive. Convictions for serious crimes—whether they occur before or after the effective date of the final rule—call into question a practitioner's fitness to represent aliens. A rule that would limit the criminal conviction ground to only those practitioners convicted after the effective date of the rule would substantially hamper the Department's goals of protecting the public and preserving the integrity of immigration proceedings. Therefore, § 3.102(h), which is consistent with the prior rule, has not been amended because applying this section only to convictions that occur after the effective date of the rule would undermine the Department's goals.

Several commenters raised a question with regard to the practitioner who has appealed his or her conviction, stating that such a person should not be subject to discipline during pendency of an appeal. We agree. Therefore, we have added language in §§ 3.103(b) and 292.3(c)(2) that prevents imposition of final discipline arising out of a criminal conviction until direct appeals of the underlying conviction have been exhausted. Notwithstanding, we note that given the grave nature of criminal proceedings and any resulting conviction or plea, a practitioner may be subject to an interim order of suspension under the regulations pending the outcome of any such appeal.

Once again, the primary objective of this rule is to protect the public and preserve the integrity of adjudicative immigration processes. Any practitioner who has been convicted of a serious crime should be held accountable for his or her actions, including loss of the privilege to practice before the Board, the Immigration Courts, and the Service.

Section 3.102(i)—False Certification of a Copy of a Document

Comment. One commenter suggested that the element of intent be added to the rule.

Response: In response to this comment, we have revised this ground by adding the element of intent.

Section 3.102(j)—Frivolous Behavior

Comments. Some commenters expressed concern that, under this provision, practitioners might be inhibited from putting forth an unpopular or unorthodox interpretation of the law; an attorney could make a losing argument for ten years before the Board and then may prevail in the eleventh year. It was suggested that an attorney's job is to advocate the "good points" of the law as well as to challenge the "wrong" side of rules and decisions. Others feared retribution for taking actions disagreeable to EOIR or the Service. Several commenters believed that the rule should include a requirement that a practitioner zealously represent his or her client.

Response: Sanctions for frivolous behavior are required in section 545 of the Immigration Act of 1990 (8 U.S.C. 1230(b)(6)). This provision implements the statutory language and has previously been included at 8 CFR 292.3(a)(15). The language in this provision is closely patterned after the language in Rule 11 of the Federal Rules of Civil Procedure (FRCP). Precautions are provided to allow for both advocacy grounded in fact or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law. Whereas the IRS regulations define frivolous as "patently improper," the language in the final rule reflects a more specific set of standards and does not interfere with the zealous advocacy of a practitioner.

Section 3.102(k)—Ineffective Assistance of Counsel.

Comments. One commenter suggested that "[t]here should be a limit of one year on the period of time following the alleged fact for a complaint to be brought." One commenter concluded that this provision would inhibit the zealous representation of immigrants;

another commenter went so far as to conclude that the fear of disciplinary action "will keep practitioners from telling their clients of the mistakes they have made and instead of fixing the mistakes, they would let them be." Another commenter suggested that such a provision may prevent one practitioner from filing a motion to reopen based on ineffective assistance of counsel because the other practitioner could lose his or her livelihood. Others concluded that since the ABA Model Rules do not make malpractice a disciplinary offense, neither should the final rule, given that clients already have the remedy of suing a practitioner for legal malpractice. Several commenters believed that the final rule goes against the traditional rules of professional conduct, while others felt that the state bar disciplinary process is adequate.

Response: The comment concerning the time period within which a complaint can be filed based on an ineffective assistance of counsel claim suggests that the time period be limited to one year from the alleged misconduct, rather than five years as provided in the rule. However, because a finding of ineffective assistance of counsel must be made by the Board or the Immigration Court before such a complaint would be considered, and since many cases take longer than one year to adjudicate fully, a longer period of time is required in order to protect the complaining alien. Also, a shorter period of time might unfairly discourage or prevent an alien from bringing a complaint against his or her former attorney or accredited representative. However, in order to strike a balance on this point, the Department has amended the rule to require that a complaint based on this ground be filed within one year of the finding of ineffective assistance of counsel made by the Board or the Immigration Court.

It is worrisome to believe that a practitioner would risk a client's case, and possibly his client's ability to remain in this country, and not resolve a potential problem by choosing instead to remain idle in order to protect himself from an ineffective assistance of counsel claim that would survive only if due process had been denied as a result of the practitioner's conduct, *i.e.*, where the proceeding was so fundamentally unfair that the alien was prevented from reasonably presenting his case. *See Matter of Lozada*, 19 I&N Dec. 637, 638 (1988); *see also Ramirez-Durazo* v. *INS*, 794 F.2d 491, 499–500 (9th Cir. 1986). Also, one must show that he was prejudiced by his representative's performance. *See Mohsseni Behbahani* v. *INS*, 796 F.2d 249, 251 (9th Cir. 1986).

Therefore, it is unlikely that a practitioner who has "made a mistake" in a client's case would allow such a mistake to languish when he could still resolve the problem without prejudice to the client and, in all probability, no longer be subject to an ineffective assistance of counsel claim. As is mentioned throughout the supplementary information in the proposed rule, these regulations are intended to preserve the fairness and integrity of the adjudicative process, secure proper service to aliens subject to proceedings before the Immigration Courts and the Service, and ensure minimal qualification standards for practitioners.

Regarding the commenter who suggested that malpractice claims should suffice as a remedy, it is certainly true that a client may sue a practitioner for malpractice in such instances. However, speculation about the availability of such a legal remedy should not preclude EOIR or the Service from pursuing disciplinary action. While malpractice lawsuits may result in monetary compensation for a particular client, they do little to protect other clients from the same fate.

Section 3.102(l)—Repeated Failure To Appear for Scheduled Hearings in a Timely Manner

Comment. One commenter felt the phrase "repeatedly fails to appear" was too vague.

Response: This provision does not define the number of occasions that will amount to "repeated" failures to appear. Such a definition is not included in the rule because choosing an arbitrary number would hamper the ability to utilize prosecutorial discretion when considering a practitioner's explanation for his or her absences. In 1998, the Social Security Administration published a final rule entitled "Standards of Conduct for Claimant Representatives," *see* 63 FR 41404 (1998), which includes a provision similar to the provision in the proposed rule regarding repeated absences from scheduled hearings. It notes that "such conduct adversely affects claimants, diminishes the ability of the Agency to operate efficiently and harms other applicants by disrupting schedules and work flow." *Id.* at 41406. For the same reasons, EOIR and the Service have added a similar provision in the rule, with the addition of a "good cause" element.

Section 3.102(m)—Assisting in the Unauthorized Practice of Law

Comment. Several commenters suggested that this rule address the unauthorized practice of law issue. See *General Comments* above.

Response. In response to the comments, EOIR and the Service have added an additional ground for discipline in the final rule which renders a practitioner subject to discipline if he or she assists a non-practitioner in the performance of any activity that constitutes the unauthorized practice of law. This ground is a necessary addition to the rule in order to protect the public from the mistakes of untrained and unqualified individuals, as well as the schemes of unscrupulous immigration practitioners, and reflects the concerns of a number of commenters.

Sections 3.104(b) and 292.3(d)(3)—Preliminary Inquiries

and

Sections 3.105(a) and 292.3(e)(1)—Notice of Intent To Discipline

Comments. A large number of commenters were concerned that the disciplinary process may be used to intimidate, retaliate, or otherwise harass practitioners who are successful in advocating against the government in immigration proceedings. One commenter suggested that this rule might be used to "intimidate and control any lawyer who might be so bold as to file a motion to recuse a judge (or) seek to enter an objection upon the record." The fact that the Department components (EOIR and the Service) investigate disciplinary cases and issue Notices of Intent to Discipline prompted some commenters to raise due process and conflict of interest issues. One commenter suggested that in order to "move cases along," Immigration Judges will resort to the disciplinary process and effectively chill aggressive representation. Another commenter concluded that this rule is a way for EOIR to ensure that "as many non-citizens as possible be deported by taking the lawyers out of the equation."

One commenter suggested that the Notice of Intent to Discipline be served by personal service and that the practitioner should be notified of any complaint and be given an opportunity to respond before any charging document is issued. Several commenters wanted to see the government hire an independent entity to investigate complaints lodged against private practitioners by government employees; others felt that the

government should hire separate counsel to conduct independent investigations.

Response: Most, if not all, of the commenters failed to recognize that the current disciplinary system is structured so that the Service (the prosecuting party in an adversarial immigration proceeding) is the party bringing the disciplinary action before EOIR (the adjudicating body). This structure has led to revisions in this rule which, in many cases, transfers responsibility for issuing charging documents from the Service to EOIR. The only cases in which the Service still retains responsibility for issuing charging documents concern situations where the Service serves as the adjudicating body (*i.e.,* adjustment of status cases, asylum cases, and some visa petition cases, among others, but not in matters before an Immigration Judge or the Board). This transition of the disciplinary system from the Service to EOIR is being made specifically to eliminate the appearance of any bias or conflict of interest. The Office of the General Counsel of EOIR or the Office of the General Counsel of the Service, not Immigration Judges or Service trial attorneys, is responsible for conducting preliminary inquiries and issuing charging documents. While the comments reflect some practitioners' reluctance to be regulated, there is simply no basis for the conclusion that this disciplinary process is biased against practitioners.

The primary purpose of this rule is to protect vulnerable aliens from unscrupulous immigration practitioners and from those who have engaged in conduct that raises questions about their fitness to practice law. Rather than demonstrating an overabundance of zeal, some practitioners fail to represent their clients at all. Numerous complaints have been reported about practitioners who fail to appear or to file essential documents or evidence on behalf of their clients. The Board adjudicates numerous motions to reopen filed before it based on such claims of ineffective assistance of counsel. The rule will provide an effective means to address the mounting instances of practitioners' failure to represent their clients. Many immigration practitioners have had the experience of trying to salvage the case of a client who was harmed by a previous representative's inaction. Often a state bar does not have the expertise to evaluate or prosecute such cases of misconduct. The disciplinary rules will provide an effective means to address such problems.

Concerning the request that the practitioner be notified of any complaints lodged against him or her, the preliminary inquiry will, in most cases, afford the practitioner an opportunity to discuss the complaint with an investigator. However, if a complaint is clearly frivolous or without merit, it is possible that the practitioner may not be contacted if it is determined that no action will be taken against him or her. Additionally, during the preliminary inquiry phase of a disciplinary proceeding, EOIR and the practitioner may reach a resolution or settlement prior to the issuance of a Notice of Intent to Discipline. Once the preliminary inquiry is completed, and if no such resolution has been reached, a Notice of Intent to Discipline will then be issued. It should be noted that the Notice of Intent to Discipline will be served by personal service, as defined in 8 CFR 103.5a.

Sections 3.105(d) and 3.106(a)(2)—Default Provisions

Comments. One commenter stated that 15 days is an insufficient time period in which to file a motion to set aside an order of default for failure to file an answer or for failure to appear at a disciplinary hearing. Some commenters thought that a practitioner should be allowed to file motions at any time after an order is issued, or at least within 180 days of issuance. One commenter thought that the provision that requires a practitioner to prove a negative (*i.e.,* failure to appear due to exceptional circumstances) is unfair when the burden of proof is placed on the practitioner.

Response: It should be noted that section 6103 of the California Rules of Professional Conduct provides that if the accused does not appear at the time appointed to answer the accusation without sufficient cause, "the court may proceed and determine the accusation in his absence." Moreover, IRS disciplinary regulations provide that an attorney's "(f)ailure to file an answer within the time prescribed. * * * shall constitute an admission of the allegations of the complaint and a waiver of hearing, and the Examiner may make his decision by default without a hearing or further procedure." 31 CFR 10.58(c). Furthermore, it is common practice in state bar disciplinary proceedings to allow both for default and expedited time frames when an attorney fails to file an answer or fails to appear before a disciplinary hearing panel. In response to the suggestions that the time period be expanded for the filing of motions to set aside, EOIR and the Service balanced the practitioner's due process rights against the primary goals of this regulation, including the protection of the public, and concluded that the time period set forth in the final rule is fair.

Section 3.106(c)—Review Process

Comments. Most commenters complained that the rule provides no opportunity for the practitioner to present a written or oral argument to the Disciplinary Committee. The remaining commenters complained that there is no appeal from the decision of the Disciplinary Committee.

Response: As stated above, the proposed Disciplinary Committee has been replaced by the Board in all respects regarding this rule. All of the established appeal procedures in immigration cases, including the submission of written briefs and requests for oral arguments, now apply also to disciplinary cases on appeal to the Board. A practitioner who wishes to obtain judicial review of the Board's decision can do so in Federal district court pursuant to28 U.S.C.1331.

Sections 3.106(d) and 292.3(g)—Referral to State Bars

Comment. One commenter suggested that the rule be amended to require all orders of public discipline to be reported to the ABA National Lawyer Regulatory Data Bank and to all jurisdictions in which the disciplined attorney is admitted.

Response: We have incorporated into the final rule a provision for referrals of public discipline to the ABA National Lawyer Regulatory Data Bank and to every jurisdiction in which the disciplined attorney is admitted.

Section 3.107—Reinstatement

Comments. One commenter believed that the requirement that a "practitioner has the burden of proving that he or she possesses the moral and professional qualifications to be reinstated by clear, convincing, and unequivocal evidence" is too ambiguous and does not protect the public. Another commenter concluded that it is too difficult to quantify moral qualifications, while another suggested that the rule should provide for a hearing during which the practitioner must show that he or she is rehabilitated and no longer poses a risk to the public, the Board, the Immigration Courts, and the Service.

Response: The language in this provision is taken directly from the Rules of Disciplinary Enforcement for the United States Court of Appeals for the District of Columbia Circuit. However, we have adopted the suggestion on providing a reinstatement

hearing by amending the rule to give the Board discretion to hold a hearing if the practitioner meets all of the reinstatement requirements.

Section 3.108—Confidentiality

Comments. There were some generalized concerns that these provisions do not sufficiently protect a practitioner's privacy, especially with regard to disclosures made to law enforcement authorities, complainants, and witnesses..

Response: These provisions are patterned after the Rules of Procedure of the State Bar of California. The presumption in the provisions is one of confidentiality, not disclosure. Exceptions to confidentiality are based on "protection of the public when the necessity for disclosing information outweighs the necessity for preserving confidentiality," and include, but are not limited to, limited disclosures necessary to conduct preliminary inquiries.

Sections 3.109 and 292.3—Discipline of Government Attorneys/Immigration Judges

Comments. Many commenters expressed their concern that the proposed rule applies only to private immigration practitioners and not to Immigration Judges and/or Service trial attorneys. Since Immigration Judges and Service trial attorneys are subject to the disciplinary system which is overseen by the Department's Office of Professional Responsibility (OPR), a system which regulates all Department attorneys, many commenters stated that having two different systems is unfair and suggested this was a denial of Equal Protection. Still other commenters concluded that the rule will hamper legal advocacy and that the "major purpose of the rule is to intimidate private attorneys out of practice" and "to deny aliens their statutory right to representation."

Response: Congress has broadly empowered the Attorney General pursuant to 8 U.S.C. 1103, to "establish such regulations * * * and perform such other acts as she deems necessary for carrying out her authority" under the provisions of the Immigration and Nationality Act. Congress delegated its plenary power over immigration matters in order to advance, among other purposes, the public interest in deciding whether to admit or exclude aliens.

Consistent with Congress's sweeping grant of authority to the Attorney General in immigration matters, "in any removal proceedings before an immigration judge and in any appeal proceedings before the Attorney General from such removal proceedings, the person concerned shall have the privilege of being represented * * * by such counsel, *authorized to practice in such proceedings*, as he shall choose" (emphasis added). 8 U.S.C. 1362. Such statutory authority, which serves as a primary basis for this disciplinary regulation, refers exclusively to counsel for individuals subject to such proceedings, not to Immigration Judges or attorneys for the government.

The Supreme Court has held that "where the empowering provision of a statute states simply that the agency may 'make * * * such rules and regulations as may be necessary to carry out the provisions of (an) act,' * * * the validity of a regulation promulgated thereunder will be sustained so long as it is 'reasonably related to the purposes of the enabling legislation.'" *Thorpe* v. *Housing Authority of the City of Durham*, 393 U.S. 268, 280–81 (1969). The general authority upon which we rely herein to impose disciplinary sanctions properly gives heed to Congress' enabling language and public interest purposes. Moreover, we view the need to safeguard adjudicative processes, fairly decide cases, and protect the public through implementation of this disciplinary regulation as consonant with Congress's public interest intent. Contrary to the assertion that such regulations will hamper counsel in rendering legal assistance to aliens, we believe that these rules will strengthen the effectiveness of representation and provide fairer adjudications.

As one court stated in reference to the foregoing express grants of authority from Congress, "an agency empowered to prescribe its own rules has the implied power to determine who can practice before it." *Koden* v. *United States Dep't of Justice*, 564 F.2d 228, 234 (7th Cir. 1977). In that case, the Seventh Circuit held that the authority bestowed on the Attorney General is more than adequate to empower, expressly or impliedly, an agency to set disciplinary standards applicable to representatives. The *Koden* court upheld a disciplinary regulation substantially similar to this one that had existed for over 25 years (at the time of the court's decision) and applied only to private immigration practitioners.

Additionally, since 1975, OPR has had responsibility for investigating allegations of misconduct against any of the Department's lawyers, which today number over 9,000 individuals, including Immigration Judges and Service trial attorneys, where such allegations relate to the exercise of their authority to investigate, litigate, adjudicate, or provide legal services. *See* 28 CFR 0.39. Such employees are also subject to the jurisdiction of the Department's Office of Inspector General. Among other rules, regulations, and orders, Department attorneys must abide by the standards of conduct applicable to executive branch employees and the Department's supplemental standards of conduct. *See* 5 CFR part 2635 *et seq.*; 5 CFR part 3801 *et seq.*

Such comprehensive standards and procedures, under the auspices of OPR and the Office of Inspector General, are equally, if not more, rigorous than those provided in this rule. They provide separate means for seeking discipline of Immigration Judges and Department attorneys.

It should also be noted that on October 21, 1998, Congress amended Chapter 31 of Title 28 of the United States Code by adding section 530B in Public Law 105–277. This amendment, which went into effect on April 19, 1999, subjects Department attorneys to state laws and rules, and local federal court rules, governing attorneys in each state where such attorneys engage in their duties, to the same extent and in the same manner as other attorneys in that state. *See* 64 FR 19273 (1999) (Interim Rule on Ethical Standards for Attorneys for the Government).

Definitions

Comment. One commenter pointed out that the rule uses the term "practitioner" whereas the current rule uses the terms "attorney" and "representative."

Response: Use of the new term "practitioner" in the proposed rule is simply for convenience when referring to both attorneys, as defined in 8 CFR 1.1(f), and representatives, as defined in 8 CFR 1.1(j).

Disciplinary System Involving Both EOIR and INS

Comments. Many commenters expressed concerns over the two parallel proceedings outlined in the proposed rule. They felt that the jurisdiction between EOIR and the Service is unclear, that the two systems are not necessary, that practitioners will have to be familiar with the professional conduct requirements of two agencies, and that two separate complaints could result in two punishments. Another commenter thought that the Board and Immigration Judges already have "plenary power to sanction attorneys."

Response: Some commenters have characterized this rule as two parallel disciplinary systems with the potential for two disciplinary actions for the same

misconduct. This notion is incorrect; only one disciplinary system exists and the delineations of authority are clear under the regulation. If a complaint concerns a practitioner's conduct before the Service in its adjudicative capacity (*i.e.*, adjustment of status cases, asylum cases, visa petition cases), then the complaint should be filed with the Service, which will conduct a preliminary inquiry. If, however, the basis of the complaint concerns a practitioner's conduct before EOIR (*i.e.*, the Board or the Immigration Courts), then the complaint should be filed with EOIR, which will conduct a preliminary inquiry. EOIR's jurisdiction to investigate and prosecute disciplinary cases will not extend to cases over which the Service has adjudicatory authority and, likewise, the Service's jurisdiction to investigate and prosecute disciplinary cases will not extend to cases over which EOIR has adjudicatory authority.

Between EOIR and the Service, there remains an expectation of cooperation and communication in instances where it is unclear which agency should take responsibility for investigating a complaint, i.e., if a complaint alleges misconduct that occurred before both agencies. Each agency is required to serve a copy of a Notice of Intent to Discipline on the other agency. Moreover, each agency may submit a written request to the adjudicating official asking that any discipline imposed upon a practitioner that restricts his or her authority to practice before one agency also apply to his or her authority to practice before the other agency. This will avoid the situation in which a practitioner could be forced to go through two separate disciplinary hearings for the same misconduct. It also gives the adjudicating official the discretion to prohibit a practitioner from continuing to practice before one agency pending suspension or exclusion from the other. Without this provision, for example, a practitioner who appears before EOIR and who has been suspended for assisting others in the unauthorized practice of law could continue to practice before the Service unless and until the Service conducted its own separate proceeding.

Contrary to one commenter's suggestion, the Board and Immigration Judges do not have "plenary power to sanction attorneys." Until the contempt rule is final (see discussion above), the revised set of grounds as set forth in this disciplinary regulation is the only means by which the Board and Immigration Judges may seek to remedy related professional misconduct.

Procedures

Comments. Some commenters felt that there should be a right to discovery while others felt that the Federal Rules of Evidence (FRE) and/or the Federal Rules of Civil Procedure (FRCP) should be used in disciplinary proceedings. One commenter asked under what circumstances costs would be assessed to the practitioner. Another commenter requested that hearings be held in the practitioner's city of practice and that a hearing should be set automatically, regardless of whether a hearing has been requested or the practitioner has failed to file an answer to the Notice of Intent to Discipline. One commenter suggested that the hearing should be closed to the public. Others suggested that the 30-day time period to file an answer be extended to 60 days. Some commenters would like to see the Disciplinary Committee establish rules of procedure. Other commenters opined that the complaining party must have standing to bring a complaint, e.g., the complainant must be an "aggrieved party" who can show harm or damage. One commenter questioned how ongoing cases would be handled under the new rule.

Response: Disciplinary proceedings are designed to be conducted under the same procedures which govern deportation and removal hearings in Immigration Courts, practices which are familiar to both adjudicating officials and practitioners. The proposed rule required the Director of EOIR not only to appoint the adjudicating official, but also to designate the time and place of the hearing. After further review, however, this provision has been amended in several respects.

First, the final rule now gives the Chief Immigration Judge the authority to appoint an Immigration Judge as the adjudicating official. At the request of the Chief Immigration Judge or in the interest of efficiency, however, the Director of EOIR may appoint an Administrative Law Judge as an adjudicating official. Second, the adjudicating official will designate the time and place of the hearing. This amendment was added to give the adjudicating official more control over the scheduling of the hearing. Third, the rule has been amended to require the adjudicating official to designate the place of the hearing "with due regard to the location of the practitioner's practice or residence, the convenience of witnesses, and any other relevant factors." Although it is most likely that the adjudicating official will select a site for the hearing which is convenient for the practitioner, this amendment does not require that such a selection be made since there may be other important factors which might dictate that another site is preferable. For example, it is reasonable to predict that disciplinary proceedings will most likely be held in one of EOIR's Immigration Courts, where such hearings are presently held, so that proper administrative support, such as clerks and interpreters, are available. Selection of such a hearing site might require the practitioner to travel to that location.

Finally, the final rule has eliminated the terms "Assistant Chief Immigration Judge" and "Board Member" as persons who may be appointed as adjudicating officials. The term "Assistant Chief Immigration Judge" was deleted because it was determined to be unnecessary, since the term "Immigration Judge" is deemed to include "Assistant Chief Immigration Judge." The term "Board Member" was deleted since, under the final rule, the Board is now the appellate reviewing body for disciplinary appeals, thereby eliminating the possibility that Board Members could be appointed as adjudicating officials.

The rule requires the practitioner to request a hearing if he or she so desires, but does not make such a hearing mandatory. There may be reasons why a practitioner may not want a hearing, *e.g.*, the practitioner intends to settle the case, does not want publicity, or does not wish to expend the time and money necessary to prepare for a hearing. To give the practitioner the option of having a hearing gives him or her more control over the progression of the case. Further, the rule does not allow for a hearing for a practitioner who fails to file an answer to a Notice of Intent to Discipline.

One commenter suggested that all hearings be closed. However, the prevailing procedure among state bars mandates that disciplinary hearings be open to the public once a charging document has been filed. The public has a right to know what transpires in such cases, and the notion of conducting disciplinary hearings behind closed doors may foster ignorance and raise doubts as to the nature of the proceedings. It should be noted that there are two exceptions in the rule to a public hearing. These include limitations of the physical facilities and/or the need to protect witnesses, parties, or the public interest.

Another commenter suggested the time period to file an answer should be extended from 30 to 60 days. In order for disciplinary actions to be most effective, it is imperative that cases be

resolved in a timely manner. To provide a practitioner with 30 days to file an answer is reasonable.

Another commenter stated that a complaining party must have standing and must be an "aggrieved party" who can show harm or damage. However, there is no reason to limit the ability of anyone to file a complaint. The degree to which a complainant has been harmed will go to the merits of the case itself, but should not preclude an individual from filing a complaint. Moreover, it is anticipated that complaints may come from adjudicators, Service personnel, aliens, or practitioners themselves, all of whom may have first-hand knowledge of practitioner misconduct.

One commenter questioned when costs might be assessed against the practitioner. Assessment of costs is not available in Immigration Court or at the Board, and benefits such as the use of interpreters have not previously been charged against a party. In an effort to keep disciplinary proceedings procedurally similar to Immigration Court practice, the agency has decided not to assess costs in disciplinary proceedings. Therefore, the provision concerning costs has been deleted in the final rule.

With regard to ongoing cases in which a charging document has been issued and filed with the Office of the Chief Immigration Judge prior to the effective date of these regulations, such matters will proceed to a final disposition under the previous regulations.

State Bars Are Appropriate Entities To Handle Complaints

Comments. Many commenters said that it is inappropriate for federal agencies to unilaterally impose a national disciplinary scheme where states should have sole jurisdiction and, further, that federal regulations concerning discipline will cause confusion and uncertainty with regard to state rules. Others objected that the rule subjects practitioners to being disciplined twice for the same conduct—once by the federal government and once by the state bar. Others believed that this rule is an unnecessary and impermissible intrusion into the state law licensure process and "to bar a lawyer from practice before an agency is unheard of."

Response: In response to the comments that claim that this regulation is an "impermissible intrusion into the state law licensure process" and that it is "inappropriate for federal agencies to unilaterally impose a national disciplinary scheme where states should have sole jurisdiction," we refer commenters to the U.S. Supreme Court decision in *Sperry* v. *Florida*, 373 U.S. 379 (1963). In that case, the state of Florida sought to enjoin a non-attorney registered to practice before the United States Patent Office from preparing and prosecuting patent applications in Florida because he was not a member of the Florida Bar. The Supreme Court held that the federal government has preemptive powers over states' legislative and judicial authorities when acting under valid federal regulations. As noted above in the supplementary information, EOIR and the Service maintain that under the broad rulemaking authority of the Attorney General and the federal government's preemptive powers, EOIR and the Service have the authority (and indeed, have had the authority since these regulations were first adopted more than 45 years ago) to promulgate disciplinary regulations on a nationwide basis governing the privilege of appearing as an attorney or representative before the Board, the Immigration Courts, and the Service.

The commenters also claim that this regulation is unnecessary in light of the 51 state bar disciplinary agencies (including the District of Columbia) which regulate attorney conduct. The American Bar Association (ABA) suggested that EOIR and the Service establish a system by which complaints about attorneys alleged to have engaged in misconduct be referred to state disciplinary authorities, and by which such disciplinary authorities then would notify the agencies about sanctioned lawyers. Since the ABA submitted almost identical comments regarding the EOIR/Service rule and the Social Security Administration's (SSA's) recently published rule on its disciplinary system (*see* 63 FR 41404 (1998)), it appears that the organization is expressing its general objection to federal oversight of the professional conduct of those who appear before federal agencies.

In response to such comments, it should be noted that immigration hearings are held in approximately 50 Immigration Courts located in 23 different states and territories. Moreover, attorneys often represent aliens in jurisdictions other than those in which they are licensed to practice law. It is imperative that EOIR and the Service administer a uniform disciplinary system among the respective Immigration Courts. For the reasons explained in SSA's supplementary information to their disciplinary rule, EOIR and the Service should not be expected or required to apply numerous local rules, or local interpretations of the rules, to problems that require national uniformity. Applying local rules or local interpretations in lieu of a national standard would leave immigration attorneys in one state subject to discipline, while possibly exempting immigration attorneys in another state. EOIR and the Service do not believe that it would benefit the Board, the Immigration Courts, the Service, the public, or attorneys to promote inconsistency in regulating the conduct of practitioners, who all practice before the same forum.

Similar to the SSA program, practice before EOIR and the Service is not limited to attorneys, but includes non-attorneys who may not be subject to state bar rules. EOIR and the Service believe that all practitioners, attorneys and non-attorneys alike, must be held to uniform standards of professional conduct in immigration proceedings. Without this regulation, non-attorneys may not be accountable to any disciplinary authority.

EOIR and the Service anticipate working closely with the various state bars when investigating disciplinary complaints. Referrals to state bars may be appropriate when a complaint does not allege a violation of the federal regulations but may allege a violation of state bar rules or regulations. Cooperation between the federal government and the 51 state bar disciplinary authorities will optimize resources and minimize duplication of investigations. In general, state bars have not been resistant to the Federal government's efforts to assist in protecting the public by scrutinizing the professional conduct of attorneys. Moreover, immigration law is a very complex area and this program may assist state bars with investigating allegations of misconduct against immigration attorneys.

After publication of the proposed rule, the vast majority of comments were from attorneys who opposed the idea of any Federal government regulations of professional conduct. However, as we have tried to emphasize in this final rule, the Department's imperatives, including preserving the integrity of the Board, the Immigration Courts, and the Service, ensuring the important and proper discharge of statutory duties under the immigration laws of the United States, and safeguarding a vulnerable client population, support continuing and improving the reasonable and fair regulation of such conduct.

One comment in particular exemplified the peril of susceptible

clients, and was submitted by immigrant twin brothers who are law students. After fleeing the former Yugoslavia, they arrived in the United States with the hope of starting a new life. They feared for their lives in their country and applied for political asylum so they would not have to return to their country to face persecution and possibly death. They retained an immigration attorney to help them file the necessary applications. After appearing before an Immigration Judge, the brothers were given a deadline to file their asylum applications with the court, and a hearing date was set. The attorney assured the brothers that the applications had been filed before the deadline and that they did not need to show up for any further hearings before the Immigration Judge.

During the ensuing months, the attorney continued to pressure the brothers for additional legal fees, telling them he needed to file more paperwork. He told them to expect to receive their permanent resident cards in the mail. After numerous attempts to contact the attorney over the next several years, the brothers finally went to the Immigration Court to find out the status of their case. Much to their surprise, they learned that their case had been dismissed after the Immigration Judge and the Board considered their requests for asylum to be abandoned when no applications had been submitted by the deadline. The brothers then contacted their attorney who told them that he had never received anything from the Immigration Court or the Service.

Eventually, they hired a new attorney who helped them correct the mistakes of the former attorney by filing a motion to reopen based on ineffective assistance of counsel. The brothers wrote: "The immigration problem which faces this great nation of ours is caused by many of the immigration attorneys who misrepresent their clients who often do not speak (the) English language and do not understand immigration law. * * * The proposed rule is a rule which needs to be used in practice. It needs to be enacted in order to deter the misconduct of attorneys who practice immigration law. These attorneys like our former attorney are taking advantage of the most vulnerable group of people in our society. Your office would serve a great deal in this process by properly investigating, and determining which complaints have merit. * * * This rule makes good on a pledge by the Attorney General to deter the bad conduct of immigration attorneys. Hopefully, this letter will inform you that (the) rule is needed and wanted by not only immigrants like us but also future legal professionals."

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule affects only those practitioners who practice immigration law before EOIR and the Service. Approximately 5000 immigration and 400 accredited representatives will be subject to this rule. This rule will not have a significant adverse economic impact on a substantial number of small entities because the rule is similar in substance to the existing regulatory process and will affect only those practitioners who have committed serious crimes or who have lost their license to practice law or otherwise engaged in professional misconduct. Therefore, this rule does not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review", section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

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

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Charles Adkins-Blanch, Acting General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia, 22041, telephone (703) 305–0470.

List of Subpart

8 CFR Part 3

Administrtive practice and procedure, Immigration, Legal services, Organizataion and functions (Government agencies), Reporting and recordkeeping requirements.

8 CFR Part 292

Administrative practice and procedures, Immigration, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, parts 3 and 292 of title 8 of the Code of Federal Regulations are amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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

Authority: 5 U.S.C. 301; 8 U.S.C. 1103; 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub L. 105–100.

2. In section 3.1, add paragraph (b)(13) and revise paragraph (d)(3) to read as follows:

§ 3.1 [Amended]

* * * * *

(b) * * *

(13) Decisions of adjudicating officials in practitioner disciplinary proceedings as provided in subpart G of this part.

* * * * *

(d) * * *

(3) *Rules of practice.* The Board shall have authority, with the approval of the

Director, EOIR, to prescribe rules governing proceedings before it. It shall also determine whether any organization and/or individual desiring to represent aliens in immigration proceedings meets the requirements as set forth in § 292.2 of this chapter.

3–4. Section 3.1(d)(1–a)(ii) is amended by revising the reference to "§ 292.3(a)(15) of this chapter" in the first sentence to read "§ 3.102(j)."

§ 3.12 [Amended]

5. Section 3.12 is amended by revising the reference to "§ 292.3 of this chapter" in the second sentence to read "this part 3."

Subpart F—[Reserved]

6. Subpart F is added and reserved.

7. Subpart G is added to Part 3 to read as follows:

Subpart G—Professional Conduct for Practitioners—Rules and Procedures

Sec.

Subpart G—Professional Conduct for Practitioners—Rules and Procedures

§ 3.101 General provisions.

(a) *Authority to sanction.* An adjudicating official or the Board of Immigration Appeals (the Board) may impose disciplinary sanctions against any practitioner if it finds it to be in the public interest to do so. It will be in the public interest to impose disciplinary sanctions against a practitioner who is authorized to practice before the Board and the Immigration Courts when such person has engaged in criminal, unethical, or unprofessional conduct, or in frivolous behavior, as set forth in § 3.102. In accordance with the disciplinary proceedings set forth in this subpart and outlined below, an adjudicating official or the Board may impose any of the following disciplinary sanctions:

(1) Expulsion, which is permanent, from practice before the Board and the Immigration Courts or the Immigration and Naturalization Service (the Service), or before all three authorities;

(2) Suspension, including immediate suspension, from practice before the Board and the Immigration Courts or the Service, or before all three authorities;

(3) Public or private censure; or

(4) Such other disciplinary sanctions as the adjudicating official or the Board deems appropriate.

(b) *Persons subject to sanctions.* Persons subject to sanctions include any practitioner. A practitioner is any attorney as defined in § 1.1(f) of this chapter who does not represent the federal government, or any representative as defined in § 1.1(j) of this chapter. Attorneys employed by the Department of Justice shall be subject to discipline pursuant to § 3.109. Nothing in this regulation shall be construed as authorizing persons who do not meet the definition of practitioner to represent individuals before the Board and the Immigration Courts or the Service.

§ 3.102 Grounds.

It is deemed to be in the public interest for an adjudicating official or the Board to impose disciplinary sanctions against any practitioner who falls within one or more of the categories enumerated in this section, but these categories do not constitute the exclusive grounds for which disciplinary sanctions may be imposed in the public interest. Nothing in this regulation should be read to denigrate the practitioner's duty to represent zealously his or her client within the bounds of the law. A practitioner who falls within one of the following categories shall be subject to disciplinary sanctions in the public interest if he or she:

(a) Charges or receives, either directly or indirectly:

(1) In the case of an attorney, any fee or compensation for specific services rendered for any person that shall be deemed to be grossly excessive. The factors to be considered in determining whether a fee or compensation is grossly excessive include the following: The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the attorney; the fee customarily charged in the locality for similar legal services; the amount involved and the results obtained; the time limitations imposed by the client or by the circumstances; the nature and length of the professional relationship with the client; and the experience, reputation, and ability of the attorney or attorneys performing the services,

(2) In the case of an accredited representative as defined in § 292.1(a)(4) of this chapter, any fee or compensation for specific services rendered for any person, except that an accredited representative may be regularly compensated by the organization of which he or she is an accredited representative, or

(3) In the case of a law student or law graduate as defined in § 292.1(a)(2) of this chapter, any fee or compensation for specific services rendered for any person, except that a law student or law graduate may be regularly compensated by the organization or firm with which he or she is associated as long as he or she is appearing without direct or indirect remuneration from the client he or she represents;

(b) Bribes, attempts to bribe, coerces, or attempts to coerce, by any means whatsoever, any person (including a party to a case or an officer or employee of the Department of Justice) to commit any act or to refrain from performing any act in connection with any case;

(c) Knowingly or with reckless disregard makes a false statement of material fact or law, or willfully misleads, misinforms, threatens, or deceives any person (including a party to a case or an officer or employee of the Department of Justice), concerning any material and relevant matter relating to a case, including knowingly or with reckless disregard offering false evidence. If a practitioner has offered material evidence and comes to know of its falsity, the practitioner shall take appropriate remedial measures;

(d) Solicits professional employment, through in-person or live telephone contact or through the use of runners, from a prospective client with whom the practitioner has no family or prior professional relationship, when a significant motive for the practitioner's doing so is the practitioner's pecuniary gain. If the practitioner has no family or prior professional relationship with the prospective client known to be in need of legal services in a particular matter, the practitioner must include the words "Advertising Material" on the outside of the envelope of any written communication and at the beginning and ending of any recorded communication. Such advertising material or similar solicitation documents may not be distributed by any person in or around the premises of any building in which an Immigration Court is located;

(e) Is subject to a final order of disbarment or suspension, or has

resigned with an admission of misconduct.

(1) In the jurisdiction of any state, possession, territory, commonwealth, or the District of Columbia, or in any Federal court in which the practitioner is admitted to practice, or

(2) Before any executive department, board, commission, or other governmental unit;

(f) Knowingly or with reckless disregard makes a false or misleading communication about his or her qualifications or services. A communication is false or misleading if it:

(1) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading, or,

(2) Contains an assertion about the practitioner or his or her qualifications or services that cannot be substantiated. A practitioner shall not state or imply that he or she has been recognized or certified as a specialist in immigration and/or nationality law unless such certification is granted by the appropriate state regulatory authority or by an organization that has been approved by the appropriate state regulatory authority to grant such certification;

(g) Engages in contumelious or otherwise obnoxious conduct, with regard to a case in which he or she acts in a representative capacity, which would constitute contempt of court in a judicial proceeding;

(h) Has been found guilty of, or pleaded guilty or *nolo contendere* to, a serious crime, in any court of the United States, or of any state, possession, territory, commonwealth, or the District of Columbia. A serious crime includes any felony and also includes any lesser crime, a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, dishonesty, bribery, extortion, misappropriation, theft, or an attempt, or a conspiracy or solicitation of another, to commit a serious crime. A plea or verdict of guilty or a conviction after a plea of *nolo contendere* is deemed to be a conviction within the meaning of this section;

(i) Knowingly or with reckless disregard falsely certifies a copy of a document as being a true and complete copy of an original;

(j) Engages in frivolous behavior in a proceeding before an Immigration Court, the Board, or any other administrative appellate body under title II of the Immigration and Nationality Act, provided:

(1) A practitioner engages in frivolous behavior when he or she knows or reasonably should have known that his or her actions lack an arguable basis in law or in fact, or are taken for an improper purpose, such as to harass or to cause unnecessary delay. Actions that, if taken improperly, may be subject to disciplinary sanctions include, but are not limited to, the making of an argument on any factual or legal question, the submission of an application for discretionary relief, the filing of a motion, or the filing of an appeal. The signature of a practitioner on any filing, application, motion, appeal, brief, or other document constitutes certification by the signer that the signer has read the filing, application, motion, appeal, brief, or other document and that, to the best of the signer's knowledge, information, and belief, formed after inquiry reasonable under the circumstances, the document is well-grounded in fact and is warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, and is not interposed for any improper purpose.

(2) The imposition of disciplinary sanctions for frivolous behavior under this section in no way limits the authority of the Board to dismiss an appeal summarily pursuant to § 3.1(d)(1-a);

(k) Engages in conduct that constitutes ineffective assistance of counsel, as previously determined in a finding by the Board or an Immigration Judge in an immigration proceeding, and a disciplinary complaint is filed within one year of the finding;

(l) Repeatedly fails to appear for scheduled hearings in a timely manner without good cause; or

(m) Assists any person, other than a practitioner as defined in § 3.101(b), in the performance of activity that constitutes the unauthorized practice of law.

§ 3.103 Immediate suspension and summary disciplinary proceedings; duty of practitioner to notify EOIR of conviction or discipline.

(a) *Immediate suspension.* (1) *Petition.* The Office of the General Counsel of EOIR shall file a petition with the Board to suspend immediately from practice before the Board and the Immigration Courts any practitioner who has been found guilty of, or pleaded guilty or *nolo contendere* to, a serious crime, as defined in § 3.102(h), or any practitioner who has been disbarred or suspended on an interim or final basis by, or has resigned with an admission of misconduct from, the highest court of any state, possession, territory, commonwealth, or the District of Columbia, or any Federal court. A copy of the petition shall be forwarded to the Office of the General Counsel of the Service, which may submit a written request to the Board that entry of any order immediately suspending a practitioner before the Board or the Immigration Courts also apply to the practitioner's authority to practice before the Service. Proof of service on the practitioner of the Service's request to broaden the scope of any immediate suspension must be filed with the Board.

(2) *Immediate suspension.* Upon the filing of a petition for immediate suspension by the Office of the General Counsel of EOIR, together with a certified copy of a court record finding that a practitioner has been so found guilty of a serious crime, or has been so disciplined or has so resigned, the Board shall forthwith enter an order immediately suspending the practitioner from practice before the Board, the Immigration Courts, and/or the Service, notwithstanding the pendency of an appeal, if any, of the underlying conviction or discipline, pending final disposition of a summary disciplinary proceeding as provided in paragraph (b) of this section. Such immediate suspension will continue until imposition of a final administrative decision. Upon good cause shown, the Board may set aside such order of immediate suspension when it appears in the interest of justice to do so. If a final administrative decision includes the imposition of a period of suspension, time spent by the practitioner under immediate suspension pursuant to this paragraph may be credited toward the period of suspension imposed under the final administrative decision.

(b) *Summary disciplinary proceedings.* The Office of the General Counsel of EOIR shall promptly initiate summary disciplinary proceedings against any practitioner described in paragraph (a) of this section. Summary proceedings shall be initiated by the issuance of a Notice of Intent to Discipline, accompanied by a certified copy of the order, judgment, and/or record evidencing the underlying criminal conviction, discipline, or resignation. Summary proceedings shall be conducted in accordance with the provisions set forth in §§ 3.105 and 3.106. Any such summary proceeding

shall not be concluded until all direct appeals from an underlying criminal conviction shall have been completed.

(1) In matters concerning criminal convictions, a certified copy of the court record, docket entry, or plea shall be conclusive evidence of the commission of the crime in any summary disciplinary proceeding based thereon.

(2) In the case of a summary proceeding based upon a final order of disbarment or suspension, or a resignation with an admission of misconduct, (*i.e.*, reciprocal discipline), a certified copy of a judgment or order of discipline shall establish a rebuttable presumption of the professional misconduct. Disciplinary sanctions shall follow in such a proceeding unless the attorney can rebut the presumption by demonstrating by clear, unequivocal, and convincing evidence that:

(i) The underlying disciplinary proceeding was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(ii) There was such an infirmity of proof establishing the attorney's professional misconduct as to give rise to the clear conviction that the adjudicating official could not, consistent with his or her duty, accept as final the conclusion on that subject; or

(iii) The imposition of discipline by the adjudicating official would result in grave injustice.

(c) *Duty of practitioner to notify EOIR of conviction or discipline.* Any practitioner who has been found guilty of, or pleaded guilty or *nolo contendere* to, a serious crime, as defined in § 3.102(h), or who has been disbarred or suspended by, or who has resigned with an admission of misconduct from, the highest court of any state, possession, territory, commonwealth, or the District of Columbia, or by any Federal court, must notify the Office of the General Counsel of EOIR of any such conviction or disciplinary action within 30 days of the issuance of the initial order, even if an appeal of the conviction or discipline is pending. Failure to do so may result in immediate suspension as set forth in paragraph (a) of this section and other final discipline. This duty to notify applies only to convictions for serious crimes and to orders imposing discipline for professional misconduct entered on or after August 28, 2000.

§ 3.104 Filing of complaints; preliminary inquiries; resolutions; referral of complaints.

(a) *Filing of complaints.*—(1) *Practitioners authorized to practice before the Board and the Immigration Courts.* Complaints of criminal, unethical, or unprofessional conduct, or of frivolous behavior by a practitioner who is authorized to practice before the Board and the Immigration Courts, shall be filed with the Office of the General Counsel of EOIR. Disciplinary complaints must be submitted in writing and must state in detail the information that supports the basis for the complaint, including, but not limited to, the names and addresses of the complainant and the practitioner, the date(s) of the conduct or behavior, the nature of the conduct or behavior, the individuals involved, the harm or damages sustained by the complainant, and any other relevant information. Any individual may file a complaint with the Office of the General Counsel of EOIR using the Form EOIR–44. The Office of the General Counsel of EOIR shall notify the Office of the General Counsel of the Service of any disciplinary complaint that pertains, in whole or in part, to a matter involving the Service.

(2) *Practitioners authorized to practice before the Service.* Complaints of criminal, unethical, or unprofessional conduct, or of frivolous behavior by a practitioner who is authorized to practice before the Service, shall be filed with the Office of the General Counsel of the Service pursuant to the procedures set forth in § 292.3(d) of this chapter.

(b) *Preliminary inquiry.* Upon receipt of a disciplinary complaint or on its own initiative, the Office of the General Counsel of EOIR will initiate a preliminary inquiry. If a complaint is filed by a client or former client, the complainant thereby waives the attorney-client privilege and any other applicable privilege, to the extent necessary to conduct a preliminary inquiry and any subsequent proceedings based thereon. If the Office of the General Counsel of EOIR determines that a complaint is without merit, no further action will be taken. The Office of the General Counsel of EOIR may, in its discretion, close a preliminary inquiry if the complainant fails to comply with reasonable requests for assistance, information, or documentation. The complainant and the practitioner shall be notified of any such determination in writing.

(c) *Resolutions reached prior to the issuance of a Notice of Intent to Discipline.* The Office of the General Counsel of EOIR, in its discretion, may issue warning letters and admonitions, and may enter into agreements in lieu of discipline, prior to the issuance of a Notice of Intent to Discipline.

(d) *Referral of complaints of criminal conduct.* If the Office of the General Counsel of EOIR receives credible information or allegations that a practitioner has engaged in criminal conduct, the Office of the General Counsel of EOIR shall refer the matter to the Inspector General and, if appropriate, to the Federal Bureau of Investigation. In such cases, in making the decision to pursue disciplinary sanctions, the Office of the General Counsel of EOIR shall coordinate in advance with the appropriate investigative and prosecutorial authorities within the Department to ensure that neither the disciplinary process nor criminal prosecutions are jeopardized.

§ 3.105 Notice of Intent to Discipline.

(a) *Issuance of Notice to practitioner.* If, upon completion of the preliminary inquiry, the Office of the General Counsel of EOIR determines that sufficient prima facie evidence exists to warrant charging a practitioner with professional misconduct as set forth in § 3.102, it will issue a Notice of Intent to Discipline to the practitioner named in the complaint. This notice will be served upon the practitioner by personal service as defined in § 103.5a of this chapter. Such notice shall contain a statement of the charge(s), a copy of the preliminary inquiry report, the proposed disciplinary sanctions to be imposed, the procedure for filing an answer or requesting a hearing, and the mailing address and telephone number of the Board.

(b) *Copy of Notice to the Service; reciprocity of disciplinary sanctions.* A copy of the Notice of Intent to Discipline shall be forwarded to the Office of the General Counsel of the Service. The Office of the General Counsel of the Service may submit a written request to the Board or the adjudicating official requesting that any discipline imposed upon a practitioner which restricts his or her authority to practice before the Board or the Immigration Courts also apply to the practitioner's authority to practice before the Service. Proof of service on the practitioner of any request to broaden the scope of the proposed discipline must be filed with the adjudicating official.

(c) *Answer.*—(1) *Filing.* The practitioner shall file a written answer to the Notice of Intent to Discipline with the Board within 30 days of the date of service of the Notice of Intent to Discipline unless, on motion to the Board, an extension of time to answer is granted for good cause. A motion for an extension of time to answer must be received by the Board no later than three (3) working days before the time to answer has expired. A copy of the

answer and any such motion shall be served by the practitioner on the Office of the General Counsel of EOIR (or the Office of the General Counsel of the Service with respect to a Notice of Intent to Discipline issued by the Service).

(2) *Contents.* The answer shall contain a statement of facts which constitute the grounds of defense and shall specifically admit or deny each allegation set forth in the Notice of Intent to Discipline. Every allegation in the Notice of Intent to Discipline which is not denied in the answer shall be deemed to be admitted and may be considered as proved, and no further evidence in respect of such allegation need be adduced. The practitioner may also state affirmatively special matters of defense and may submit supporting documents, including affidavits or statements, along with the answer.

(3) *Request for hearing.* The practitioner shall also state in the answer whether he or she requests a hearing on the matter. If no such request is made, the opportunity for a hearing will be deemed waived.

(d) *Failure to file an answer.* (1) Failure to file an answer within the time period prescribed in the Notice of Intent to Discipline, except where the time to answer is extended by the Board, shall constitute an admission of the allegations in the Notice of Intent to Discipline and no further evidence with respect to such allegations need be adduced.

(2) Upon such a default by the practitioner, the Office of the General Counsel shall submit to the Board proof of personal service of the Notice of Intent to Discipline. The practitioner shall be precluded thereafter from requesting a hearing on the matter. The Board shall issue a final order adopting the recommended disciplinary sanctions in the Notice of Intent to Discipline unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct, or would otherwise be unwarranted or not in the interest of justice. Any final order imposing discipline shall not become effective sooner than 15 days from the date of the order to provide the practitioner opportunity to comply with the terms of such order, including, but not limited to, withdrawing from pending immigration matters and notifying immigration clients of the imposition of any sanction. A practitioner may file a motion to set aside a final order of discipline issued pursuant to this paragraph, with service of such motion on the Office of the General Counsel of EOIR, provided:

(i) Such a motion is filed within 15 days of the date of service of the final order; and

(ii) His or her failure to file an answer was due to exceptional circumstances (such as serious illness of the practitioner or death of an immediate relative of the practitioner, but not including less compelling circumstances) beyond the control of the practitioner.

§ 3.106 Hearing and disposition.

(a) *Hearing.*—(1) *Procedure.* (i) The Chief Immigration Judge shall, upon the filing of an answer, appoint an Immigration Judge as an adjudicating official. At the request of the Chief Immigration Judge or in the interest of efficiency, the Director of EOIR may appoint an Administrative Law Judge as an adjudicating official. An Immigration Judge or Administrative Law Judge shall not serve as the adjudicating official in any case in which he or she is also the complainant. An Immigration Judge shall not serve as the adjudicating official in any case involving a practitioner who regularly appears before him or her.

(ii) Upon the practitioner's request for a hearing, the adjudicating official shall designate the time and place of the hearing with due regard to the location of the practitioner's practice or residence, the convenience of witnesses, and any other relevant factors. Such notice shall be served upon the practitioner by personal service as defined in § 103.5a of this chapter. The practitioner shall be afforded adequate time to prepare his or her case in advance of the hearing. Pre-hearing conferences may be scheduled at the discretion of the adjudicating official in order to narrow issues, to obtain stipulations between the parties, to exchange information voluntarily, and otherwise to simplify and organize the proceeding. Settlement agreements reached after the issuance of a Notice of Intent to Discipline are subject to final approval by the adjudicating official or if the practitioner has not filed an answer, subject to final approval by the Board.

(iii) The practitioner may be represented at the hearing by counsel at no expense to the government. Counsel for the practitioner shall file a Notice of Entry of Appearance on Form EOIR–28 in accordance with the procedures set forth in this Part 3. At the hearing, the practitioner shall have a reasonable opportunity to examine and object to evidence presented by the government, to present evidence on his or her own behalf, and to cross-examine witnesses presented by the government.

(iv) In rendering a decision, the adjudicating official shall consider the following: the complaint, the preliminary inquiry report, the Notice of Intent to Discipline, the answer and any supporting documents, and any other evidence presented at the hearing (or, if the practitioner files an answer but does not request a hearing, any pleading, brief, or other materials submitted by counsel for the government). Counsel for the government shall bear the burden of proving the grounds for disciplinary sanctions enumerated in the Notice of Intent to Discipline by clear, unequivocal, and convincing evidence.

(v) The record of the hearing, regardless of whether the hearing is held before an Immigration Judge or an Administrative Law Judge, shall conform to the requirements of 8 CFR part 3, subpart C and 8 CFR 240.9. Disciplinary hearings shall be conducted in the same manner as Immigration Court proceedings as is appropriate, and shall be open to the public, except that:

(A) Depending upon physical facilities, the adjudicating official may place reasonable limitations upon the number of individuals in attendance at any one time, with priority being given to the press over the general public, and

(B) For the purposes of protecting witnesses, parties, or the public interest, the adjudicating official may limit attendance or hold a closed hearing.

(2) *Failure to appear at the hearing.* If the practitioner fails to appear at the hearing, the adjudicating official shall then proceed and decide the case in the absence of the practitioner, in accordance with paragraph (b) of this section, based upon the available record, including any additional evidence or arguments presented by EOIR or the Service at the hearing. In such a proceeding, the Office of the General Counsel of EOIR or the Office of the General Counsel of the Service shall submit to the adjudicating official proof of personal service of the Notice of Intent to Discipline as well as the Notice of the Hearing. The practitioner shall be precluded thereafter from participating further in the proceedings. Any final order imposing discipline entered in absentia shall be a final order, but shall not become effective sooner than 15 days from the date of the order to provide the practitioner opportunity to comply with the terms of such order, including, but not limited to, withdrawing from pending immigration matters and notifying immigration clients of the imposition of any sanction. A final order of discipline issued pursuant to this paragraph shall

not be subject to further review, except that the practitioner may file a motion to set aside the order, with service of such motion on the Office of the General Counsel of EOIR (or the Office of the General Counsel of the Service), provided:

(i) Such a motion is filed within 15 days of the date of issuance of the final order; and

(ii) His or her failure to appear at the hearing was due to exceptional circumstances (such as serious illness of the practitioner or death of an immediate relative of the practitioner, but not including less compelling circumstances) beyond the control of the practitioner.

(b) *Decision.* The adjudicating official shall consider the entire record, including any testimony and evidence presented at the hearing, and, as soon as practicable after the hearing, render a decision. If the adjudicating official finds that one or more of the grounds for disciplinary sanctions enumerated in the Notice of Intent to Discipline have been established by clear, unequivocal, and convincing evidence, he or she shall rule that the disciplinary sanctions set forth in the Notice of Intent to Discipline be adopted, modified, or otherwise amended. If the adjudicating official determines that the practitioner should be suspended, the time period for such suspension shall be specified. Any grounds for disciplinary sanctions enumerated in the Notice of Intent to Discipline that have not been established by clear, unequivocal, and convincing evidence shall be dismissed. Except as provided in paragraph (a)(2) of this section, the adjudicating official's decision becomes final only upon waiver of appeal or expiration of the time for appeal to the Board, whichever comes first, nor does it take effect during the pendency of an appeal to the Board as provided in § 3.6.

(c) *Appeal.* Upon the issuance of a decision by the adjudicating official, either party or both parties may appeal to the Board to conduct a *de novo* review of the record. Parties must comply with all pertinent provisions for appeals to the Board, including provisions relating to forms and fees, as set forth in this Part 3, and must use the Form EOIR–45. The decision of the Board is a final administrative order as provided in § 3.1(d)(2), and shall be served upon the practitioner by personal service as defined in § 103.5a of this chapter. Any final order imposing discipline shall not become effective sooner than 15 days from the date of the order to provide the practitioner opportunity to comply with the terms of such order, including, but not limited to, withdrawing from any pending immigration matters and notifying immigration clients of the imposition of any sanction. A copy of the final administrative order of the Board shall be served upon the Office of the General Counsel of EOIR and the Office of the General Counsel of the Service. If disciplinary sanctions are imposed against a practitioner (other than a private censure), the Board may require that notice of such sanctions be posted at the Board, the Immigration Courts, or the Service for the period of time during which the sanctions are in effect, or for any other period of time as determined by the Board.

(d) *Referral.* In addition to, or in lieu of, initiating disciplinary proceedings against a practitioner, the Office of the General Counsel of EOIR may notify any appropriate Federal and/or state disciplinary or regulatory authority of any complaint filed against a practitioner. Any final administrative decision imposing sanctions against a practitioner (other than a private censure) shall be reported to any such disciplinary or regulatory authority in every jurisdiction where the disciplined practitioner is admitted or otherwise authorized to practice. In addition, the Office of the General Counsel of EOIR shall transmit notice of all public discipline imposed under this rule to the National Lawyer Regulatory Data Bank maintained by the American Bar Association.

§ 3.107 Reinstatement after expulsion or suspension.

(a) *Expiration of suspension.* Upon notice to the Board, a practitioner who has been suspended will be reinstated to practice before the Board and the Immigration Courts or the Service, or before all three authorities, once the period of suspension has expired, provided that he or she meets the definition of attorney or representative as set forth in § 1.1(f) and (j), respectively, of this chapter. If a practitioner cannot meet the definition of attorney or representative, the Board shall decline to reinstate the practitioner.

(b) *Petition for reinstatement.* A practitioner who has been expelled or who has been suspended for one year or more may file a petition for reinstatement directly with the Board after one-half of the suspension period has expired or one year has passed, whichever is greater, provided that he or she meets the definition of attorney or representative as set forth in § 1.1(f) and (j), respectively, of this chapter. A copy of such petition shall be served on the Office of the General Counsel of EOIR. In matters in which the practitioner was ordered expelled or suspended from practice before the Service, a copy of such petition shall be served on the Office of the General Counsel of the Service.

(1) The practitioner shall have the burden of demonstrating by clear, unequivocal, and convincing evidence that he or she possesses the moral and professional qualifications required to appear before the Board and the Immigration Courts or the Service, or before all three authorities, and that his or her reinstatement will not be detrimental to the administration of justice. The Office of the General Counsel of EOIR, and in matters in which the practitioner was ordered expelled or suspended from practice before the Service, the Office of the General Counsel of the Service, may reply within 30 days of service of the petition in the form of a written response to the Board, which may include documentation of any complaints filed against the expelled or suspended practitioner subsequent to his or her expulsion or suspension.

(2) If a practitioner cannot meet the definition of attorney or representative as set forth in § 1.1(f) and (j), respectively, of this chapter, the Board shall deny the petition for reinstatement without further consideration. If the petition for reinstatement is found to be otherwise inappropriate or unwarranted, the petition shall be denied. Any subsequent petitions for reinstatement may not be filed before the end of one year from the date of the Board's previous denial of reinstatement. If the petition for reinstatement is determined to be timely, the practitioner meets the definition of attorney or representative, and the petitioner has otherwise set forth by the requisite standard of proof that he or she possesses the qualifications set forth herein, and that reinstatement will not be detrimental to the administration of justice, the Board shall grant the petition and reinstate the practitioner. The Board, in its discretion, may hold a hearing to determine if the practitioner meets all of the requirements for reinstatement.

§ 3.108 Confidentiality.

(a) *Complaints and preliminary inquiries.* Except as otherwise provided by law or regulation, information concerning complaints or preliminary inquiries is confidential. A practitioner whose conduct is the subject of a complaint or preliminary inquiry, however, may waive confidentiality, except that the Office of the General Counsel of EOIR may decline to permit

a waiver of confidentiality if it is determined that an ongoing preliminary inquiry may be substantially prejudiced by public disclosure before the filing of a Notice of Intent to Discipline.

(1) *Disclosure of information for the purpose of protecting the public.* The Office of the General Counsel of EOIR may disclose information concerning a complaint or preliminary inquiry for the protection of the public when the necessity for disclosing information outweighs the necessity for preserving confidentiality in circumstances including, but not limited to, the following:

(i) A practitioner has caused, or is likely to cause, harm to client(s), the public, or the administration of justice, such that the public or specific individuals should be advised of the nature of the allegations. If disclosure of information is made pursuant to this paragraph, the Office of the General Counsel of EOIR may define the scope of information disseminated and may limit the disclosure of information to specified individuals or entities;

(ii) A practitioner has committed criminal acts or is under investigation by law enforcement authorities;

(iii) A practitioner is under investigation by a disciplinary or regulatory authority, or has committed acts or made omissions that may reasonably result in investigation by such authorities;

(iv) A practitioner is the subject of multiple disciplinary complaints and the Office of the General Counsel of EOIR has determined not to pursue all of the complaints. The Office of the General Counsel of EOIR may inform complainants whose allegations have not been pursued of the status of any other preliminary inquiries or the manner in which any other complaint(s) against the practitioner have been resolved.

(2) *Disclosure of information for the purpose of conducting a preliminary inquiry.* The Office of the General Counsel of EOIR, in the exercise of discretion, may disclose documents and information concerning complaints and preliminary inquiries to the following individuals or entities:

(i) To witnesses or potential witnesses in conjunction with a complaint or preliminary inquiry;

(ii) To other governmental agencies responsible for the enforcement of civil or criminal laws;

(iii) To agencies and other jurisdictions responsible for disciplinary or regulatory investigations and proceedings;

(iv) To the complainant or a lawful designee;

(v) To the practitioner who is the subject of the complaint or preliminary inquiry or the practitioner's counsel of record.

(b) *Resolutions reached prior to the issuance of a Notice of Intent to Discipline.* Resolutions, such as warning letters, admonitions, and agreements in lieu of discipline, reached prior to the issuance of a Notice of Intent to Discipline, will remain confidential. However, such resolutions may become part of the public record if the practitioner becomes subject to a subsequent Notice of Intent to Discipline.

(c) *Notices of Intent to Discipline and action subsequent thereto.* Notices of Intent to Discipline and any action that takes place subsequent to their issuance, except for the imposition of private censures, may be disclosed to the public, except that private censures may become part of the public record if introduced as evidence of a prior record of discipline in any subsequent disciplinary proceeding. Settlement agreements reached after the issuance of a Notice of Intent to Discipline may be disclosed to the public upon final approval by the adjudicating official or the Board. Disciplinary hearings are open to the public, except as noted in § 3.106(a)(1)(v).

§ 3.109 Discipline of government attorneys.

Complaints regarding the conduct or behavior of Department attorneys, Immigration Judges, or Board Members shall be directed to the Office of Professional Responsibility, United States Department of Justice. If disciplinary action is warranted, it shall be administered pursuant to the Department's attorney discipline procedures.

PART 292—REPRESENTATION AND APPEARANCES

8. The authority citation for Part 292 continues to read as follows:

Authority: 8 U.S.C. 1103, 1252b, 1362.

9. Section 292.3 is revised to read as follows:

§ 292.3 Professional Conduct for Practitioners—Rules and Procedures.

(a) *General provisions.*— (1) *Authority to sanction.* An adjudicating official or the Board of Immigration Appeals (the Board) may impose disciplinary sanctions against any practitioner if it finds it to be in the public interest to do so. It will be in the public interest to impose disciplinary sanctions against a practitioner who is authorized to practice before the Service when such person has engaged in criminal, unethical, or unprofessional conduct, or in frivolous behavior, as set forth in § 3.102 of this chapter. In accordance with the disciplinary proceedings set forth in part 3 of this chapter, an adjudicating official or the Board may impose any of the following disciplinary sanctions:

(i) Expulsion, which is permanent, from practice before the Board and the Immigration Courts or the Service, or before all three authorities;

(ii) Suspension, including immediate suspension, from practice before the Board and the Immigration Courts or the Service, or before all three authorities;

(iii) Public or private censure; or

(iv) Such other disciplinary sanctions as the adjudicating official or the Board deems appropriate.

(2) *Persons subject to sanctions.* Persons subject to sanctions include any practitioner. A practitioner is any attorney as defined in § 1.1(f) of this chapter who does not represent the federal government, or any representative as defined in § 1.1(j) of this chapter. Attorneys employed by the Department of Justice shall be subject to discipline pursuant to paragraph (i) of this section.

(b) *Grounds of discipline as set forth in § 3.102 of this chapter.* It is deemed to be in the public interest for the adjudicating official or the Board to impose disciplinary sanctions as described in paragraph (a)(1) of this section against any practitioner who falls within one or more of the categories enumerated in § 3.102 of this chapter, with the exception of paragraphs (k) and (l) of that section, but these categories do not constitute the exclusive grounds for which disciplinary sanctions may be imposed in the public interest. Nothing in this regulation should be read to denigrate the practitioner's duty to represent zealously his or her client within the bounds of the law.

(c) *Immediate suspension and summary disciplinary proceedings; duty of practitioner to notify the Service of conviction or discipline.* (1) *Petition.* The Office of the General Counsel of the Service shall petition the Board to suspend immediately from practice before the Service any practitioner who has been found guilty of, or pleaded guilty or *nolo contendere* to, a serious crime, as defined in § 3.102(h) of this chapter, or who has been disbarred or suspended on an interim or final basis by, or has resigned with an admission of misconduct from, the highest court of any state, possession, territory, commonwealth, or the District of Columbia, or any Federal court. A copy

of the petition shall be forwarded to the Office of the General Counsel of EOIR, which may submit a written request to the Board that entry of any order immediately suspending a practitioner before the Service also apply to the practitioner's authority to practice before the Board or the Immigration Courts. Proof of service on the practitioner of EOIR's request to broaden the scope of any immediate suspension must be filed with the Board.

(2) *Immediate suspension.* Upon the filing of a petition for immediate suspension by the Office of the General Counsel of the Service, together with a certified copy of a court record finding that a practitioner has been so found guilty of a serious crime, or has been so disciplined or has so resigned, the Board shall forthwith enter an order immediately suspending the practitioner from practice before the Service and/or the Board and Immigration Courts, notwithstanding the pendency of an appeal, if any, of the underlying conviction or discipline, pending final disposition of a summary proceeding, as provided in paragraph (c)(3) of this section. Such immediate suspension will continue until imposition of a final administrative decision. Upon good cause shown, the Board may set aside such order of immediate suspension when it appears in the interest of justice to do so. If a final administrative decision includes the imposition of a period of suspension, time spent by the practitioner under immediate suspension pursuant to this paragraph may be credited toward the period of suspension imposed under the final administrative decision.

(3) *Summary disciplinary proceedings.* The Office of the General Counsel of the Service shall promptly initiate summary disciplinary proceedings against any practitioner described in paragraph (c)(1) of this section. Summary proceedings shall be initiated by the issuance of a Notice of Intent to Discipline, accompanied by a certified copy of the order, judgment and/or record evidencing the underlying criminal conviction or discipline. Summary proceedings shall be conducted in accordance with the provisions set forth in §§ 3.105 and 3.106 of this chapter. Any such proceeding shall not be concluded until all direct appeals from an underlying criminal conviction have been completed.

(i) In matters concerning criminal convictions, a certified copy of the court record, docket entry, or plea shall be conclusive evidence of the commission of that crime in any summary disciplinary hearing based thereon.

(ii) In the case of a summary proceeding based upon a final order of disbarment or suspension, or a resignation with an admission of misconduct, (i.e., reciprocal discipline), a certified copy of a judgment or order of discipline shall establish a rebuttable presumption of the professional misconduct. Disciplinary sanctions shall follow in such a proceeding unless the attorney can rebut the presumption by demonstrating by clear, unequivocal, and convincing evidence that:

(A) The underlying disciplinary proceeding was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(B) There was such an infirmity of proof establishing the practitioner's professional misconduct as to give rise to the clear conviction that the adjudicating official could not, consistent with his or her duty, accept as final the conclusion on that subject; or

(C) The imposition of discipline by the adjudicating official would result in grave injustice.

(4) *Duty of practitioner to notify the Service of conviction or discipline.* Any practitioner who has been found guilty of, or pleaded guilty or *nolo contendere* to, a serious crime, as defined in § 3.102(h) of this chapter, or who has been disbarred or suspended by, or who has resigned with an admission of misconduct from, the highest court of any state, possession, territory, commonwealth, or the District of Columbia, or by any Federal court, must notify the Office of the General Counsel of the Service of any such conviction or disciplinary action within 30 days of the issuance of the initial order, even if an appeal of the conviction or discipline is pending. Failure to do so may result in immediate suspension as set forth in paragraph (c)(1) of this section. This duty to notify applies only to convictions for serious crimes or to orders imposing discipline for professional misconduct entered on or after July 27, 2000.

(d) *Filing of complaints; preliminary inquiries; resolutions; referral of complaints.*—(1) *Filing of complaints.*—(i) *Misconduct occurring before Service.* Complaints of criminal, unethical, or unprofessional conduct, or of frivolous behavior before the Service by a practitioner shall be filed with the Office of the General Counsel of the Service. Disciplinary complaints must be submitted in writing and must state in detail the information that supports the basis for the complaint, including, but not limited to, the names and addresses of the complainant and the practitioner, the date(s) of the conduct or behavior, the nature of the conduct or behavior, the individuals involved, the harm or damages sustained by the complainant, and any other relevant information. Any individual may file a complaint with the Office of the General Counsel of the Service. The Office of the General Counsel of the Service shall notify the Office of the General Counsel of EOIR of any disciplinary complaint that pertains, in whole or in part, to a matter before the Board or the Immigration Courts.

(ii) *Misconduct occurring before the Board and the Immigration Courts.* Complaints of criminal, unethical, or unprofessional conduct, or of frivolous behavior before the Board and the Immigration Courts by a practitioner shall be filed with the Office of the General Counsel of EOIR pursuant to the procedures set forth in § 3.104(a) of this chapter.

(2) *Preliminary inquiry.* Upon receipt of a disciplinary complaint or on its own initiative, the Office of the General Counsel of the Service will initiate a preliminary inquiry. If a complaint is filed by a client or former client, the complainant thereby waives the attorney-client privilege and any other applicable privilege, to the extent necessary to conduct a preliminary inquiry and any subsequent proceeding based thereon. If the Office of the General Counsel of the Service determines that a complaint is without merit, no further action will be taken. The Office of the General Counsel of the Service may, in its discretion, close a preliminary inquiry if the complainant fails to comply with reasonable requests for assistance, information, or documentation. The complainant and the practitioner shall be notified of any such determination in writing.

(3) *Resolutions reached prior to the issuance of a Notice of Intent to Discipline.* The Office of the General Counsel of the Service, in its discretion, may issue warning letters and admonitions, and may enter into agreements in lieu of discipline, prior to the issuance of a Notice of Intent to Discipline.

(4) *Referral of complaints of criminal conduct.* If the Office of the General Counsel of the Service receives credible information or allegations that a practitioner has engaged in criminal conduct, the Office of the General Counsel of the Service shall refer the matter to the Inspector General and, if appropriate, to the Federal Bureau of Investigation. In such cases, in making the decision to pursue disciplinary sanctions, the Office of the General

Counsel of the Service shall coordinate in advance with the appropriate investigative and prosecutorial authorities within the Department to ensure that neither the disciplinary process nor criminal prosecutions are jeopardized.

(e) *Notice of Intent to Discipline.*—(1) *Issuance of Notice to practitioner.* If, upon completion of the preliminary inquiry, the Office of the General Counsel of the Service determines that sufficient prima facie evidence exists to warrant charging a practitioner with professional misconduct as set forth in § 3.102 of this chapter, it will issue a Notice of Intent to Discipline to the practitioner named in the complaint. This notice will be served upon the practitioner by personal service as defined in § 103.5a of this chapter. Such notice shall contain a statement of the charge(s), a copy of the preliminary inquiry report, the proposed disciplinary sanctions to be imposed, the procedure for filing an answer or requesting a hearing, and the mailing address and telephone number of the Board.

(2) *Copy of Notice to EOIR; reciprocity of disciplinary sanctions.* A copy of the Notice of Intent to Discipline shall be forwarded to the Office of the General Counsel of EOIR. The Office of the General Counsel of EOIR may submit a written request to the Board or the adjudicating official requesting that any discipline imposed upon a practitioner which restricts his or her authority to practice before the Service also apply to the practitioner's authority to practice before the Board and the Immigration Courts. Proof of service on the practitioner of any request to broaden the scope of the proposed discipline must be filed with the adjudicating official.

(3) *Answer.*—(i) *Filing.* The practitioner shall file a written answer to the Notice of Intent to Discipline with the Board as provided in § 3.105(c) of this chapter.

(ii) *Failure to file an answer.* Failure to file an answer within the time period prescribed in the Notice of Intent to Discipline, except where the time to answer is extended by the Board, shall constitute an admission of the allegations in the Notice of Intent to Discipline and no further evidence with respect to such allegations need be adduced. Upon such a default by the practitioner, the Office of the General Counsel of the Service shall submit to the Board proof of personal service of the Notice of Intent to Discipline. The practitioner shall be precluded thereafter from requesting a hearing on the matter. The Board shall adopt the recommended disciplinary sanctions in the Notice of Intent to Discipline and issue a final order as provided in § 3.105(d) of this chapter. A practitioner may file a motion to set aside a final order of discipline issued pursuant to this paragraph, with service of such motion on the Office of the General Counsel of the Service, provided:

(A) Such a motion is filed within 15 days of service of the final order; and

(B) His or her failure to file an answer was due to exceptional circumstances (such as serious illness of the practitioner or death of an immediate relative of the practitioner, but not including less compelling circumstances) beyond the control of the practitioner.

(f) *Hearing and disposition; appeal; reinstatement proceedings.* Upon the filing of an answer, the matter shall be heard and decided according to the procedures set forth in § 3.106(a), (b), and (c) of this chapter. The Office of the General Counsel of the Service shall represent the government. Reinstatement proceedings shall be conducted according to the procedures set forth in § 3.107 of this chapter.

(g) *Referral.* In addition to, or in lieu of, initiating disciplinary proceedings against a practitioner, the Office of the General Counsel of the Service may notify any appropriate Federal and/or state disciplinary or regulatory authority of any complaint filed against a practitioner. Any final administrative decision imposing sanctions against a practitioner (other than a private censure) shall be reported to any such disciplinary or regulatory authority in every jurisdiction where the disciplined practitioner is admitted or otherwise authorized to practice. In addition, the Office of the General Counsel of the Service shall transmit notice of all public discipline imposed under this rule to the National Lawyer Regulatory Data Bank maintained by the American Bar Association.

(h) *Confidentiality.*—(1) *Complaints and preliminary inquiries.* Except as otherwise provided by law or regulation, information concerning complaints or preliminary inquiries is confidential. A practitioner whose conduct is the subject of a complaint or preliminary inquiry, however, may waive confidentiality, except that the Office of the General Counsel of the Service may decline to permit a waiver of confidentiality if it is determined that an ongoing preliminary inquiry may be substantially prejudiced by a public disclosure before the filing of a Notice of Intent to Discipline.

(i) *Disclosure of information for the purpose of protecting the public.* The Office of the General Counsel of the Service may disclose information concerning a complaint or preliminary inquiry for the protection of the public when the necessity for disclosing information outweighs the necessity for preserving confidentiality in circumstances including, but not limited to, the following:

(A) A practitioner has caused, or is likely to cause, harm to client(s), the public, or the administration of justice, such that the public or specific individuals should be advised of the nature of the allegations. If disclosure of information is made pursuant to this paragraph, the Office of the General Counsel of the Service may define the scope of information disseminated and may limit the disclosure of information to specified individuals or entities;

(B) A practitioner has committed criminal acts or is under investigation by law enforcement authorities;

(C) A practitioner is under investigation by a disciplinary or regulatory authority, or has committed acts or made omissions that may reasonably result in investigation by such an authority;

(D) A practitioner is the subject of multiple disciplinary complaints and the Office of the General Counsel of the Service has determined not to pursue all of the complaints. The Office of the General Counsel of the Service may inform complainants whose allegations have not been pursued of the status of any other preliminary inquiries or the manner in which any other complaint(s) against the practitioner have been resolved.

(ii) *Disclosure of information for the purpose of conducting a preliminary inquiry.* The Office of the General Counsel of the Service, in the exercise of discretion, may disclose documents and information concerning complaints and preliminary inquiries to the following individuals or entities:

(A) To witnesses or potential witnesses in conjunction with a complaint or preliminary inquiry;

(B) To other governmental agencies responsible for the enforcement of civil or criminal laws;

(C) To agencies and other jurisdictions responsible for conducting disciplinary investigations or proceedings;

(D) To the complainant or a lawful designee; and

(E) To the practitioner who is the subject of the complaint or preliminary inquiry or the practitioner's counsel of record.

(2) *Resolutions reached prior to the issuance of a Notice of Intent to Discipline.* Resolutions, such as warning

letters, admonitions, and agreements in lieu of discipline, reached prior to the issuance of a Notice of Intent to Discipline, will remain confidential. However, such resolutions may become part of the public record if the practitioner becomes subject to a subsequent Notice of Intent to Discipline.

(3) *Notices of Intent to Discipline and action subsequent thereto.* Notices of Intent to Discipline and any action that takes place subsequent to their issuance, except for the imposition of private censures, may be disclosed to the public, except that private censures may become part of the public record if introduced as evidence of a prior record of discipline in any subsequent disciplinary proceeding. Settlement agreements reached after the issuance of a Notice of Intent to Discipline may be disclosed to the public upon final approval by the adjudicating official or the Board. Disciplinary hearings are open to the public, except as noted in § 3.106(a)(v) of this chapter.

(i) *Discipline of government attorneys.* Complaints regarding the conduct or behavior of Department attorneys, Immigration Judges, or Board Members shall be directed to the Office of Professional Responsibility, United States Department of Justice. If disciplinary action is warranted, it shall be administered pursuant to the Department's attorney discipline procedures.

Dated: June 17, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–16052 Filed 6–26–00; 8:45 am]

BILLING CODE 4410–30–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 54 and 79

[Docket No. 99–067–2]

Scrapie Pilot Projects

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the voluntary scrapie flock certification program and the interstate movement of sheep and goats to exempt flocks from certain regulatory requirements when the flocks are participating in scrapie control pilot projects authorized by the Animal and Plant Health Inspection Service. We believe this action is necessary so that pilot projects can achieve their goal of furthering progress toward the eradication of scrapie. This action will affect a small number of flock owners participating in scrapie control pilot projects.

EFFECTIVE DATE: June 27, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Diane Sutton, Senior Staff Veterinarian, National Animal Health Programs Staff, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1235; (301) 734–6954.

SUPPLEMENTARY INFORMATION:

Background

Scrapie is a degenerative and eventually fatal disease affecting the central nervous systems of sheep and goats. To control the spread of scrapie within the United States, the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), administers regulations at 9 CFR part 79, which restrict the interstate movement of certain sheep and goats. APHIS also administers the Voluntary Scrapie Flock Certification Program (the VSFCP), described in the regulations at 9 CFR part 54.

On December 17, 1999, we published in the **Federal Register** (64 FR 70608–70610, Docket No. 99–067–1) a proposal to amend 9 CFR parts 54 and 79 to add a definition of the term *scrapie control pilot project* and to allow the Administrator to waive specified requirements of parts 54 and 79 for flocks participating in scrapie control pilot projects. The purpose of the proposal was to enhance the ability of APHIS to work with flock owners to develop pilot projects for scrapie control that may involve using techniques and procedures different from those contained in the current regulations.

We solicited comments concerning our proposal for 30 days ending January 18, 2000. We received seven comments by that date. They were from a State government, an association representing veterinarians, two associations representing the U.S. sheep industry, and three individual sheep producers. Six commenters generally supported the proposed rule, but several suggested changes to improve it. One commenter opposed the proposed rule. Several of the commenters also raised issues outside the scope of the proposed rule. All issues raised by the comments pertinent to the proposed rule are discussed below by topic.

Pilot Projects will Preserve Infected Sheep and Delay Eradication of Scrapie

The comment opposed to the proposed rule stated that pilot projects, by lessening restrictions, could result in the movement of sheep that were potentially infected with scrapie, spreading the disease and delaying its eradication. This commenter stated that sheep allowed movement by the pilot projects would be quarantined or destroyed under the previous regulations. Another commenter urged APHIS to be conservative in its approval of pilot projects to guard against projects that may actually contribute to the spread of scrapie.

We are not making any change in response to these comments. Historically, scrapie control has not been successful in part because producers of sheep with valuable genetic lines were often left with few alternatives other than flock depopulation. This was discouraging and often influenced producers not to report scrapie. The pilot projects will allow us to evaluate methods that may provide alternatives to flock depopulation while minimizing the spread of disease. It is essential to use pilot projects to evaluate different tests and control methods. It is our belief that these projects will assist us in adjusting our control and eradication programs to be more effective and acceptable to producers and will, therefore, accelerate, not delay, progress toward the eradication of scrapie. Each pilot project will have restrictions on the movement of sheep in the project that are commensurate with the risk that the sheep might spread scrapie, and these movement restrictions and other precautions in pilot project design should prevent the spread of scrapie as a result of the pilot projects.

Definition of Scrapie Control Pilot Project

The definition proposed for the term *scrapie control pilot project* was "A pilot project authorized by the Administrator in writing, designed to perform research or test or improve program procedures for scrapie control. In addition to APHIS, participants may include State animal health agencies, flock owners, and other parties as necessary." Two commenters suggested that pilot projects could contribute to the eradication as well as the control of scrapie, and noted that eventual eradication of the disease is an important goal of scrapie programs and should be stressed. We agree.

One commenter questioned including "designed to perform research" in the

definition, in light of the fact that research is not a primary APHIS mission and that other agencies have research as their primary mission.

While it is not the mission of APHIS to conduct pure research, APHIS has historically conducted projects that have examined the practicality of implementing new testing techniques and control strategies. The scrapie pilot project initiative expands our role in this effort as a means to enhance scrapie control with the goal of eventual eradication. This effort also will allow flocks and animals to be kept alive for use by other entities whose sole mission is to conduct research. However, we agree that by encouraging pilot projects, APHIS will not be directly conducting research, but instead facilitating research by other parties.

In response to the above comments, we are changing the definition of *scrapie control pilot project* to read "A pilot project authorized by the Administrator in writing, designed to test or improve program procedures or to facilitate research, in order to control and eradicate scrapie. In addition to APHIS, participants may include State animal health agencies, flock owners, and other parties as necessary."

Further Restrictions Needed on Movement of Sheep from Pilot Projects

One commenter stated that animals from flocks in a pilot project should be allowed to move intrastate or interstate only with permission from State animal health officials, and should be required to be individually identified with official identification.

We are not making any change in response to this comment. As our goal is to control and eventually eradicate scrapie, movement of sheep from flocks participating in the pilot project will be done in accordance with pilot project designs that minimize the risk of scrapie spread and ensure that these animals will be monitored after movement from the flock of origin. State animal health officials will be involved in establishing and approving pilot projects, including the terms under which animals from pilot projects may be moved. Individual animal identification will be used whenever it is necessary to allow continued monitoring of animals after they have been moved from a pilot project flock.

Miscellaneous

One commenter noted the statement in the economic analysis section of the proposed rule that "APHIS expects to engage in scrapie pilot projects over approximately the next 5 years." He commented that 5 years is not long enough to fully evaluate the role of genetics in scrapie resistance and how knowledge of genetics can assist control efforts.

That time estimate was only an approximation, and we agree that it may take longer. Also, followup monitoring of animals involved in pilot projects may occur for much longer. For instance, we intend to continue monitoring high risk animals from pilot projects throughout their lifetimes and to conduct necropsies of each high risk animal and examine it for any evidence of scrapie.

Two commenters questioned the statement in the economic analysis that the proposed rule would affect "no more than 75 sheep flocks containing approximately 3,400 sheep that may be engaged in pilot projects in any given year." The number 75 was not meant to be a limit on the total number of pilot project flocks but was our projection of the number of flocks that may participate based on the number of infected and source flocks known to exist in the United States. The actual number will depend upon the amount of Federal funding available. Additional participation may be permitted if some costs are borne by States or producers.

One commenter stated that premises contamination studies are vitally needed to gain better understanding of the degree to which contaminated premises might spread scrapie and the effectiveness of decontamination techniques for premises. We agree, and APHIS has asked the Agricultural Research Service, USDA, to conduct such studies.

One commenter suggested that animals in pilot projects should be awarded a flock status under the Voluntary Scrapie Flock Certification Program that would allow them to be eligible for export in order to minimize adverse financial impacts on their owners. We did not make any change in response to this comment. The intent of the pilot project is to evaluate the effectiveness of certain tests, procedures, and alternative methods, not to certify animals for export. Animals in pilot projects are not necessarily in the same category, in terms of risk of scrapie or demonstrated freedom from scrapie, with animals in any of the flock categories established by the Voluntary Scrapie Flock Certification Program. The pilot projects may eventually lead to methods that enhance our ability to certify animals for export, but there is no basis at this stage for certifying animals in pilot projects for export.

Therefore, for the reasons given in the proposed rule and in this final rule, we are adopting the proposed rule as a final rule, with the changes discussed above.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

Immediate implementation of this rule is necessary to provide relief to those persons involved in scrapie pilot projects who are adversely affected by restrictions we no longer find warranted. Making this rule effective immediately will allow participating sheep producers and others in the marketing chain to move and sell animals during this year's slaughter season. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule will allow the Administrator to exempt sheep and goat flocks participating in scrapie control pilot projects from certain requirements of the regulations. Because APHIS resources will allow us to develop and administer only a limited number of pilot projects, this rule is unlikely to affect more than 75 sheep flocks containing approximately 3,400 sheep that may be engaged in pilot projects in any given year. It could affect substantially fewer if owners of flocks eligible for pilot projects decline to participate. APHIS expects to engage in scrapie pilot projects over approximately the next 5 years. Based on current plans for pilot projects, this rule will probably affect no more than 20 flocks the first year. The primary effects on these flock owners should be beneficial, in that animal testing and genotyping under the pilot projects would allow them to keep animals that would otherwise have to be destroyed under the regulations. All flock owners should eventually accrue long-term benefits from the control or eradication of scrapie in the form of reduced loss of animals from the disease and opening of additional international markets.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not

have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects

9 CFR Part 54

Animal diseases, Goats, Indemnity payments, Scrapie, Sheep.

9 CFR Part 79

Animal diseases, Quarantine, Sheep, Transportation.

Accordingly, we are amending 9 CFR parts 54 and 79 as follows:

PART 54—CONTROL OF SCRAPIE

1. The authority citation for part 54 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, and 134a–134h; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 54.1, the following definition is added in alphabetical order to read as follows:

§ 54.1 Definitions.

* * * * *

Scrapie control pilot project. A pilot project authorized by the Administrator in writing, designed to test or improve program procedures or to facilitate research, in order to control and eradicate scrapie. In addition to APHIS, participants may include State animal health agencies, flock owners, and other parties as necessary.

* * * * *

3. A new § 54.14 is added to read as follows:

§ 54.14 Waiver of requirements for scrapie control pilot projects.

(a) The Administrator may waive the following requirements of this part for participants in a scrapie control pilot project by recording the requirements waived in the scrapie control pilot project plan:

(1) The determination that an animal is a high-risk animal, if the scrapie control pilot project plan contains testing or other procedures that indicate that an animal, despite meeting the definition of high-risk animal, is unlikely to spread scrapie; and

(2) The requirement that high-risk animals must be removed from a flock if the scrapie control pilot project plan contains alternative procedures to prevent the further spread of scrapie without removing high-risk animals from the flock.

(b) [*Reserved*]

PART 79—SCRAPIE IN SHEEP AND GOATS

1. The authority citation for part 79 continues to read as follows:

Authority: 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 79.1, the following definition is added in alphabetical order to read as follows:

§ 79.1 Definitions.

* * * * *

Scrapie control pilot project. A pilot project authorized by the Administrator in writing, designed to test or improve program procedures or to facilitate research, in order to control and eradicate scrapie. In addition to APHIS, participants may include State animal health agencies, flock owners, and other parties as necessary.

* * * * *

3. A new § 79.4 is added to read as follows:

§ 79.4 Waiver of requirements for scrapie control pilot projects.

(a) The Administrator may waive the following requirements of this part for participants in a scrapie control pilot project by recording the requirements waived in the scrapie control pilot project plan:

(1) The determination that an animal is a high-risk animal, if the scrapie control pilot project plan contains testing or other procedures that indicate that an animal, despite meeting the definition of high-risk animal, is unlikely to spread scrapie; and

(2) The requirement that high-risk animals must be removed from a flock, if the scrapie control pilot project plan contains alternative procedures to prevent the further spread of scrapie without removing high-risk animals from the flock.

(b) [*Reserved*]

Done in Washington, DC, this 21st day of June 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–16219 Filed 6–26–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–45–AD; Amendment 39–11786; AD 2000–12–08]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Models CF6–80C2A1/A2/A3/A5/A5F/A8/D1F Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to General Electric Company (GE) Models CF6–80C2A1/A2/A3/A5/A5F/A8/D1F turbofan engines. This AD requires initial and repetitive visual inspections of left hand and right hand aft engine mount link assemblies for separations, cracks and spherical bearing race migration. Cracked or separated parts must be replaced prior to further flight. If spherical bearing race migration is discovered, an additional borescope inspection for cracks is also required. If no cracks are discovered by the additional borescope inspection, assemblies have a 75-cycle grace period for remaining in service before replacement. Finally, installation of improved aft engine mount link assemblies constitutes terminating action to the inspections of this AD. This amendment is prompted by a report of a fractured left hand aft engine mount link discovered during a scheduled removal of an engine of similar design. The actions specified by the AD are intended to prevent aft engine mount link failure, which can result in adverse redistribution of the aft engine mount loads and possible aft engine mount system failure.

DATES: Effective date August 28, 2000. The incorporation by reference of certain publications listed in the rule is

approved by the Director of the Federal Register as of August 28, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7192, fax (781) 238–7199.

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 General Electric Company Models CF6–80C2A1/A2/A3/A5/A5F/A8/D1F turbofan engines was published in the **Federal Register** on February 23, 2000 (65 FR 8892). That action proposed to require initial and repetitive visual inspections of left hand and right hand aft engine mount link assemblies for separations, cracks and spherical bearing race migration and replacement of cracked or separated parts prior to further flight.

Comments Received

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

Link Assembly Replacement Cost

Although one comment agrees with the technical content of the AD, concern was expressed because the economic analysis within the NPRM indicates that the cost to replace link assemblies is approximately $7,000 per engine, while the service bulletin indicates the cost is $9,718 per engine. The comment suggests that the FAA should change its economic analysis to match the cost quoted in the Service Bulletin. The FAA does not agree. The FAA started with the new part costs cited in the service bulletin, but took into account that some useful life had been realized from the existing parts. The $7,000 per engine cost to replace link assemblies quoted in the NPRM represents the cost of the lost life of existing, installed links.

Length of Grace Period

Another comment requests that the length of the grace period permitted to remove migrated links that are not cracked, be tied to the extent of bearing migration. The FAA does not agree. Bearing migration results from a failed or undersized bearing race swage lip. There is no data available to quantify the rate of migration once the retention feature is overcome. Once migration begins, there is no data to indicate that it will not progress until contact is made with the boss of the turbine rear frame clevis. Therefore, the analysis assumed the worst case condition (*i.e.* maximum migration) for calculating the reduction in useful life. The 75-cycle allowance for replacement of migrated, but not cracked links, is considered conservative, but reasonable.

Replacement of Aft Engine Mount Link Assemblies

One comment requests that the FAA change the requirement to replace aft engine mount link assemblies with improved aft engine mount link assemblies by deleting the requirement that link assemblies be replaced prior to the engine accumulating 29,000 cycles since new. The comment stated that link assemblies are sometimes installed new on engines that have already accumulated a considerable number of cycles and that the link assemblies are inspected themselves. Therefore, replacement of link assemblies should not be tied to engine cycles. The FAA does not agree. Links are expected to be replaced "at the next engine shop visit." However, since the current link assemblies are not life-limited and not routinely tracked, the 29,000 cycles since new (CSN) limit was added as an absolute limit. Operators may apply for an Alternate Method of Compliance (AMOC) for link assemblies installed on engines that will exceed the 29,000 CSN limit prior to their next scheduled engine shop visit provided sufficient records of link assembly CSN data are available to show that the links will not exceed 29,000 CSN.

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.

Economic Analysis

There are approximately 975 engines of the affected design in the worldwide fleet. The FAA estimates that 323 engines installed on aircraft of US registry will be affected by this AD. The cost to replace link assemblies is approximately $7,000. The FAA estimates that it will take approximately 0.5 work hours per engine to accomplish each of an average of two interim inspections prior to next engine shop visit and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on US operators is estimated to be $2,280,380.

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:

2000–12–08 General Electric Company: Amendment 39–11786. Docket 99–NE–45–AD.

Applicability: General Electric Company (GE) Models CF6–80C2A1/A2/A3/A5/A5F/

A8/D1F turbofan engines, with left hand aft engine mount link assemblies, part numbers (P/Ns) 9348M79G01 or 9348M79G02 installed, or right hand aft engine mount link assemblies, P/Ns 9348M84G01 or 9348M84G02 installed. These engines are installed on but not limited to Airbus Industrie A300 and A310 series, and McDonnell Douglas MD–11 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 aft engine mount link failure, which can result in adverse redistribution of the aft engine mount loads and possible aft engine mount system failure, accomplish the following:

Initial Inspection

(a) Visually inspect aft engine mount link assemblies for separations, cracks, and spherical bearing race migration, as follows:

Not Previously Inspected

(1) Within 400 cycles-in-service (CIS) after the effective date of this AD, if not previously inspected using GE CF6–80C2 Alert Service Bulletin (ASB) 72–A0964, Revision 2, dated January 24, 2000, Revision 1, dated November 12, 1999, or Original, dated April 16, 1999, OR

Previously Inspected

(2) Within 400 cycles-since-last-inspection (CSLI), if previously inspected using GE CF6–80C2 Alert Service Bulletin (ASB) 72–A0964, Revision 2, dated January 24, 2000, Revision 1, dated November 12, 1999, or Original, dated April 16, 1999.

(3) Inspect in accordance with the Accomplishment Instructions of GE CF6–80C2 ASB 72–A0964, Revision 2, dated January 24, 2000.

Cracked or Separated Parts

(4) If a crack or separation is discovered, prior to further flight:

(i) Remove the cracked or separated aft engine mount link assembly and the attaching hardware from service; AND

(ii) Replace with serviceable parts.

Removal of Aft Engine Mount Link Assemblies with Spherical Bearing Race Migration

(5) If an aft engine mount link assembly is found with spherical bearing race migration, but no cracks or separations, prior to further flight, EITHER:

(i) Remove the aft engine mount link assembly and the attaching hardware from service and replace with serviceable parts; OR

Additional Borescope Inspection of Aft Engine Mount Link Assemblies with Spherical Bearing Race Migration

(ii) Perform an additional borescope inspection for cracks in accordance with paragraph (3)(I) of the Accomplishment Instructions of GE CF6–80C2 ASB 72–A0964, Revision 2, dated January 24, 2000.

After Additional Borescope Inspection, If Parts Are Cracked

(6) If a crack indication is discovered, prior to further flight, remove the cracked aft engine mount link assembly and the attaching hardware from service, and replace with serviceable parts.

After Additional Borescope Inspection, If Parts Are Not Cracked (Grace Period)

(7) If crack indications are not discovered, within 75 CIS after the inspection performed in accordance with paragraph (a)(5)(ii) of this AD, remove the aft engine mount link assembly from service, and replace with serviceable parts.

Attaching Hardware

(8) Attaching hardware may be returned to service after inspection in accordance with paragraph 3(I)(1)(d) or 3(I)(2)(d) of GE CF6–80C2 ASB 72–A0964, Revision 2, dated January 24, 2000, as applicable, only if visual inspection of the removed link shows no cracks or separations.

Note 2: Link attaching hardware includes the nuts, bolts and washers that secure the link.

Repetitive Inspections

(b) Thereafter, perform the actions required by paragraph (a) and associated subparagraphs at intervals not to exceed 400 CSLI.

Replacement with Improved Link Assemblies

(c) Replace aft engine mount link assemblies with improved aft engine mount link assemblies at the next engine shop visit (ESV), or before accumulating 29,000 engine cycles since new (CSN), whichever occurs first.

(1) Replace in accordance with the Accomplishment Instructions of CF6–80C2 ASB 72–A0989, dated January 19, 2000.

Left Hand Aft Engine Mount Link Assemblies

(2) Replace left-hand aft engine mount link assemblies, P/Ns 9348M79G01 or 9348M79G02, with improved left-hand aft engine mount link assemblies, P/N 1846M23G01.

Right Hand Aft Engine Mount Link Assemblies

(3) Replace right hand aft engine mount link assemblies, P/Ns 9348M84G01 or 9348M84G02, with improved right hand aft engine mount link assemblies, P/N 9348M84G03.

Terminating Action

(d) Installation of improved aft engine mount link assemblies in accordance with paragraph (c) and its subparagraphs constitutes terminating action to the inspections required by paragraphs (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, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Ferry Flights

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

Incorporation By Reference

(g) The inspection shall be done in accordance with the following GE Alert Service Bulletins: (ASBs) CF6–80C2 72–A0964, Revision 2, dated January 24, 2000; Revision 1, dated November 12, 1999; Original, dated April 16, 1999 and CF6–80C2 72–A0989, dated January 19, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on August 28, 2000.

Issued in Burlington, Massachusetts, on June 8, 2000.

David A. Downey,

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

[FR Doc. 00–16200 Filed 6–26–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–49–AD; Amendment 39–11802; AD 2000–13–03]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8 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–8 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration, that requires a revision to the Airplane Flight Manual Supplement to ensure that the main deck cargo door is closed, latched, and locked; inspection of the door wire bundle to detect discrepancies and repair or replacement of discrepant parts. This amendment also requires, among other actions, modification of the hydraulic and indication systems of the main deck cargo door, and installation of a means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked. This amendment is prompted by the FAA's determination that certain main deck cargo door systems do not provide an adequate level of safety, and that there is no means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked. The actions specified by this AD are intended to prevent opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of flight control or severe structural damage.

EFFECTIVE DATE: August 1, 2000.

ADDRESSES: Information pertaining to this amendment 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.

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: 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–8 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration, was published in the **Federal Register** on April 17, 2000 (65 FR 20390). That action proposed to require a revision to the Airplane Flight Manual Supplement (AFMS) to ensure that the main deck cargo door is closed, latched, and locked; inspection of the door wire bundle to detect discrepancies and repair or replacement of discrepant parts. That action also proposed to require, among other actions, modification of the hydraulic and indication systems of the main deck cargo door, and installation of a means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked.

Comments

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

The commenter supports the proposed rule.

Conclusion

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

Cost Impact

There are approximately 15 Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 11 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the general visual inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the general visual inspections required by this AD on U.S. operators is estimated to be $660, or $60 per airplane, per inspection cycle.

It will take approximately 1 work hour per airplane to accomplish the AFMS revision and installation of associated placards, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFMS revision and installation of associated placards required by this AD on U.S. operators is estimated to be $660, or $60 per airplane.

The FAA estimates that it will take approximately 210 work hours per airplane to accomplish the modification required by paragraph (c) of the AD, at an average labor rate of $60 per work hour. The FAA also estimates that required parts will cost approximately $45,000 per airplane. Based on these figures, the cost impact of this modification required by this AD on U.S. operators is estimated to be $633,600, or $57,600 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, 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:

2000–13–03 McDonnell Douglas: Amendment 39–11802. Docket 2000–NM–49–AD.

Applicability: Model DC–8 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration in accordance with Supplemental Type Certificate (STC) SA1063SO; 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 opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of flight control or severe structural damage, accomplish the following:

Actions Addressing the Main Deck Cargo Door

(a) Within 60 days after the effective date of this AD, accomplish a general visual inspection of the wire bundle of the main deck cargo door between the exit point of the cargo liner and the attachment point on the main deck cargo door to detect crimped, frayed, or chafed wires; and perform a general visual inspection for damaged, loose, or missing hardware mounting components. If any crimped, frayed, or chafed wire, or damaged, loose, or missing hardware mounting component is detected, prior to further flight, repair in accordance with FAA-approved maintenance procedures.

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."

(b) Within 60 days after the effective date of this AD, revise the Limitations Section of the appropriate FAA-approved Airplane Flight Manual Supplement (AFMS) for STC SA1063SO by inserting therein procedures to ensure that the main deck cargo door is fully closed, latched, and locked prior to dispatch of the airplane, and install any associated placards. The AFMS revision procedures and installation of any associated placards shall be accomplished in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Actions Addressing the Main Deck Cargo Door Systems

(c) Within 18 months after the effective date of this AD, accomplish the actions specified in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), and (c)(5) of this AD in accordance with a method approved by the Manager, Los Angeles ACO.

(1) Modify the indication system of the main deck cargo door to indicate to the pilots whether the main deck cargo door is fully closed, latched, and locked;

(2) Modify the mechanical and hydraulic systems of the main deck cargo door to eliminate detrimental deformation of elements of the door latching and locking mechanism;

(3) Install a means to visually inspect the locking mechanism of the main deck cargo door;

(4) Install a means to remove power to the door while the airplane is in flight;

(5) Install a means to prevent pressurization to an unsafe level if the main deck cargo door is not fully closed, latched, and locked.

(d) Compliance with paragraphs (c)(1), (c)(2), (c)(3), (c)(4), and (c)(5) of this AD constitutes terminating action for the requirements of paragraphs (a) and (b) of this AD, and the AFMS revision and placards may be removed.

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 ACO. 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 Permit

(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.

Effective Date

(g) This amendment becomes effective on August 1, 2000.

Appendix 1

Excerpt from an FAA Memorandum to Director-Airworthiness and Technical Standards of ATA. dated March 20, 1992

"(1) *Indication System:*

(a) The indication system must monitor the closed, latched, and locked positions, directly.

(b) The indicator should be *amber* unless it concerns an outward opening door whose opening during takeoff could present an immediate hazard to the airplane. In that case the indicator must be *red* and located in plain view in front of the pilots. An aural warning is also advisable. A display on the master caution/warning system is also acceptable as an indicator. For the purpose of complying with this paragraph, an immediate hazard is defined as significant reduction in controllability, structural damage, or impact with other structures, engines, or controls.

(c) Loss of indication or a false indication of a closed, latched, and locked condition must be improbable.

(d) A warning indication must be provided at the door operators station that monitors the door latched and locked conditions directly, unless the operator has a visual indication that the door is fully closed and locked. For example, a vent door that monitors the door locks and can be seen from the operators station would meet this requirement.

(2) *Means to Visually Inspect the Locking Mechanism:* There must be a visual means of directly inspecting the locks. Where all locks are tied to a common lock shaft, a means of inspecting the locks at each end may be sufficient to meet this requirement provided no failure condition in the lock shaft would go undetected when viewing the end locks. Viewing latches may be used as an alternate to viewing locks on some installations where there are other compensating features.

(3) *Means to Prevent Pressurization:* All doors must have provisions to prevent initiation of pressurization of the airplane to an unsafe level, if the door is not fully closed, latched and locked.

(4) *Lock Strength:* Locks must be designed to withstand the maximum output power of the actuators and maximum expected manual operating forces treated as a limit load. Under these conditions, the door must remain closed, latched and locked.

(5) *Power Availability:* All power to the door must be removed in flight and it must not be possible for the flight crew to restore power to the door while in flight.

(6) *Powered Lock Systems:* For doors that have powered lock systems, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latched and locked, is extremely improbable."

Issued in Renton, Washington, on June 21, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–16234 Filed 6–26–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–208–AD; Amendment 39–11801; AD 2000–13–02]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–135 and EMB–145 series airplanes. This action requires revising the Airplane Flight Manual, and eventual disconnection of the precooler differential pressure switches. This action is necessary to prevent incorrect operation of the precooler differential pressure switches, which could result in inappropriate automatic shutoff of the engine bleed valve, and consequent inability to restart a failed engine using cross-bleed from the other engine or possible failure of the anti-ice system. This action is also necessary to ensure that the flight crew is advised of the procedures necessary to restart an engine in flight using the auxiliary power unit.

DATES: Effective July 3, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 3, 2000.

Comments for inclusion in the Rules Docket must be received on or before July 28, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–208–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-iarcomment@faa.gov. Comments sent via the Internet must contain "Docket No. 2000–NM–208–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 this AD 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; at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rob Capezzuto, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6071; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, recently notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–135 and EMB–145 series airplanes. The DAC advises that activation of the precooler differential pressure switches may cause inappropriate automatic shutoff of the engine bleed valve on airplanes on which EMBRAER Service Bulletin No. 145–36–0017, dated March 28, 2000, or the production equivalent, has been accomplished. The inappropriate shutoff is due to incorrect operation of the precooler differential pressure switch and may result in the flight crew being unable to restart a failed engine using cross-bleed from the other engine. Automatic shutoff of the engine bleed valve could also occur during single-bleed operation of the anti-ice system, resulting in possible failure of the anti-ice system.

Explanation of Relevant Service Information

EMBRAER has issued Alert Service Bulletin No. 145–36–A018, dated April 14, 2000, which describes procedures for disconnection of the electrical connector from precooler differential pressure switches in the left and right engine pylons. The DAC classified this alert service bulletin as mandatory and issued Brazilian airworthiness directive 2000–04–01R1, dated May 3, 2000, in order to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

These airplane models are manufactured in Brazil 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 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 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, this AD is being issued to prevent incorrect operation of the precooler differential pressure switches, which could result in automatic shutoff of the engine bleed valve, and consequent inability to restart a failed engine using cross-bleed from the other engine or possible failure of the anti-ice system. This AD will also ensure that the flight crew is advised of the procedures necessary to restart an engine in flight using the auxiliary power unit (APU). This AD requires revising the Limitations section of the FAA-approved Airplane Flight Manual (AFM) to prohibit departure without the APU operating and single-bleed operation in icing conditions. This AD also requires revising the Abnormal Procedures section of the AFM to replace the existing "Engine Airstart" instructions with revised instructions that clarify proper procedures for restarting an engine using the APU. This AD also requires accomplishment of the actions specified in the alert service bulletin described previously. Following accomplishment of the actions specified in the alert service bulletin, the revision to the Limitations section of the AFM described previously may be removed.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Differences Between This AD and the Brazilian Airworthiness Directive

Operators should note that, within 24 hours after the effective date of this AD, this AD requires revising the Limitations and Abnormal Procedures

sections of the AFM as described previously. This AD also requires, within 100 flight hours after the effective date of this AD, accomplishment of the actions specified in EMBRAER Alert Service Bulletin No. 145–36–A018. The Brazilian airworthiness directive states that dispatch with the APU inoperative is prohibited immediately upon receipt of their Emergency AD until the accomplishment of the actions in the alert service bulletin. The Brazilian airworthiness directive further provides some guidance for engine starting assisted by the APU, but does not provide the full details of this restart procedure. The FAA finds that the revision of the Limitations section described previously is necessary to mitigate the effects of incorrect operation of the precooler differential pressure switches until the switches are disconnected. The FAA finds that replacement of the existing "Engine Airstart" procedure in the "Abnormal Procedures" section of the AFM is necessary to ensure that the procedure is clear and that the flight crew is properly advised of how to restart a failed engine using the APU.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, 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 involves requirements affecting flight safety 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–208–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 this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, 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:

2000–13–02 Empresa Brasileira de Aeronautica S.A. (Embraer): Amendment 39–11801. Docket 2000–NM–208–AD.

Applicability: Model EMB–135 and EMB–145 series airplanes; serial numbers 145095, 145099, 145179, 145189, 145197, 145198, 145209 through 145244 inclusive, and 145246 through 145249 inclusive; AND serial numbers 145004 through 145094 inclusive, 145096 through 145098 inclusive, 145100 through 145103 inclusive, 145105 through 145121 inclusive, 145123 through 145139 inclusive, 145141 through 145153 inclusive, 145155 through 145178 inclusive, 145180 through 145188 inclusive, 145190 through 145196 inclusive, and 145199 through 145208 inclusive, on which EMBRAER Service Bulletin No. 145–36–0017, dated March 28, 2000, has been accomplished; 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 (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 incorrect operation of the precooler differential pressure switches, which could result in inappropriate automatic shutoff of the engine bleed valve, and consequent inability to perform engine cross-bleed restarts or possible failure of the anti-ice system; and to ensure that the flight crew is advised of proper procedures to restart an engine using the auxiliary power unit; accomplish the following:

Revision to Airplane Flight Manual: Limitations Section

(a) Within 24 hours after the effective date of this AD revise the Limitations section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This may be accomplished by inserting a copy of this AD into the AFM. Following accomplishment of paragraph (c) of this AD, the revisions required by this paragraph may be removed from the AFM.

"THE APU MUST BE OPERATIVE FOR EVERY DEPARTURE.

SINGLE BLEED OPERATION IN ICING CONDITIONS IS PROHIBITED."

Revision to Airplane Flight Manual: Abnormal Procedures Section

(b) Within 24 hours after the effective date of this AD, replace the existing "ENGINE AIRSTART" procedure in the Abnormal Procedures section of the AFM with the following procedures. This may be accomplished by inserting a copy of this AD into the AFM.

"ENGINE AIRSTART

Affected engine:	
One Electric Fuel Pump (A or B).	ON
Ignition	AUTO
Start/Stop Selector	STOP
Engine Bleed	CLOSE
Thrust Lever	IDLE
Airspeed and Altitude.	REFER TO AIRSTART ENVELOPE

Perform an assisted start or windmilling, as required.

CAUTION: IN ICING CONDITIONS USE CROSSBLEED START ONLY, TO AVOID LOSS OF ANTI-ICE SYSTEM PERFORMANCE.

Assisted Start:	
Crossbleed Start:	
N2 (operating engine).	ABOVE 80%
Crossbleed	AUTO OR OPEN
Engine Bleed (operating engine).	OPEN
APU bleed start:	
APU	START
APU Bleed	OPEN
Crossbleed	AUTO
Engine Bleed (operating engine).	CLOSE
Start/Stop Selector	START, THEN RUN
Engine Indication	MONITOR

Check ITT and N2 rising. Observe limits. Check ignition and fuel flow indication at 10% N2.

Windmilling Start:	
Airspeed	ABOVE 260 KIAS
Minimum N2	12%
Start/Stop Selector	START, THEN RUN
ITT and N2	MONITOR

Note: Windmilling start will be slower than an assisted start. Windmilling start with N2 above 30% and increasing, the loss of altitude may be minimized, by reducing airspeed. Start will be faster if ITT is below 320°C.

After Start:	
Affected Engine Bleed.	AS REQUIRED
Crossbleed	AUTO
APU Bleed	AS REQUIRED"

Disconnection of the Precooler Differential Pressure Switches

(c) Within 100 flight hours after the effective date of this AD, disconnect the electrical connector from the precooler differential pressure switches in the left and right engine pylons, in accordance with EMBRAER Alert Service Bulletin No. 145–36–A018, dated April 14, 2000. Following accomplishment of this paragraph, the AFM revision required by paragraph (a) of this AD may be removed from the AFM.

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, 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

(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.

Incorporation by Reference

(f) The disconnection of the precooler differential pressure switches shall be done in accordance with EMBRAER Alert Service Bulletin No. 145–36–A018, dated April 14, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected 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; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 2000–04–01R1, dated May 3, 2000.

Effective Date

(g) This amendment becomes effective on July 3, 2000.

Issued in Renton, Washington, on June 20, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–16110 Filed 6–26–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Surface Mining Reclamation and Enforcement

30 CFR Part 750

Surface Coal Mining and Reclamation Operations; Permit fees

CFR Correction

In Title 30 of the Code of Federal Regulations, parts 700–end, revised as of July 1, 1999, on page 168, in the second column of §750.25(d), the last line of the table was inadvertently omitted and should read as follows:

§ 750.25 Permit fees.

* * * * *

(d) *Fee schedule for a new permit.*

* * *	* * *
Decision document	2000.00

[FR Doc. 00–55511 Filed 6–26–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–00–021]

RIN 2115–AA97

Safety Zone—Lake Erie, Port Clinton, OH

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Erie, in the state of Ohio. This zone restricts the entry of vessels into the area designated for the July 4th, 2000 fireworks display. This temporary safety zone is necessary to protect mariners in case of accidental misfire of fireworks mortar rounds.

DATES: This rule is effective from 2 p.m., to 11 p.m., July 4, 2000.

ADDRESSES: The U.S. Coast Guard Marine Safety Office in Toledo, Ohio maintains the public document for this rule. Documents identified in this rule will be available for public copying and inspection between 9:30 A.M. and 2

P.M., Monday through Friday, except federal holidays. The Marine Safety Office is located at 420 Madison Ave, Suite 700, Toledo, Ohio 43604; (419) 259–6372.

FOR FURTHER INFORMATION CONTACT: Chief Marine Science Technician Michael Pearson, Asst. Chief of Port Operations, Marine Safety Office, 420 Madison Ave, Suite 700, Toledo, Ohio 43604; (419) 259–6372.

SUPPLEMENTARY INFORMATION: We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing an NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to public interest because immediate action is necessary to protect the maritime public and other persons from the hazards associated with fireworks displays. We had insufficient time to publish a Notice of Proposed Rulemaking because we did not receive adequate advance notice of this event.

Background and Purpose

This temporary rule is necessary to ensure the safety of the maritime community during setup, loading and firing operations of fireworks in conjunction with the City of Port Clinton Fireworks. Entry into the safety zone without permission of the Captain of the Port is prohibited.

The Captain of the Port may be contacted via Coast Guard Station Toledo on VHF–FM Channel 16.

Regulatory Evaluation

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

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.

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.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for less than one day when vessel traffic can pass safely around the safety zone.

Assistance for Small Entities

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), assistance to small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process is available upon request. 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 rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) 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 having first provided the funds to pay those 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 E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new temporary section 165.T09–021 is added to read as follows:

§ 165.T09–021 Safety zone: Lake Erie, Port Clinton, Ohio.

(a) *Location.* The following area is a temporary safety zone: The waters and adjacent shoreline inside a 420′ radius as extended from position 41°30′52″ N, 082°55′46″ W, Lake Erie, Ohio. All nautical positions are based on North American Datum of 1983.

(b) *Effective date.* This regulation is effective between the hours of 2 p.m. to

11 p.m., July 4, 2000, unless terminated earlier by the Captain of the Port.

(c) *Restrictions.* In accordance with the general regulations in section 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: June 13, 2000.

David L. Scott,

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

[FR Doc. 00–16248 Filed 6–26–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–00–020]

RIN 2115–AA97

Safety Zone: Lake Erie, Red, White and Blues Bang, Huron, Ohio

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Huron River, in the state of Ohio. This zone restricts the entry of vessels into the area designated for the July 1st, Red, White and Blues Bang fireworks display. This temporary safety zone is necessary to protect mariners in case of accidental misfire of fireworks mortar rounds.

DATES: This rule is effective from 10 a.m, to 11 p.m., July 1, 2000.

ADDRESSES: The U.S. Coast Guard Marine Safety Office in Toledo, Ohio maintains the public document for this rule. Documents identified in this rule will be available for public copying and inspection between 9:30 a.m. and 2 p.m., Monday through Friday, except federal holidays. The Marine Safety Office is located at 420 Madison Ave, Suite 700, Toledo, Ohio 43604; (419) 259–6372.

FOR FURTHER INFORMATION CONTACT: Chief Marine Science Technician Michael Pearson, Asst. Chief of Port Operations, Marine Safety Office, 420 Madison Ave, Suite 700, Toledo, Ohio 43604; (419) 259–6372.

SUPPLEMENTARY INFORMATION: We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing an NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to public interest because immediate action is necessary to protect the maritime public and other persons from the hazards associated with fireworks displays. We had insufficient time to publish a Notice of Proposed Rulemaking because the event sponsor did not provide us with adequate advance notice of this event.

Background and Purpose

This temporary rule is necessary to ensure the safety of the maritime community during setup, loading and firing operations of fireworks in conjunction with the Red, White and Blues Bang fireworks display. Entry into the safety zone without permission of the Captain of the Port is prohibited.

The Captain of the Port may be contacted via Coast Guard Station Toledo on VHF–FM Channel 16.

Regulatory Evaluation

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

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.

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. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for less than one day when vessel traffic can pass safely around the safety zone.

Assistance for Small Entities

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), assistance to small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process is available upon request. 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 rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) 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 having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health

Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new temporary section 165.T09–020 is added to read as follows:

§ 165.T09–020 Safety zone: Lake Erie, Huron Boat Basin, Huron River, Huron, Ohio.

(a) *Location.* The following area is a temporary safety zone: The waters and adjacent shoreline inside a circumference with a 560 ft. radius as extended from position 41 deg.23 min.45 sec. N by 082 deg.32 min.55 sec. W, Lake Erie, OH. All nautical positions are based on North American Datum of 1983.

(b) *Effective date.* This regulation is effective between the hours of 10 a.m. to 11 p.m., July 1, 2000, unless terminated earlier by the Captain of the Port.

(c) *Restrictions.* In accordance with the general regulations in section 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: June 13, 2000.

David L. Scott,

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

[FR Doc. 00–16247 Filed 6–26–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–166]

RIN 2115–AA97

Safety Zone: Arrival of Sailing Vessel AMISTAD, New Haven Harbor, Connecticut

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the arrival of the sailing vessel AMISTAD in New Haven Harbor, New Haven, CT on July 15, 2000. This action will restrict vessel traffic in New Haven Harbor and is needed to protect the S/V *Amistad,* recreational and commercial vessels and their passengers and crew.

DATES: This rule is effective from 10:00 a.m. until 4:00 p.m. on July 15, 2000.

ADDRESSES: You may mail comments and related material to Coast Guard Group/Marine Safety Office Long Island Sound, 120 Woodward Ave, New Haven, CT 06512–3698. The Response Department maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Response Department between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Robert D. Mutto, Group/MSO Long Island Sound, New Haven, Connecticut, (203)468–4438.

SUPPLEMENTARY INFORMATION:

Request for Comments

Although this rule is being published as a temporary final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the rule is both reasonable and workable. Accordingly, we encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–00–166), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(8), the Coast Guard finds that good cause exists for not publishing an NPRM. We were not notified of the event with sufficient time to publish an NPRM, allow for comments, and publish a final rule in sufficient time to allow notice to the public.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This is a locally supported event with minimal impact on the waterways and the zones are only in affect for a short duration.

Background and Purpose

The Amistad Historical Society is sponsoring a voyage of the sailing vessel *Amistad* from New London Harbor to NewHaven Harbor. On July 14, 2000, the *Amistad* and participating vessels will transit from New London Harbor via Long Island Sound to New Haven. The *Amistad* will arrive in New Haven Harbor on July 15, 2000 and will transit to a berth at Long Wharf Pier.

The Coast Guard will establish a safety zone in New Haven Harbor on July 15, 2000, to protect the maritime public and participating vessels from possible hazards to navigation caused by the arrival of the sailing vessel AMISTAD on July 15, 2000. The safety zone includes all waters of New Haven Harbor within the boundaries of the marked channel from the Hew Haven Harbor entrance buoy to the I–95 Quinnipiac River Bridge. This safety zone is effective from 10:00 a.m. until 4:00 p.m. on July 15, 2000.

Regulatory Evaluation

This proposed 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.

Although this regulation prevents traffic from transiting New Haven Harbor during the event, the effect of this regulation will not be significant for the following reasons: the limited duration that the safety zone will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, facsimile, marine information broadcast, local area committee meetings, and New Haven area newspapers. Mariners will be able to adjust their plans accordingly base on the extensive advance information. Additionally, this safety zone has been narrowly tailored to impose the least impact on maritime interests yet provide the level of safety deemed necessary.

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.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit through portions of Long Island Sound and New Haven Harbor during various times of July 15, 2000. Although these regulations apply to a substantial portion of New Haven Harbor, designated areas for viewing the *Amistad* arrival are being established to allow for maximum use of the waterways by vessels that usually operate in the affected areas. New Haven Harbor will be closed to commercial traffic during the *Amistad* arrival parade. Before the effective period, the Coast Guard would make notifications to the public via mailings, facsimiles, the Local Notice to Mariners and the use of the sponsor's Internet site. In addition, the sponsoring organization, Amistad Historical society, is planning to provide notification of the event via local newspapers, pamphlets and television and radio broadcasts.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) 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 costs. This rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

Temporary Regulation

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

PART 165—[AMENDED]

1. The authority citation for Part 165 reads as follows:

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

2. Add temporary § 165.T01–166 to read as follows:

§ 164.T01–166 Safety Zone; Arrival of Sailing Vessel AMISTAD in New Haven Harbor, Connecticut.

(a) *Location.* All waters of New Haven Harbor within the boundaries of the marked channel leading from the New Haven Harbor entrance buoy to the I–95 Quinnipiac River Bridge.

(b) *Effective period.* This section is effective from 10:00 a.m. until 4:00 p.m., on July 15, 2000.

(c) *Regulations.* (1) The rules covering safety zones contained in section 165.23 of this part apply.

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

Dated: May 24, 2000.

David P. Pekoske,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 00–16246 Filed 6–26–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–00–023]

RIN 2115–AA97

Safety Zone: Lake Erie, Huron River Fest, Huron, Ohio

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Huron River, in the state of Ohio. This zone restricts the entry of vessels into the area designated for the July 8, 2000 Huron river fest fireworks display. This temporary safety zone is necessary to protect mariners in case of accidental misfire of fireworks mortar rounds.

DATES: This rule is effective from 10 a.m., to 11 p.m. July 8, 2000.

ADDRESSES: The U.S. Coast Guard Marine Safety Office in Toledo, Ohio maintains the public document for this rule. Documents identified in this rule will be available for public copying and inspection between 9:30 A.M. and 2 P.M., Monday through Friday, except federal holidays. The Marine Safety Office is located at 420 Madison Ave, Suite 700, Toledo, Ohio 43604; (419) 259–6372.

FOR FURTHER INFORMATION CONTACT: Chief Marine Science Technician Michael Pearson, Asst. Chief of Port Operations, Marine Safety Office, 420 Madison Ave, Suite 700, Toledo, Ohio 43604; (419) 259–6372.

SUPPLEMENTARY INFORMATION: We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing an NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to public interest because immediate action is necessary to protect the maritime public and other persons from the hazards associated with fireworks displays. We had insufficient time to publish a Notice of Proposed Rulemaking because we did not receive adequate advance notice of this event.

Background and Purpose

This temporary rule is necessary to ensure the safety of the maritime community during setup, loading and firing operations of fireworks in conjunction with the City of Huron river fest. Entry into the safety zone without permission of the Captain of the Port is prohibited. The Captain of the Port may be contacted via Coast Guard Station Toledo on VHF-FM Channel 16.

Regulatory Evaluation

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

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.

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.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for less than one day when vessel traffic can pass safely around the safety zone.

Assistance for Small Entities

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), assistance to small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process is available upon request. 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 rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) 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 having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new temporary section 165.T09-023 is added to read as follows:

§ 165.T09-023 Safety zone: Lake Erie, Huron Boat Basin, Huron River, Huron Ohio.

(a) *Location.* The following area is a temporary safety zone: The waters and adjacent shoreline inside a 560′ radius as extended from position 41°23′45″ N, 082°32′55″ W, Lake Erie, Ohio. All nautical positions are based on North American Datum of 1983.

(b) *Effective dates.* This regulation is effective between the hours of 10 a.m. to 11 p.m., July 8, 2000, unless terminated earlier by the Captain of the Port.

(c) *Restrictions.* In accordance with the general regulations in section 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: June 14, 2000.

David L. Scott,

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

[FR Doc. 00-16245 Filed 6-26-00; 8:45 am]

BILLING CODE 4910-15-U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09-00-022]

RIN 2115-AA97

Safety Zone—Lake Erie, Maumee River, Ohio

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Maumee River, in the state of Ohio. This zone restricts the entry of vessels into the area designated for the July 4th, 2000 fireworks display. This temporary safety zone is necessary to protect mariners in case of accidental misfire of fireworks mortar rounds.

DATES: This rule is effective from 8:30 a.m., to 11 p.m. July 4, 2000.

ADDRESSES: The U.S. Coast Guard Marine Safety Office in Toledo, Ohio maintains the public document for this rule. Documents identified in this rule will be available for public copying and inspection between 9:30 a.m. and 2 p.m., Monday through Friday, except federal holidays. The Marine Safety Office is located at 420 Madison Ave, Suite 700, Toledo, Ohio 43604; (419) 259-6372.

FOR FURTHER INFORMATION CONTACT: Chief Marine Science Technician Michael Pearson, Asst. Chief of Port Operations, Marine Safety Office, 420 Madison Ave, Suite 700, Toledo, Ohio 43604; (419) 259-6372.

SUPPLEMENTARY INFORMATION: We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing an NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to public interest because immediate action is necessary to protect the maritime public and other persons from the hazards associated with fireworks displays. We had insufficient time to publish a Notice of Proposed Rulemaking because we did not receive adequate advance notice of this event.

Background and Purpose

This temporary rule is necessary to ensure the safety of the maritime community during setup, loading and firing operations of fireworks in conjunction with the City of Toledo Fireworks. Entry into the safety zone without permission of the Captain of the Port is prohibited.

The Captain of the Port may be contacted via Coast Guard Station Toledo on VHF-FM Channel 16.

Regulatory Evaluation

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

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.

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.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for less than one day when vessel traffic can pass safely around the safety zone.

Assistance for Small Entities

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), assistance to small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process is available upon request. 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 rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) 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 having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new temporary section 165.T09–022 is added to read as follows:

§ 165.T09–022 Safety zone: Lake Erie, Maumee River, Ohio.

(a) *Location.* The following area is a temporary safety zone: The waters and adjacent shoreline extending from the bow of the museum ship SS *Willis B. Boyer* then NNE to the south end of the City of Toledo Street, Harbors and Bridges Building then SW to the red nun bouy #64 then SSE to the museum ship SS *Willis B. Boyer.* A triangle as formed by positions 41° 38′ 35″ N, 083° 31′ 54″ W; 41° 38′ 51″ N, 083° 31′ 50″ W; 41° 38′ 48″ N, 083° 31′ 58″ W. All nautical positions are based on North American Datum of 1983.

(b) *Effective date.* This regulation is effective between the hours of 8:30 a.m. to 11 p.m., July 4, 2000, unless terminated earlier by the Captain of the Port.

(c) *Restrictions.* In accordance with the general regulations in section 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: June 13, 2000.

David L. Scott,

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

[FR Doc. 00–16244 Filed 6–26–00; 8:45 am]

BILLING CODE 4910–15–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1290 and Chapter XIV

RIN 3095–AB00

John F. Kennedy Assassination Records Collection Rules

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is transferring regulations providing guidance for the interpretation and implementation of the John F. Kennedy Assassination Records Collection Act of 1992 from 36 CFR chapter XIV to chapter XII without substantive change. The Assassination Records Review Board that originally issued the regulations terminated on September 30, 1998, but NARA has determined that these regulations are still required to provide guidance to agencies.

EFFECTIVE DATE: June 27, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at telephone number 301–713–7360, ext. 226, or fax number 301–713–7270.

SUPPLEMENTARY INFORMATION: The Assassination Records Review Board was established by the John F. Kennedy Assassination Records Collection Act of 1992 (106 Stat. 3443). At the termination of the Review Board on September 30, 1998, its records were transferred to the Archivist of the United States. NARA continues to maintain and supplement the collection under the provisions of the Act. NARA is, therefore, the successor in function to this defunct independent agency.

The Review Board issued regulations at 36 CFR chapter XIV providing guidance on the Act (part 1400) on June 28, 1995. In this final rule we are transferring those regulations without substantive change to a new 36 CFR part 1290 in new subchapter H. Agencies continue to identify records that may qualify as assassination records and need to have this guidance available.

Other Review Board regulations implementing Government in the Sunshine Act, FOIA, and the Privacy Act for the Board's own operations (parts 1405, 1410, and 1415) are withdrawn from the Code of Federal Regulations as unnecessary. The Board's records were transferred to NARA and are now subject to NARA regulations.

This rule is effective upon publication for "good cause" as permitted by the Administrative Procedure Act (5 U.S.C. 553(d)(3)). If the rule is not effective before July 1, 2000, the regulations of the defunct Review Board in 36 CFR ch. XIV will continue to appear in the print and electronic copies of title 36. NARA believes that delaying the effective date for 30 days is unnecessary as this rule represents a minor technical amendment and there is no substantive impact on the public or Federal agencies.

This rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. This rule does not have federalism implications and is not a major rule under 5 U.S.C. 801. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 36 CFR Part 1290

Archives and records.

For the reasons set forth in the preamble and under the authority of Pub. L. 103–345 (108 Stat. 3128), NARA amends chapters XII and XIV of title 36, Code of Federal Regulations, as follows:

CHAPTER XII—NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

SUBCHAPTER H—JFK ASSASSINATION RECORDS

1. In 36 CFR ch. XII, establish Subchapter H, consisting of parts 1290 through 1299, and add a heading for Subchapter H to read as set forth above.

PART 1400—[REDESIGNATED AS PART 1290]

2. Redesignate 36 CFR part 1400 as part 1290 and reserve parts 1291–1299.

CHAPTER XIV—[VACATED]

PARTS 1405, 1410, 1415—[REMOVED]

3. In 36 CFR ch. XIV, remove parts 1405, 1410, and 1415, and vacate the chapter.

Dated: June 21, 2000.

John W. Carlin,

Archivist of the United States.

[FR Doc. 00–16191 Filed 6–26–00; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[085–1085b; FRL–6720–8]

Approval and Promulgation of Implementation Plans; State of Kansas; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction.

SUMMARY: On January 11, 2000 (65 FR 1545), EPA published a direct final action approving revisions to the Kansas State Implementation Plan (SIP). In the January 11, 2000, rule, EPA inadvertently made an incorrect reference to rule K.A.R. 28–19–20. We are correcting the reference in this document.

EFFECTIVE DATE: This action is effective June 27, 2000.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

SUPPLEMENTARY INFORMATION: EPA published a SIP for Kansas that included revising and renumbering regulatory definitions, streamlining opacity requirements, expanding testing of gasoline delivery vehicles, and methods for calculating actual emissions. In the January 11, 2000, rule, FR DOC 00–27 (65 FR 1545) on page 1545, in the third column under the heading "D. Method for Determining Actual Emissions," correct the reference "K.A.R. 28–19–20" to read "K.A.R. 28–19–210."

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is such good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely corrects an incorrect citation in a previous action, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely corrects a citation in a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act (CAA). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

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

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. As stated previously, we made such a good cause finding, including the reasons therefore and established an effective date of June 27, 2000. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This correction to the Kansas SIP table is not a "major rule" as defined by 5 U.S.C. 804 *et seq.* (2).

Dated: June 15, 2000.

William Rice,

Acting Regional Administrator, Region 7.

Accordingly, in rule FR Doc. 00–270 published at 65 FR 1545, January 11, 2000, make the following corrections:

PART 52—[CORRECTED]

Subpart R—[Corrected]

1. On page 1547, column three, amendatory instruction 2.b., line 2, correct "16a', 'K.A.R. 28–19–20' and 'K.A.R." to read "16a' and 'K.A.R.".

2. On page 1547, column three, amendatory instruction 2.c., line 2, correct "'K.A.R. 28–19–200' and 'K.A.R. 28-" to read "'K.A.R. 28–19–200', 'K.A.R. 28–19–210', and 'K.A.R. 28-".

3. On page 1548, in § 52.870, the table in paragraph (c) is corrected by removing the heading "Processing Operation Emissions" and the entry "K.A.R. 28–19–20" under it.

4. On page 1548, in § 52.870, the table in paragraph (c) is corrected by adding

an entry "K.A.R. 28–19–210" in numerical order under the heading "General Provisions" to read as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

EPA—APPROVED KANSAS REGULATIONS

Kansas citation	Title	State effective date	EPA approval date	Explanation
*	*	*	*	*
General Provisions				
*	*	*	*	*
K.A.R. 28–19–210	Calculation of Actual Emissions.	11/22/93	01/11/00, 65 FR 1548.	
*	*	*	*	*

* * * * *

[FR Doc. 00–15837 Filed 6–26–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPPTS–400056B; FRL–6591–5]

RIN 2070–AC00

Phosphoric Acid; Community Right-to-Know Toxic Chemical Release Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is deleting phosphoric acid from the list of chemicals subject to reporting requirements under section 313 of the Emergency Planning and Community-Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA) in response to the United States District Court for the District of Columbia ruling that phosphoric acid does not meet EPCRA section 313(d)(2)(C) listing criterion. On April 15, 1999, the United States District Court reversed EPA's denial of a petition that The Fertilizer Institute (TFI) submitted to the Agency to delete phosphoric acid from the EPCRA section 313 list of toxic chemicals. By promulgating this rule, EPA is relieving facilities of their obligation to report releases of and other waste management information on phosphoric acid that occurred during the 1999 reporting year, and for activities in the future.

EFFECTIVE DATE: This rule is effective June 27, 2000.

FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Petitions Coordinator, (202) 260–3882, e-mail: bushman.daniel@epa.gov, for specific information on this document, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: (703) 412–9877 or Toll free TDD: 1–800–553–7672. Information concerning this notice is also available on EPA's Web site at http://www.epa.gov/tri.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you manufacture, process, or otherwise use phosphoric acid. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of Potentially Affected Entities
Industry	SIC major group codes 10 (except 1011, 1081, and 1094), 12 (except 1241), or 20 through 39; industry codes 4911 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); 4931 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. section 6921 *et seq.*), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis
Federal Government	Federal facilities

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations (CFR). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information or Copies of this Document or Other Support Documents?

1. *Electronically.* You may obtain electronic copies of this document from the EPA internet Home Page at http://www.epa.gov/. On the Home Page select

"Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. Information concerning this notice is also available on EPA's Web site at http://www.epa.gov/tri.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–400056A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

II. Introduction

A. What is the Statutory Authority for this Action?

EPA is finalizing this action under EPCRA section 313(d)(3) and (e)(1)(A). 42 U.S.C. 11023.

B. What is the General Background for this Action?

Section 313 of EPCRA requires certain facilities that manufacture, process, or otherwise use listed toxic chemicals in amounts above reporting threshold levels to report their environmental releases and other waste management of such chemicals annually. Beginning with the 1991 reporting year, such facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of PPA, 42 U.S.C. 13106. EPCRA section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Phosphoric acid was included on the initial list of chemicals and chemical categories.

EPCRA section 313(d) authorizes EPA to add chemicals to or delete chemicals from the list and sets forth criteria for these actions. Under EPCRA section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has added and deleted chemicals from the original statutory list.

EPCRA section 313(d)(2) states that EPA may add a chemical to the list if any of the listing criteria are met. Therefore, to add a chemical, EPA must demonstrate that at least one criterion is met, but need not determine whether any other criterion is met. Conversely, to remove a chemical from the list, EPA must demonstrate that none of the criteria are met. The EPCRA section 313(d)(2) criteria are:

> (A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.
>
> (B) The chemical is known to cause or can reasonably be anticipated to cause in humans—
>
> (i) cancer or teratogenic effects, or
>
> (ii) serious or irreversible—
>
> (I) reproductive dysfunctions,
>
> (II) neurological disorders,
>
> (III) heritable genetic mutations, or
>
> (IV) other chronic health effects.
>
> (C) The chemical is known to cause or can reasonably be anticipated to cause, because of
>
> (i) its toxicity,
>
> (ii) its toxicity and persistence in the environment, or
>
> (iii) its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

EPA refers to the section 313(d)(2)(A) criterion as the "acute human health effects criterion," the section 313(d)(2)(B) criterion as the "chronic human health effects criterion," and the section 313(d)(2)(C) criterion as the "environmental effects criterion."

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479) to provide guidance regarding the recommended content and format for submitting petitions. EPA has issued a statement clarifying its interpretations of the section 313(d)(2) and (3) criteria for adding and deleting chemicals from the section 313 toxic chemical list (59 FR 61432, November 30, 1994) (FRL–4922–2).

III. Description of Petition and Related Proceedings

A. What Petition was Filed and How did EPA Respond?

On November 9, 1990, TFI filed a petition with EPA to delist phosphoric acid from the EPCRA section 313 list of toxic chemicals. Congress had included phosphoric acid on the list when it enacted EPCRA section 313 in 1986. In the petition, TFI argued that EPA should delete phosphoric acid because it did not meet any of the three listing criteria in EPCRA section 313(d)(2): The acute human health effects criterion, the chronic human health effects criterion, or the environmental effects criterion.

On January 23, 1998, EPA denied TFI's petition, finding that phosphoric acid met the environmental effects listing criterion at EPCRA section 313(d)(2)(C), which provides that EPA may add or decline to delete a chemical if it "is known to cause or reasonably can be anticipated to cause, because of its toxicity . . . a significant adverse effect on the environment of sufficient seriousness . . . to warrant reporting" (63 FR 3566) (FRL–5762–2) (Ref. 1). EPA based the denial, among other things, upon phosphoric acid's potential to cause eutrophication when released into certain water bodies.

B. What Other Proceedings Relate to this Petition?

On April 29, 1998, TFI challenged EPA's denial of its petition in the United States District Court for the District of Columbia. *The Fertilizer Institute v. Browner*, No. 98—1067 (D.D.C.). In its challenge, TFI argued that phosphoric acid did not meet the environmental effects listing criterion because it was not toxic. TFI did not dispute that releases of phosphoric acid can cause eutrophication. It argued, however, that the eutrophication did not result "because of" phosphoric acid's toxicity, but "because of" its nutrient value. TFI also argued that phosphoric acid was not toxic because its effects were indirect and that EPA's interpretation of EPCRA section 313(d)(2)(C) read the term "toxicity" out of the statute.

EPA disagreed and argued, among other things, that: (1) Many chemicals that are nutrients are also toxic; (2) the number of steps between exposure and effect does not determine whether something is toxic; and (3) it was not reading "toxicity" out of the statute because there were situations in which a chemical could cause a significant adverse effect upon the environment for reasons other than any inherent toxicity.

The Court ruled in TFI's favor, granting TFI's motion for summary judgment on the toxicity issue and reversing EPA's denial of TFI's petition to delete phosphoric acid from the EPCRA section 313 toxic chemical list (Ref. 2). Notwithstanding its ruling, the Court agreed that phosphoric acid "can reasonably be anticipated to cause . . . a significant adverse effect on the environment" and that a listing decision under EPCRA section 313 could be based upon toxic effects that manifest indirectly. The Court, however, found that the "significant adverse effect" that phosphoric acid causes is not "because of its toxicity," but because of its nutrient value. The government did not appeal the Court's decision.

As a result of the Court's ruling, EPA proposed to delist phosphoric acid from the reporting requirements under EPCRA section 313 and section 6607 of the PPA on December 7, 1999 (64 FR 68311)(FRL–6397–3).

IV. What was EPA's Technical Review of the Effects of Phosphoric Acid?

A. What are the Acute Effects of Phosphoric Acid?

Based on available information, EPA cannot find that phosphoric acid meets the acute effects criterion at EPCRA section 313(d)(2)(A). Like many other acids, phosphoric acid may cause irritation and corrosive effects. The Poison Index states that "Phosphoric acid causes irritation of eyes, skin, and respiratory tract. When ingested it can produce nausea, vomiting, abdominal pain, bloody diarrhea, acidosis, shock and irritation or burns of the oropharyngeal mucosa esophagus and stomach" (Ref. 3). As with other corrosive or caustic materials, the extent of damage generally is determined by the acidity of the solution and the duration of contact. Phosphoric acid is weaker than the other strong mineral acids. Likewise, phosphoric acid is not expected to exist beyond facility site boundaries at a pH that will cause acute effects (Ref. 3). Thus, EPA has determined that it does not meet the EPCRA section 313(d)(2)(A) acute effects criterion.

B. What are the Chronic Effects of Phosphoric Acid?

Based on available information, EPA cannot find that phosphoric acid can reasonably be anticipated to cause a chronic human health effect. EPA has not found phosphoric acid to cause heritable genetic effects or developmental or reproductive toxicity in humans (Ref. 4). EPA has not found any information in the available literature with which to evaluate the potential for phosphoric acid to cause carcinogenic or neurotoxic effects (Ref. 3). Several studies suggest that phosphoric acid may cause nephrocalcinosis in rats when administered in relatively high doses (Ref. 3). However, the doses that may cause such effects are somewhat uncertain since, even on diets without added phosphate, rats may have some isolated areas of renal calcification and the composition of the diet (e.g., the amount of calcium, acid-base balance, and vitamin D) can influence the appearance of the effects. EPA, therefore, does not believe that, at this time, there is sufficient information to conclude that phosphoric acid meets the EPCRA section 313(d)(2)(B) criterion.

C. What are the Environmental Effects of Phosphoric Acid?

As discussed in EPA's original denial of TFI's petition (63 FR 3566), phosphoric acid, as a source of phosphates, causes eutrophication (Ref. 5). Eutrophication is the nutrient enrichment of waters resulting in stimulation of an array of undesirable symptomatic changes in the aquatic ecosystem. Therefore, phosphoric acid can reasonably be anticipated to cause significant adverse effects on the environment.

Phosphoric acid, as well as other phosphates, has the potential to cause increased algal growth leading to eutrophication in the aquatic environment (Ref. 5). Eutrophication may result when excessive phosphates enter into an aquatic ecosystem in the presence of sunlight and nitrogen. The phosphate ion is a plant nutrient and it can be a major limiting factor for plant growth in freshwater environments. When levels of phosphate are limited, plant growth is controlled. In excess, however, phosphate from phosphoric acid can cause extreme algal blooms. Toxic effects result from oxygen depletion as the algae die and decay. Toxic effects have also been related to the release of decay products or direct excretion of toxic substances from sources such as blue-green algae. In addition, phosphates in aquatic environments may encourage the growth of introduced plants to the detriment of native plants and thereby change plant distribution (Refs. 5 and 6).

V. What is EPA's Response to Comments and Rationale for Delisting?

A. What Comments Did EPA Receive in Response to the Proposed Rulemaking?

EPA requested comments on its proposal to delete phosphoric acid from the EPCRA section 313 list of toxic chemicals. Specifically, EPA requested comment on whether phosphoric acid produces any toxic effects that meet the EPCRA section 313(d)(2)(A), (B), or (C) listing criteria. Such effects could include acute and chronic human health effects or environmental effects. Additional hazard information on phosphoric acid can be found in EPA's original petition denial (63 FR 3566).

EPA received 29 comments in response to the December 7, 1999 proposal to delete phosphoric acid from the EPCRA section 313 list of toxic chemicals (64 FR 68311). All of the comments that EPA received were in support of the delisting proposal. As a result and because no commenter raised issues that call into question the basis for the Agency's proposal, EPA does not consider the comments significant and is not otherwise responding to them.

B. What is EPA's Rationale for Delisting?

EPA has authority to delete a chemical from the EPCRA section 313 list of chemicals only if it fails to meet any of the EPCRA section 313(d)(2) criteria: the acute human health effects criterion (313(d)(2)(A)), the chronic human health effects criterion (313(d)(2)(B)), or the environmental effects criterion (313(d)(2)(C)). EPA's original denial of the petition to delist phosphoric acid was based on the finding that phosphoric acid met the EPCRA section 313(d)(2)(C) criterion for listing. The Court in *Fertilizer Institute* although recognizing that phosphoric acid can cause adverse effects on the environment, found that the effects do not occur because of phosphoric acid's toxicity. Therefore, according to the Court, phosphoric acid does not satisfy the EPCRA section 313(d)(2)(C) criterion. EPA scientists agree that phosphoric acid releases can and do cause significant adverse effects on the environment. However, in keeping with the Court's decision, EPA proposed to remove phosphoric acid from the EPCRA section 313 list of toxic chemicals. The comments received on the proposal did not provide any information that demonstrates, consistent with the Court's decision, that phosphoric acid "(causes) or can reasonably be anticipated to cause, because of (1) its toxicity. . ., a significant adverse effect on the environment." Therefore, EPA is going

forward with the delisting of phosphoric acid.

VI. What is the Effective Date of this Final Rule?

This action becomes effective June 27, 2000. Thus, the last year in which facilities had to file a Toxics Release Inventory (TRI) report for phosphoric acid was 1999, covering releases and other activities that occurred in 1998.

EPCRA section 313(d)(4) provides that "[a]ny revision" to the section 313 list of toxic chemicals shall take effect on a delayed basis. EPA interprets this delayed effective date provision to apply only to actions that add chemicals to the section 313 list. For deletions, EPA may, in its discretion, make such actions immediately effective. An immediate effective date is authorized, in these circumstances, under 5 U.S.C. section 553(d)(I) because a deletion from the section 313 list relieves a regulatory restriction.

EPA believes that where the Agency has determined, as it has with this chemical, that a chemical should not be included on the section 313 list of toxic chemicals, no purpose is served by requiring facilities to collect data or file TRI reports for that chemical, or therefore, by leaving that chemical on the section 313 list for any additional period of time. This construction of section 313(d)(4) is consistent with previous rules deleting chemicals from the section 313 list. For further discussion of the rationale for immediate effective dates for EPCRA section 313 delistings, see 59 FR 33205 (June 28, 1994).

VII. What are the References Cited in this Final Rule?

1. Phosphoric Acid; Toxic Chemical Release Reporting; Community Right-to-Know; Denial of Petition, 63 FR 3566, January 23, 1998.

2. *The Fertilizer Institute v. Browner*, No. 98–1067, Slip op. (D.D.C. April 15, 1999).

3. USEPA, OPPT. Memorandum from Janette Houk, Ph.D., Hazard Integrator, Chemical Review and Evaluation Branch, Health and Environmental Review Division. Re: Petition to Delist Phosphoric Acid. (February 14, 1990).

4. USEPA, OPPT. Memorandum from Michael C. Cimino, Ph.D., Biologist, Toxic Effects Section, Toxic Effects Branch, Health and Environmental Review Division. Re: Mutagenicity Review of Delist Petition for Phosphoric Acid. (February 9, 1990).

5. USEPA, OPPT. Memorandum from Ossi Meyn, Environmental Effects Branch, Health and Environmental Review Division. Re: Petition to Delist Phosphoric Acid—Ecological Hazard. (February 27, 1990).

6. USEPA. South Florida Ecosystem Assessment. Monitoring for Adaptive Management: Implications for Ecosystem Restoration. (Interim Report). December 1996. EPA 904–R–96–008.

VIII. What are the Regulatory Assessment Requirements for this Action?

A. Executive Order 12866

This action, which deletes a chemical from the list of chemicals subject to reporting under EPCRA section 313 and PPA section 6607, eliminates an existing requirement to report and does not contain any new or modified requirements. As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), because OMB has determined that the complete elimination of an existing requirement is not a "significant regulatory action" subject to review by OMB under E.O. 12866.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this final rule will not have a significant impact on a substantial number of small entities. This determination is based on the fact that the complete elimination of the existing requirement will also eliminate the corresponding burden and costs associated with that requirement. This action will not, therefore, result in any adverse economic impacts on the facilities subject to reporting under EPCRA section 313, regardless of the size of the facility.

C. Paperwork Reduction Act

The deletion of this chemical from the EPCRA section 313 toxic chemical list will reduce the overall reporting and recordkeeping burden estimate provided for the TRI program, but this action does not require any review or approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* EPA will determine the total TRI burden associated with the chemical being deleted, and will complete the required Information Collection Worksheet to adjust the total TRI burden estimate approved by OMB.

The reporting and recordkeeping burdens associated with TRI are approved by OMB under OMB No. 2070–0093 (Form R, EPA ICR No. 1363) and under OMB No. 2070–0145 (Form A, EPA ICR No. 1704). The current public reporting burden for TRI is estimated to average 52.1 hours for a Form R submitter and 34.6 hours for a Form A submitter. These estimates include the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection appears above. In addition, the OMB control number for EPA's regulations, after initial display in the final rule, are displayed on the collection instruments and are also listed in 40 CFR part 9.

D. Unfunded Mandates Reform Act and Executive Orders 13084 and 13132

Since this action involves the elimination of an existing requirement, it does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, it is not subject to the requirement for prior consultation with Indian tribal governments as specified in Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998). Nor will this action 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, entitled *Federalism* (64 FR 43255, August 10, 1999).

E. Executive Order 12898

Pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency must consider environmental justice related issues with regard to the potential impacts of this action on environmental and health conditions in low-income populations and minority populations. The Agency has determined that deleting this chemical from the EPCRA section 313 toxic chemical list, which would eliminate the availability of the TRI information on this chemical that is made available to communities through the TRI Community Right-to-Know

program, will not result in environmental justice related issues.

F. Executive Order 13045

Pursuant to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), if an action is economically significant under Executive Order 12866, the Agency must, to the extent permitted by law and consistent with the Agency's mission, identify and assess the environmental health risks and safety risks that may disproportionately affect children. Since this action is not economically significant under Executive Order 12866, this action is not subject to Executive Order 13045.

G. National Technology Transfer and Advancement Act

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

This action does not involve technical standards, nor did EPA consider the use of any voluntary consensus standards. In general, EPCRA does not prescribe technical standards to be used for threshold determinations or completion of EPCRA section 313 reports. EPCRA section 313(g)(2) states that "In order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulation."

IX. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: June 15, 2000.

Margaret N. Schneider,

Principal Deputy Assistant Administrator, Office of Environmental Information.

Therefore, 40 CFR part 372 is amended as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

§ 372.65 [Amended]

2. Sections 372.65(a) and (b) are amended by removing the entry for phosphoric acid under paragraph (a) and the entire CAS number entry for 7664–38–2 under paragraph (b).

[FR Doc. 00–16182 Filed 6–26–00; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 310

[Docket No. MARAD–2000–7147]

RIN 2133–AB41

Appeal Procedures for Determinations Concerning Compliance With Service Obligations, Deferments, and Waivers

AGENCY: Maritime Administration, Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is publishing this final rule regarding revisions to the procedures for reviewing: determinations that a student or graduate of the U.S. Merchant Marine Academy (USMMA) or a State maritime academy that receives student incentive payments has breached the service obligation; denials of requests for deferment of the service obligation; and denials of requests for waivers of the service obligation contract. The previous regulations called for review by a panel composed of a representative of MARAD and representatives from the Department of the Navy, the National Oceanic and Atmospheric Administration (NOAA), and the United States Coast Guard. These revisions provide for an appeal to the Maritime Administrator, the head of the agency, rather than review by the panel. The intended effect of this regulation is to streamline the process of reaching a final agency decision and allow for timely action on requests for review.

DATES: The effective date of this final rule is July 27, 2000.

FOR FURTHER INFORMATION CONTACT: Jay Gordon of the Office of Chief Counsel at (202) 366–5191. You may send mail to Jay Gordon, Maritime Administration, Office of Chief Counsel, Room 7228, MAR–226, 400 7th St., SW., Washington, DC, 20590–0001, or you may send e-mail to jay.gordon@marad.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

Since 1980, each individual U.S. citizen who enters the USMMA and each student at a State maritime academy who receives Federal student incentive payments is required pursuant to statute (46 U.S.C. app. 1295b(e) and 1295c(g)) to sign an agreement committing: (A) To complete the course of instruction at the relevant academy, unless the individual is separated by such institution; (B) to fulfill the requirements for a license as an officer in the merchant marine of the United States on or before the date of graduation from the USMMA or, if a student incentive payment recipient, to take the examination for a license as an officer in the merchant marine of the United States on or before the date of graduation and to fulfill the requirements for such a license not later than 3 months after the date of graduation from a State maritime academy; (C) to maintain a license as an officer in the merchant marine of the United States for at least 6 years following the date of graduation from the relevant academy; (D) to apply for an appointment as, to accept if tendered an appointment as, and to serve as a commissioned officer in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve), the United States Coast Guard Reserve, or any other Reserve

unit of an armed force of the United States, for at least 6 years following the date of graduation from the relevant academy; (E) to serve the foreign and domestic commerce and the national defense of the United States for at least 5 years following the date of graduation from the USMMA or for at least 3 years following the date of graduation from a State maritime academy; and (F) to report to the Maritime Administrator on the compliance by the individual. If the official designated by the Maritime Administrator determines that the individual has breached the service obligation contract, denies a request for a deferment of the service obligation, or denies a request for a waiver of the service obligation contract, the individual may seek review of that determination(s).

Previously, review of said determination(s) was to be made by a panel composed of a representative of MARAD and representatives from the Department of the Navy, the National Oceanic and Atmospheric Administration, and the United States Coast Guard. There was no standing panel and, when requested in writing by the individual, the panel was to be convened on an ad hoc basis. These revisions would remove the panel as the reviewing authority and provide for direct appeal to the Maritime Administrator, the head of MARAD. These revisions are designed to streamline the process of reaching a final agency decision and allow for timely review of the decisions of the designated official. It also recognizes that the fundamental concerns involved in breach determinations and waiver and deferment decisions are central to the statutory purposes of the authority and responsibility of MARAD to operate the USMMA and administer the program for incentive payments to students at State maritime academies. These programmatic concerns do not necessarily involve areas of concern to organizations, such as NOAA and the United States Coast Guard, currently designated to sit on the panel.

Notice of Proposed Rulemaking (NPRM)

We published an NPRM on April 10, 2000 (65 FR 18957) providing the public with notice and an opportunity to comment on the proposed changes to the review and appeals process. We received no comments and are promulgating these final rules as proposed.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been reviewed under Executive Order 12866, and it has been determined that this is not a significant regulatory action. This final rule is not likely to result in an annual effect on the economy of $100 million or more.

This final rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). The costs and benefits associated with this rulemaking are considered to be so minimal that no further analysis is necessary. Because the economic impact, if any, should be minimal, further regulatory evaluation is not necessary. These amendments are intended only to simplify and clarify the procedural requirements for appeals of determinations concerning breaches of service obligations, deferments, and waivers.

Federalism

We analyzed this final rule in accordance with the principles and criteria contained in E.O. 13132 ("Federalism") and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. These regulations have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Therefore, consultation with State and local officials was not necessary.

Executive Order 13084

The Maritime Administration does not believe that this final rule will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Therefore, the funding and consultation requirements of this Executive Order would not apply. No comments were received from affected persons, including Indian tribal governments, as to its potential impact.

Regulatory Flexibility Act

The Maritime Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule only sets forth new procedural rules for students and graduates of the USMMA or State maritime academies to appeal determinations regarding breaches of service obligations, deferments, and waivers.

Environmental Impact Statement

We have analyzed this final rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order ("MAO") 600–1, "Procedures for Considering Environmental Impacts," 50 FR 11606 (March 22, 1985), the preparation of an Environmental Assessment, and an Environmental Impact Statement, or a Finding of No Significant Impact for this final rule is not required. This final rule involves administrative and procedural regulations that have no environmental impact.

Unfunded Mandates Reform Act of 1995

This final rule does not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This final rule is the least burdensome alternative that achieves the objective of the rule.

Paperwork Reduction Act

This final rule contains information collection requirements covered by OMB approval number 2133–0150, under 5 CFR part 1320, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number is contained in the heading of this document to cross-reference this action with the Unified Agenda.

List of Subjects in 46 CFR Part 310

Grant programs—education, Reporting and recordkeeping requirements, Schools, Seamen.

Accordingly, MARAD hereby amends 46 CFR part 310 as follows:

PART 310—MERCHANT MARINE TRAINING

1. The authority citation for part 310 continues to read as follows:

Authority: 46 App. U.S.C. 1295; 49 CFR 1.66.

2. Section 310.7 is amended by revising paragraph (b)(10) heading, paragraph (b)(10)(ii), paragraph (b)(10)(iii) and adding a new paragraph (b)(10)(iv) to read as follows:

§ 310.7 Federal student subsistence allowances and student incentive payments.

* * * * *

(b) * * *

(10) *Determination of compliance with service obligation contract; deferment; waiver; and appeal procedures.*

* * * * *

(ii)(A) If a student or graduate disagrees with the decision of the designated official, the student or graduate may appeal that decision to the Maritime Administrator. The appeal must set forth all the legal and factual grounds on which the student or graduate bases the appeal. Any grounds not set forth in the appeal are waived.

(B) Appeals must be filed with the Maritime Administrator within 30 calendar days of the date of receipt by such student or graduate of the written decision of the designated official. Appeals must be filed at the Office of the Secretary, Maritime Administration, Room 7210, 400 7th St., SW., Washington, DC 20590. Each decision will include a notice of appeal rights.

(C) A decision is deemed to be received by a student or graduate five (5) working days after the date it is mailed by first class mail, postage prepaid, to the address for such student or graduate listed with the Office of Maritime Labor, Training, and Safety. It is the responsibility of such student or graduate to ensure that their current mailing address is on file with the Office of Maritime Labor, Training, and Safety, Room 7302, 400 7th St., SW., Washington, DC 20590.

(D) If the appeal is sent by conventional mail (through the United States Postal Service), the date of filing is determined by the postmark date. If no legible postmark date appears on the mailing, the appeal is deemed to be filed five (5) working days before the date of its receipt in the Office of the Secretary. If delivered by other than the United States Postal Service, an appeal is filed with the Maritime Administrator on the date it is physically delivered to the Office of the Secretary at the address referenced in paragraph (b)(10)(ii)(B) of this section. The date of filing by commercial delivery (not United States Postal Service) is the date it is received at the address for the Office of the Secretary set forth in paragraph (b)(10)(ii)(B) of this section. Appeals may not be submitted by facsimile or by electronic mail. Requests for extension of the time to file an appeal may be submitted by facsimile or electronic mail to the Office of the Secretary. Requests for extension of time do not stop or toll the running of the time for filing an appeal. Appeals may only be filed after the deadline if the Maritime Administrator or his designee, in their sole discretion, grants an extension.

(E) In computing the number of days, the first day counted is the day after the event from which the time period begins to run. If the date that ordinarily would be the last day for filing falls on a Saturday, Sunday, or Federal holiday, the filing period will include the first workday after that date.

Example to paragraph (b)(10)(ii)(E): If a graduate receives a decision on July 1, the 30-day period for filing an appeal starts to run on July 2. The appeal would ordinarily be timely only if postmarked on or physically delivered by July 31. If July 31 is a Saturday, however, the last day for obtaining a postmark by mailing or physical delivery would be Monday, August 2.

(iii) The Maritime Administrator will issue a written decision for each timely appeal. This decision constitutes final agency action.

(iv) If a student or graduate fails to appeal within the time set forth in paragraph (b)(10)(ii) of this section, the decision of the designated official will be final and constitute final agency action.

3. Section 310.58 is amended by revising paragraph (h) heading, paragraphs (h)(2), (h)(3), and (h)(4) to read as follows:

§ 310.58 Service obligation for students enrolled after April 1, 1982.

* * * * *

(h) *Determination of compliance with service obligation contract; deferment; waiver; and appeal procedures.*

* * * * *

(2)(i) If a student or graduate disagrees with the decision of the designated official, the student or graduate may appeal that decision to the Maritime Administrator. The appeal will set forth all the legal and factual grounds on which the student or graduate bases the appeal. Any grounds not set forth in the appeal are waived.

(ii) Appeals must be filed with the Maritime Administrator within 30 calendar days of the date of receipt by such student or graduate of the written decision of the designated official. Appeals must be filed at the Office of the Secretary, Maritime Administration, Room 7210, 400 7th St. SW., Washington, DC 20590. Each decision will include a notice of appeal rights.

(iii) A decision is deemed to be received by a student or graduate five (5) working days after the date it is mailed by first class mail, postage prepaid, to the address for such student or graduate listed with the Office of Maritime Labor, Training, and Safety. It is the responsibility of such student or graduate to ensure that their current mailing address is on file with the Office of Maritime Labor, Training, and Safety, Room 7302, 400 7th St., SW., Washington, DC 20590.

(iv) If the appeal is sent by conventional mail (through the United States Postal Service), the date of filing is determined by the postmark date. If no legible postmark date appears on the mailing, the appeal is deemed to be filed five (5) working days before the date of its receipt in the Office of the Secretary. If delivered by other than the United States Postal Service, an appeal is filed with the Maritime Administrator on the date it is physically delivered to the Office of the Secretary at the address referenced in paragraph (h)(2)(ii) of this section. The date of filing by commercial delivery (not United States Postal Service) is the date it is received at the address for the Office of the Secretary set forth in paragraph (h)(2)(ii) of this section. Appeals may not be submitted by facsimile or by electronic mail. Requests for extension of the time to file an appeal may be submitted by facsimile or electronic mail to the Office of the Secretary. Requests for extension of time do not stop or toll the running of the time for filing an appeal. Appeals may only be filed after the deadline if the Maritime Administrator or his designee, in their sole discretion, grants an extension.

(v) In computing the number of days, the first day counted is the day after the event from which the time period begins to run. If the date that ordinarily would be the last day for filing falls on a Saturday, Sunday, or Federal holiday, the filing period will include the first workday after that date.

Example to paragraph (b)(10)(v): If a graduate receives a decision on July 1, the 30-day period for filing an appeal starts to run on July 2. The appeal would ordinarily be timely only if postmarked on or physically delivered by July 31. If July 31 is a Saturday, however, the last day for obtaining a postmark by mailing or physical delivery would be Monday, August 2.

(3) The Maritime Administrator will issue a written decision for each timely appeal. This decision constitutes final agency action.

(4) If a student or graduate fails to appeal within the time set forth in paragraph (h)(2) of this section, the decision of the designated official will be final and constitute final agency action.

Dated: June 19, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–15852 Filed 6–26–00; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 89–552 and GN Docket No. 93–252; FCC 00–187]

Use of the 220–222 MHz Band by the Private Land Mobile Radio Service Regarding Geographic Partitioning and Spectrum Disaggregation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document disposes of two Petitions for Reconsideration of the *Fifth Report and Order* in this docket, in which the Commission adopted geographic partitioning and spectrum disaggregation rules for the 220–222 MHz service. This document dismisses as moot Rand McNally & Company's (RMC's) Petition for Reconsideration to remove the references to Major Trading Areas (MTAs) and Basic Trading Areas (BTAs) in the 220 MHz partitioning rules. This document also grants in part Intek's Petition for Reconsideration by clarifying that the options afforded to 220 MHz service licensees for satisfying the Commission's construction requirements in cases of partitioning and disaggregation, and the consequences of not satisfying such requirements, exactly mirror the options and consequences for partitioning and disaggregation imposed on broadband personal communications service (PCS) licensees. In all other respects, Intek's Petition for Reconsideration is denied. Finally, this document amends the construction requirements of the Commission's rules for licensing and use of frequencies in the 220–222 MHz band to restore language that was inadvertently deleted in an earlier order specifying the consequences of failure to construct by parties to a disaggregation agreement. The Commission's goals in taking these actions are to promote more efficient use of the spectrum, increase opportunities for a variety of entities to participate in the provision of 220 MHz service, and expedite delivery of 220 MHz service to unserved areas.

DATES: Effective August 28, 2000.

FOR FURTHER INFORMATION CONTACT: Jeffrey Steinberg, Wireless Telecommunications Bureau at (202) 418–0896.

SUPPLEMENTARY INFORMATION: This document addresses implementing Congress' goal of giving small businesses, as well as other entities, who lack the financial resources for participation in auctions, the opportunity to participate in the provision of spectrum-based services. Also, this document is consistent with the Communications Act's mandate to identify and eliminate market entry barriers for entrepreneurs and small businesses in the provisions and ownership of telecommunications services. This document also clarifies aspects of the construction requirements for 220 MHz licensees as set out in the Commission's rules, as well as, disposes of two Petitions for Reconsideration of the *Fifth Report and Order,* 63 FR 49291 (September 15, 1998).

2. This Memorandum Opinion and Order was released on May 30, 2000, and is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, SW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036 / (202) 857–3800. This Memorandum Opinion and Order is also available via the Internet at *http://www.fcc.gov/Bureaus/Wireless/Orders/2000/.*

Supplemental Final Regulatory Flexibility Certification

3. The Regulatory Flexibility Act of 1980, as amended,[1] requires that a final regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[2] We certify that the rule change adopted in this *Memorandum Opinion and Order* will not have a significant economic impact on a substantial number of small entities because it does not effect any substantive policy change, but only restores language that was previously inadvertently deleted from the Commission's rules.

A. Report to Congress

4. The Commission will send a copy of this *Memorandum Opinion and Order,* including a copy of the Supplemental Final Regulatory Flexibility Certification, in a report to Congress pursuant to SBREFA, see 5 U.S.C. 801(a)(1)(A). In addition, the *Memorandum Opinion and Order* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**. See 5 U.S.C. 605(b).

B. Ordering Clauses

5. Pursuant to section 4(i) of the Communications Act, 47 U.S.C. 154(i), and section 1.108 of the Commission's rules, the *Memorandum Opinion and Order* in this proceeding released on March 29, 2000, FCC 00–102, IS VACATED.

6. Pursuant to sections 4(i), 303(g), 303(r), 332(a)(2), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(g), 303(r), 332(a)(2), and 405, the Petition for Reconsideration filed by Rand McNally & Company on October 13, 1998, *is dismissed,* and the Petition for Reconsideration filed on October 15, 1998, by Intek Global Corporation IS GRANTED to the extent stated herein and otherwise *denied.*

7. The rule adopted shall become effective August 28, 2000. This action is taken pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

8. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Memorandum Opinion and Order,* including the Supplemental Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 90

Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications

[1] The Regulatory Flexibility Act of 1980, *see* 5 U.S.C. 601 *et seq.,* has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] 5 U.S.C. 605(b).

Commission amends 47 CFR part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), 332(c)(7) of the Commissions Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

2. Section 90.1019 is amended by revising paragraph (d)(2) to read as follows:

§ 90.1019 Eligibility for partitioned licenses.

* * * * *

(d) * * *

(2) *Requirements for disaggregation.* Parties seeking authority to disaggregate spectrum must certify in FCC Form 601 which of the parties will be responsible for meeting the five-year and ten-year construction requirements for the particular market as set forth in §§ 90.767 or 90.769, as applicable. Parties may agree to share responsibility for meeting the construction requirements. If one party accepts responsibility for meeting the construction requirements and later fails to do so, then its license will cancel automatically without further Commission action. If both parties accept responsibility for meeting the construction requirements and later fail to do so, then both their licenses will cancel automatically without further Commission action.

[FR Doc. 00–16187 Filed 6–26–00; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

50 CFR Part 228

[Docket No. 000619186–0186–01; I.D.051500B]

RIN 0648–AO17

Reinstatement of Procedures for Hearings Conducted Pursuant to Section 103(d) of the Marine Mammal Protection Act

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

ACTION: Final rule.

SUMMARY: This final rule reinstates rules of practice and procedure for formal rulemaking hearings conducted under the Marine Mammal Protection Act (MMPA). These rules were removed from the Code of Federal Regulations in 1995 because of non-use. NMFS now anticipates the need for formal rulemaking hearings. The intent of this action is to reinstate the rules of practice and procedure for formal rulemaking hearings conducted under the MMPA.

DATES: Effective June 27, 2000.

ADDRESSES: Donna Wieting, Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Caroline Good, (301) 713–2322, x117.

SUPPLEMENTARY INFORMATION:

Background

The MMPA gives the Secretaries of Commerce and Interior broad authority to issue and implement regulations related to the conservation or taking of marine mammals. In some cases (e.g., regulating subsistence harvest by Alaskan Natives), the MMPA requires a hearing on the record as provided in section 103(d) of the MMPA. The Endangered Species Act (ESA) also requires a formal rulemaking hearing before the Secretaries of Commerce or Interior can limit the subsistence take of threatened or endangered species of fish or wildlife by Alaska Natives. These ESA formal rulemaking provisions cross-reference section 103(d) of the MMPA, 16 U.S.C. 1539(e)(4).

Prior to 1995, the rules of practice and procedure for hearings conducted pursuant to section 103(d) of the MMPA were codified at 50 CFR 216.71. In 1995, NMFS removed these rules as part of an effort to simplify the Code of Federal Regulations. Such hearings had not been convened for more than 15 years, and NMFS did not anticipate using the rules in the foreseeable future.

NMFS now anticipates conducting formal rulemaking to promulgate regulations governing the subsistence harvest of certain marine mammals by Alaska Natives. NMFS is reinstating the rules of practice and procedure that were removed in 1995. This final rule reinstates these rules as they appeared prior to 1995 with only minor technical corrections to incorporate current terminology, such as Assistant Administrator for Fisheries rather than Director, NMFS.

Classification

This final rule establishes agency rules of practice and procedure. Under section 553(b)(3)(A) of the Administrative Procedure Act (APA), prior notice and opportunity for comment is not required for the promulgation of agency rules of practice and procedure. Under section 553(d) of the APA, only substantive rules require publication 30 days prior to their effective date. This final rule is effective upon publication.

Because prior notice and opportunity for public comment are not required to be provided for this final rule by 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act do not apply.

This final rule is not subject to review under Executive Order 12866.

The promulgation of regulations establishing rules of practice and procedure in this instance is categorically excluded by NOAA Administrative Order 216–6 from the requirement to prepare an environmental assessment or an environmental impact statement under the National Environmental Policy Act.

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act of 1980.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 13132.

List of Subjects in 50 CFR Part 228

Administrative practice and procedure, Endangered and threatened species, Marine mammals.

Dated: June 21, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 228 is added to read as follows:

PART 228—NOTICE AND HEARING ON SECTION 103(d) REGULATIONS

Sec.

Authority: 16 U.S.C. 1361 *et seq.*

§ 228.1 Basis and purpose.

(a) Sections 101(a)(2), 101(a)(3)(A), and 101(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(2), 1371(a)(3)(A), and 1371(b)) and these regulations authorize the Assistant Administrator of the National Marine Fisheries Service, to:

(1) Impose regulations governing the taking of marine mammals incidental to commercial fishing operations;

(2) Waive the moratorium and to adopt regulations with respect to the taking and importing of animals from each species of marine mammals under the Assistant Administrator's jurisdiction;

(3) Prescribe regulations governing the taking of depleted marine mammals by any Indian, Aleut or Eskimo, respectively. In prescribing regulations to carry out the provisions of said sections, the Act refers the Assistant Administrator to section 103 (16 U.S.C. 1373). In accordance with section 103(d), regulations must be made on the record after opportunity for an agency hearing on such regulations and, in the case of a waiver, on the determination by the Assistant Administrator to waive the moratorium pursuant to section 101(a)(3)(A) of the Act (16 U.S.C. 1371(a)(3)(A)).

(b) The purpose of this part is to establish rules of practice and procedure for all hearings conducted pursuant to section 103(d) of the Act.

§ 228.2 Definitions.

(a) *Party* means, for the purposes of this subpart:

(1) The Assistant Administrator or the Assistant Administrator's representative;

(2) A person who has notified the Assistant Administrator by specified dates of his or her intent to participate in the hearing pursuant to §§ 228.5 and 228.14(b).

(b) *Witness* means, for the purpose of this part, any person who submits written direct testimony on the proposed regulations. A person may be both a party and a witness.

§ 228.3 Scope of regulations.

The procedural regulations in this part govern the practice and procedure in hearings held under section 103(d) of the Act. These hearings will be governed by the provisions of 5 U.S.C. 556 and section 557 of the Administrative Procedure Act. The regulations shall be construed to secure the just, speedy and inexpensive determination of all issues raised with respect to any waiver or regulation proposed pursuant to section 103(d) of the Act with full protection for the rights of all persons affected thereby.

§ 228.4 Notice of hearing.

(a) A notice of hearing on any proposed regulations shall be published in the **Federal Register**, together with the Assistant Administrator's proposed determination to waive the moratorium pursuant to section 101(a)(3)(A) of the Act (16 U.S.C. 1371(a)(3)(A)), where applicable.

(b) The notice shall state:

(1) The nature of the hearing;

(2) The place and date of the hearing. The date shall not be less than 60 days after publication of notice of the hearing;

(3) The legal authority under which the hearing is to be held;

(4) The proposed regulations and waiver, where applicable, and a summary of the statements required by section 103(d) of the Act (16 U.S.C. 1373(d));

(5) Issues of fact which may be involved in the hearing;

(6) If a draft Environmental Impact Statement is required, the date of publication of the draft and the place(s) where the draft and comments thereon may be viewed and copied;

(7) Any written advice received from the Marine Mammal Commission;

(8) The place(s) where records and submitted direct testimony will be kept for public inspection;

(9) The final date for filing with the Assistant Administrator a notice of intent to participate in the hearing pursuant to § 228.5;

(10) The final date for submission of direct testimony on the proposed regulations and waiver, if applicable, and the number of copies required;

(11) The docket number assigned to the case which shall be used in all subsequent proceedings; and

(12) The place and date of the pre-hearing conference.

§ 228.5 Notification by interested persons.

Any person desiring to participate as a party shall notify the Assistant Administrator, by certified mail, on or before the date specified in the notice.

§ 228.6 Presiding officer.

(a) Upon publication of the notice of hearing pursuant to § 228.4, the Assistant Administrator shall appoint a presiding officer pursuant to 5 U.S.C. 3105. No individual who has any conflict of interest, financial or otherwise, shall serve as presiding officer in such proceeding.

(b) The presiding officer, in any proceeding under this subpart, shall have power to:

(1) Change the time and place of the hearing and adjourn the hearing;

(2) Evaluate direct testimony submitted pursuant to these regulations, make a preliminary determination of the issues, conduct a prehearing conference to determine the issues for the hearing agenda, and cause to be published in the **Federal Register** a final hearing agenda;

(3) Rule upon motions, requests and admissibility of direct testimony;

(4) Administer oaths and affirmations, question witnesses and direct witnesses to testify;

(5) Modify or waive any rule (after notice) when determining that no party will be prejudiced;

(6) Receive written comments and hear oral arguments;

(7) Render a recommended decision; and

(8) Do all acts and take all measures, including regulation of media coverage, for the maintenance of order at and the efficient conduct of the proceeding.

(c) In case of the absence of the original presiding officer or the original presiding officer's inability to act, the powers and duties to be performed by the original presiding officer under this subpart in connection with a proceeding may, without abatement of the proceeding, be assigned to any other presiding officer unless otherwise ordered by the Assistant Administrator.

(d) The presiding officer may upon the presiding officer's own motion withdraw as presiding officer in a proceeding if the presiding officer deems himself or herself to be disqualified.

(e) A presiding officer may be requested to withdraw at any time prior to the recommended decision. Upon the filing by an interested person in good faith of a timely and sufficient affidavit alleging the presiding officer's personal bias, malice, conflict of interest or other basis which might result in prejudice to a party, the hearing shall recess. The Assistant Administrator shall immediately determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as the Assistant Administrator may deem appropriate in the circumstances.

§ 228.7 Direct testimony submitted as written documents.

(a) Unless otherwise specified, all direct testimony, including

accompanying exhibits, must be submitted to the presiding officer in writing no later than the dates specified in the notice of the hearing (§ 228.4), the final hearing agenda (§ 228.12), or within 15 days after the conclusion of the prehearing conference (§ 228.14) as the case may be. All direct testimony shall be in affidavit form and exhibits constituting part of such testimony, referred to in the affidavit and made a part thereof, must be attached to the affidavit. Direct testimony submitted with exhibits must state the issue to which the exhibit relates; if no such statement is made, the presiding officer shall determine the relevance of the exhibit to the issues published in the **Federal Register**.

(b) The direct testimony submitted shall contain:

(1) A concise statement of the witness' interest in the proceeding and his position regarding the issues presented. If the direct testimony is presented by a witness who is not a party, the witness shall state the witness' relationship to the party; and

(2) Facts that are relevant and material.

(c) The direct testimony may propose issues of fact not defined in the notice of the hearing and the reason(s) why such issues should be considered at the hearing.

(d) Ten copies of all direct testimony must be submitted unless the notice of the hearing specifies otherwise.

(e) Upon receipt, direct testimony shall be assigned a number and stamped with that number and the docket number.

(f) Contemporaneous with the publication of the notice of hearing, the Assistant Administrator's direct testimony in support of the proposed regulations and waiver, where applicable, shall be available for public inspection as specified in the notice of hearing. The Assistant Administrator may submit additional direct testimony during the time periods allowed for submission of such testimony by witnesses.

§ 228.8 Mailing address.

Unless otherwise specified in the notice of hearing, all direct testimony shall be addressed to the Presiding Officer, c/o Assistant Administrator, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. All affidavits and exhibits shall be clearly marked with the docket number of the proceedings.

§ 228.9 Inspection and copying of documents.

Any document in a file pertaining to any hearing authorized by this subpart or any document forming part of the record of such a hearing may be inspected and/or copied in the Office of the Assistant Administrator, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–unless the file is in the care and custody of the presiding officer, in which case the presiding officer shall notify the parties as to where and when the record may be inspected.

§ 228.10 Ex parte communications.

(a) After notice of a hearing is published in the **Federal Register**, all communications, whether oral or written, involving any substantive or procedural issue and directed either to the presiding officer or to the Assistant Administrator, Deputy Assistant Administrator, or Chief of the Marine Mammal Division, National Marine Fisheries Service, without reference to these rules of procedure, shall be deemed ex parte communications and are not to be considered part of the record for decision.

(b) A record of oral conversations shall be made by the persons who are contacted. All communications shall be available for public viewing at the place(s) specified in the notice of hearing.

(c) The presiding office shall not consult any person or party on any fact in issue or on the merits of the matter unless notice and opportunity is given for all parties to participate.

§ 228.11 Prehearing conference.

(a) After an examination of all the direct testimony submitted pursuant to § 228.7, the presiding officer shall make a preliminary determination of issues of fact which may be addressed at the hearing.

(b) The presiding officer's preliminary determination shall be made available at the place or places provided in the notice of the hearing (§ 228.4(b)(8)) at least 5 days before the prehearing conference.

(c) The purpose of the prehearing conference shall be to enable the presiding officer to determine, on the basis of the direct testimony submitted and prehearing discussions:

(1) Whether the presiding officer's preliminary determination of issues of fact for the hearing has omitted any significant issues;

(2) What facts are not in dispute;

(3) Which witnesses may appear at the hearing; and

(4) The nature of the interest of each party and which parties' interests are adverse.

(d) Only parties may participate in the hearing conference and a party may appear in person or be represented by counsel.

(e) Parties who do not appear at the prehearing conference shall be bound by the conference's determinations.

§ 228.12 Final agenda of the hearing.

(a) After the prehearing conference, the presiding officer shall prepare a final agenda which shall be published in the **Federal Register** within 10 days after the conclusion of the conference. A copy of the final agenda shall be mailed to all parties.

(b) The final agenda shall list:

(1) All the issues which the hearing shall address, the order in which those issues shall be presented, and the direct testimony submitted which bears on the issues; and

(2) A final date for submission of direct testimony on issues of fact not included in the notice of hearing if such issues are presented. The final agenda may also specify a final date for submission of direct testimony to rebut testimony previously submitted during the time specified in the notice of the hearing.

(c) The presiding officer shall publish with the final agenda a list of witnesses who may appear at the hearing, a list of parties, the nature of the interest of each party, and which parties' interests are adverse on the issues presented.

§ 228.13 Determination to cancel the hearing.

(a) If the presiding officer concludes that no issues of fact are presented by the direct testimony submitted, the presiding officer shall publish such conclusion and notice in the **Federal Register** that a hearing shall not be held and shall also publish a date for filing written comments on the proposed regulations. Written comments may include proposed findings and conclusions, arguments or briefs.

(b) A person need not be a party to submit any written comments.

(c) Promptly after expiration of the period for receiving written comments, the presiding officer shall make a recommended decision based on the record, which in this case shall consist of the direct testimony and written comments submitted. He shall transfer to the Assistant Administrator his recommended decision, the record and a certificate stating that the record contains all the written direct testimony and comments submitted. The Assistant Administrator shall then make a final decision in accordance with these regulations (§ 228.21).

§ 228.14 Rebuttal testimony and new issues of fact in final agenda.

(a) Direct testimony to rebut testimony offered during the time period specified in the notice of hearing may be submitted pursuant to these regulations within fifteen days after the conclusion of the prehearing conference unless the presiding officer otherwise specifies in the final agenda.

(b) If the final agenda presents issues not included in the notice of the hearing published pursuant to § 228.4:

(1) Any person interested in participating at the hearing on such issues presented shall notify the Assistant Administrator by certified mail of an intent to participate not later than 10 days after publication of the final agenda. Such person may present direct testimony or cross-examine witnesses only on such issues presented unless that person previously notified the Assistant Administrator pursuant to § 228.5; and

(2) Additional written direct testimony concerning such issues may be submitted within the time provided in the final agenda. Such direct testimony will comply with the requirements of § 228.7.

§ 228.15 Waiver of right to participate.

Persons who fail to notify the Assistant Administrator pursuant to §§ 228.5 and 228.14 shall be deemed to have waived their right to participate as parties in any part of the hearing.

§ 228.16 Conduct of the hearing.

(a) The hearing shall be held at the time and place fixed in the notice of the hearing, unless the presiding officer changes the time or place. If a change occurs, the presiding officer shall publish the change in the **Federal Register** and shall expeditiously notify all parties by telephone or by mail: Provided, that if that change in time or place of hearing is made less than 5 days before the date previously fixed for the hearing, the presiding officer shall also announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) The presiding officer shall, at the commencement of the hearing, introduce into the record: the notice of hearing as published in the **Federal Register**; all subsequent documents published in the **Federal Register**; the draft Environmental Impact Statement if it is required and the comments thereon and agency responses to the comments; and a list of all parties. Direct testimony shall then be received with respect to the matters specified in the final agenda in such order as the presiding officer shall announce. With respect to direct testimony submitted as rebuttal testimony or in response to new issues presented by the prehearing conference, the presiding officer shall determine the relevancy of such testimony.

(c) The hearing shall be publicly conducted and reported verbatim by an official reporter.

(d) If a party objects to the admission or rejection of any direct testimony or to any other ruling of the presiding officer during the hearing, he or she shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the presiding officer. The transcript shall not include argument or debate thereon except as ordered by the presiding officer. The ruling by the presiding officer on any objection shall be a part of the transcript and shall be subject to review at the same time and in the same manner as the Assistant Administrator's final decision. Only objections made before the presiding officer may subsequently be relied upon in the proceedings.

(e) All motions and requests shall be addressed to, and ruled on by, the presiding officer, if made prior to his certification of the transcript or by the Assistant Administrator if made thereafter.

§ 228.17 Direct testimony.

(a) Only direct testimony submitted by affidavit as provided in these regulations and introduced at the hearing by a witness shall be considered part of the record. Such direct testimony shall not be read into evidence but shall become a part of the record subject to exclusion of irrelevant and immaterial parts thereof;

(b) The witness introducing direct testimony shall:

(1) State his or her name, address and occupation;

(2) State qualifications for introducing the direct testimony. If an expert, the witness shall briefly state the scientific or technical training which qualifies the witness as an expert;

(3) Identify the direct testimony previously submitted in accordance with these regulations; and

(4) Submit to appropriate cross and direct examination. Cross-examination shall be by a party whose interests are adverse on the issue presented, to the witness', if the witness is a party, or to the interests of the party who presented the witness.

(c) A party shall be deemed to have waived the right to introduce direct testimony if such party fails to present a witness to introduce the direct testimony.

(d) Official notice may be taken of such matters as are judicially noticed by the courts of the United States: Provided, that parties shall be given adequate notice, by the presiding officer, at the hearing, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

§ 228.18 Cross-examination.

(a) The presiding officer may:

(1) Require the cross-examiner to outline the intended scope of the cross-examination;

(2) Prohibit parties from cross-examining witnesses unless the presiding officer has determined that the cross-examiner has an adverse interest on the facts at issue to the party-witness or the party presenting the witness. For the purposes of this subsection, the Assistant Administrator's or his or her representative's interest shall be considered adverse to all parties;

(3) Limit the number of times any party or parties having a common interest may cross-examine an "adverse" witness on the same matter; and

(4) Exclude cross-examination questions that are immaterial, irrelevant or unduly repetitious.

(b) Any party shall be given an opportunity to appear, either in person or through an authorized counsel or representative, to cross-examine witnesses. Before cross-examining a witness, the party or counsel shall state his or her name, address and occupation. If counsel cross-examines the witness, counsel shall state for the record the authority to act as counsel. Cross-examiners shall be assumed to be familiar with the direct testimony.

(c) Any party or party's counsel who fails to appear at the hearing to cross-examine an "adverse" witness shall be deemed to have waived the right to cross-examine that witness.

(d) Scientific, technical or commercial publications may only be utilized for the limited purposes of impeaching witnesses under cross-examination unless previously submitted and introduced in accordance with these regulations.

§ 228.19 Oral and written arguments.

(a) The presiding officer may, in his or her discretion, provide for oral argument at the end of the hearing. Such argument, when permitted, may be limited by the presiding officer to the extent necessary for the expeditious disposition of the proceeding.

(b) The presiding officer shall announce at the hearing a reasonable

period of time within which any interested person may file with the presiding officer any written comments on the proposed regulations and waiver, including proposed findings and conclusions and written arguments or briefs, which are based upon the record and citing where practicable the relevant page or pages of the transcript. If a party filing a brief desires the presiding officer to reconsider any objection made by such party to a ruling of the presiding officer, the party shall specifically identify such rulings by reference to the pertinent pages of the transcript and shall state their arguments thereon as a part of the brief.

(c) Oral or written arguments shall be limited to issues arising from direct testimony on the record.

§ 228.20 Recommended decision, certification of the transcript and submission of comments on the recommended decision.

(a) Promptly after expiration of the period for receiving written briefs, the presiding officer shall make a recommended decision based on the record and transmit the decision to the Assistant Administrator. The recommended decision shall include:

(1) A statement containing a description of the history of the proceedings;

(2) Findings on the issues of fact with the reasons therefor; and

(3) Rulings on issues of law.

(b) The presiding officer shall also transmit to the Assistant Administrator the transcript of the hearing, the original and all copies of the direct testimony, and written comments. The presiding officer shall attach to the original transcript of the hearing a certificate stating that, to the best of his knowledge and belief, the transcript is a true transcript of the testimony given at the hearing except in such particulars as are specified.

(c) Immediately after receipt of the recommended decision, the Assistant Administrator shall give notice thereof in the **Federal Register**, send copies of the recommended decision to all parties, and provide opportunity for the submission of comments. The recommended decision may be reviewed and/or copied in the office of the Assistant Administrator, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

(d) Within 20 days after the notice of receipt of the recommended decision has been published in the **Federal Register**, any interested person may file with the Assistant Administrator any written comments on the recommended decision. All comments, including recommendations from or consultation with the Marine Mammal Commission, must be submitted during the 20-day period to the Assistant Administrator at the previously mentioned address.

§ 228.21 Assistant Administrator's decision.

(a) Upon receipt of the recommended decision and transcript and after the 20-day period for receiving written comments on the recommended decision has passed, the Assistant Administrator shall make a final decision on the proposed regulations and waiver, where applicable. The Assistant Administrator's decision may affirm, modify, or set aside, in whole or in part, the recommended findings, conclusions and decision of the presiding officer. The Assistant Administrator may also remand the hearing record to the presiding officer for a fuller development of the record.

(b) The Assistant Administrator's decision shall include:

(1) A statement containing a description of the history of the proceeding;

(2) Findings on the issues of fact with the reasons therefor; and

(3) Rulings on issues of law.

(4) The Assistant Administrator's decision shall be published in the **Federal Register**. If the waiver is approved, the final adopted regulations shall be promulgated with the decision.

[FR Doc. 00–16229 Filed 6–26–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 121399A]

Fisheries of the Exclusive Economic Zone off Alaska; Bycatch Rate Standards for the Second Half of 2000

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

ACTION: Pacific halibut and red king crab bycatch rate standards; request for comments.

SUMMARY: NMFS announces Pacific halibut and red king crab bycatch rate standards for the second half of 2000. Publication of these bycatch rate standards is required by regulations implementing the vessel incentive program. This action is necessary to implement the bycatch rate standards for trawl vessel operators who participate in the Alaska groundfish trawl fisheries. The intent of this action is to reduce prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

DATES: Effective 1201 hours, Alaska local time (A.l.t.), July 1, 2000, through 2400 hours, A.l.t., December 31, 2000. Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., July 27, 2000.

ADDRESSES: Comments may be submitted to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Comments also may be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing the U.S. groundfish fisheries and implementing the FMPs appear at 50 CFR part 679.

Regulations at § 679.21(f) implement a vessel incentive program to reduce halibut and red king crab bycatch rates in the groundfish trawl fisheries. Under the incentive program, operators of trawl vessels may not exceed Pacific halibut bycatch rate standards specified for the BSAI and GOA midwater pollock and "other trawl" fisheries, and the BSAI yellowfin sole and "bottom pollock" fisheries. Vessel operators also may not exceed red king crab bycatch standards specified for the BSAI yellowfin sole and "other trawl" fisheries in Bycatch Limitation Zone 1 (defined in § 679.2). The fisheries included under the incentive program are defined in regulations at § 679.21(f)(2).

Regulations at § 679.21(f)(3) require that halibut and red king crab bycatch rate standards for each fishery included

under the incentive program be published in the **Federal Register**. The standards are in effect for specified seasons within the 6-month periods of January 1 through June 30, and July 1 through December 31. For purposes of calculating vessel bycatch rates under the incentive program, 2000 fishing months were specified in the **Federal Register** on December 28, 1999 (64 FR 72572).

NMFS published halibut and red king crab bycatch rate standards for the first half of 2000 in the **Federal Register** (64 FR 72572, December 28, 1999). As required by § 679.21(f)(3) and (4), the Administrator of the Alaska Region, NMFS (Regional Administrator), has established the bycatch rate standards for the second half of 2000 (July 1 through December 31). The Council endorsed these standards at its April 2000 meeting and are set out in Table 1. As required by § 679.21(f)(4), bycatch rate standards are based on the following information:

(A) Previous years' average observed bycatch rates;

(B) Immediately preceding season's average observed bycatch rates;

(C) The bycatch allowances and associated fishery closures specified under § 679.21(d) and (e);

(D) Anticipated groundfish harvests;

(E) Anticipated seasonal distribution of fishing effort for groundfish; and

(F) Other information and criteria deemed relevant by the Regional Administrator.

TABLE 1.— BYCATCH RATE STANDARDS BY FISHERY FOR THE SECOND HALF OF 2000 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA.

Fishery	*2000 bycatch rate standard*
Halibut bycatch rate standards (kilogram (kg) of halibut/metric ton (mt) of groundfish catch)	
BSAI Midwater pollock	1.0
BSAI Bottom pollock	5.0
BSAI Yellowfin sole	5.0
BSAI Other trawl	30.0
GOA Midwater pollock	1.0
GOA Other trawl	40.0
Zone 1 red king crab bycatch rate standards (number of crab/mt of groundfish catch)	
BSAI yellowfin sole	2.5
BSAI Other trawl	2.5

Bycatch Rate Standards for Pacific Halibut

The halibut bycatch rate standards for the 2000 trawl fisheries are unchanged from those implemented in 1999. The Regional Administrator based standards for the second half of 2000 on anticipated seasonal fishing effort for groundfish species on 1996–1999 halibut bycatch rates observed in the trawl fisheries included under the incentive program.

With the exception of the BSAI yellowfin sole fishery, these bycatch rate standards generally reflect the average halibut bycatch rates observed in the BSAI and GOA trawl fisheries. At times, quarterly bycatch rates have exceeded the bycatch rate standards, but these situations usually represent limited fishing effort (e.g., GOA other trawl fisheries in the 2nd and 4th quarters). The BSAI yellowfin sole fishery has experienced undesirably high bycatch rates that NMFS and the Council expect to reduce through existing incentives. NMFS anticipates that the formation of American Fisheries Act (AFA) cooperatives should help participating vessels maintain overall bycatch rates of halibut in the yellowfin sole fishery at a minimal level so that the amount of groundfish harvested may be optimized under the AFA PSC sideboard provisions. In determining these bycatch rate standards, the Regional Administrator considered the annual and seasonal bycatch specifications for the BSAI and GOA trawl fisheries (65 FR 8282, February 18, 2000, and 65 FR 8298, February 18, 2000, respectively). He further recognized that directed fishing for Pacific cod for the inshore component in the Western and Central Regulatory Areas of the GOA is closed for the remainder of the year. The GOA shallow-water and deep-water trawl fishery species complexes are open. In the Bering Sea, the rockfish and rock sole/flathead sole/other flatfish fishery categories will open or reopen on July 4 when seasonal apportionments of halibut bycatch allowances specified for these fisheries become available. The BSAI Pacific cod trawl fishery is closed for the remainder of the year for catcher vessels and is open for catcher processors. The BSAI yellowfin sole fishery is ongoing, and no closure has yet been projected due to crab or halibut bycatch. The Regional Administrator also considered the June 10 opening date of the 2000 Bering Sea pollock 'C/D' season (§ 679.23(e)(2)) and the Gulf of Alaska 'C' and 'D' season pollock fisheries (§ 679.23(d)(2)). The halibut bycatch rate standards for the BSAI yellowfin sole and "bottom pollock" trawl fisheries are each set at 5 kilograms (kg) of halibut per metric ton (mt) of groundfish. The halibut bycatch rate standard for the BSAI and GOA midwater pollock fisheries (1 kg of halibut/mt of groundfish) is higher than the bycatch rates normally experienced by vessels participating in these fisheries. This standard is intended to encourage vessel operators to maintain off-bottom trawl operations and limit further bycatch of halibut in the pollock fishery. A bycatch rate standard of 30 kg halibut/mt of groundfish is established for the BSAI "other trawl" fishery. This standard has remained unchanged since 1992. A bycatch rate standard of 40 kg of halibut/mt of groundfish is established for the GOA "other trawl" fishery, which is unchanged since 1994. The considerations that support these bycatch rate standards for the "other trawl" fisheries are unchanged from previous years and are discussed in the **Federal Register** publications of 1995 bycatch rate standards (60 FR 2905, January 12, 1995, and 60 FR 27425, May 24, 1995). Observer data collected from the 1999 GOA "other trawl" fishery show average third and fourth quarter halibut bycatch rates of 18 and 69 kg of halibut/mt of groundfish, respectively. The first quarter rate from 2000 was 23 kg of halibut/mt of groundfish. Observer data from the 1999 BSAI "other trawl" fishery show third and fourth quarter halibut bycatch rates of 6 and 9 kg of halibut/mt of groundfish. The first

quarter rate from the 2000 BSAI "other trawl" fishery was 8 kg of halibut/mt of groundfish.

Bycatch Rate Standards for Red King Crab

The red king crab bycatch rate standard for the yellowfin sole and "other trawl" fisheries in Zone 1 of the Bering Sea subarea is 2.5 crab/mt of groundfish during the second half of 2000. This standard has remained unchanged since 1992. Through April 8, 2000, the rock sole/flathead sole/other flatfish fishery category had taken 76 percent of its annual red king crab bycatch allowance including the Red King Crab Savings Subarea bycatch limit. The Pacific cod and yellowfin sole fisheries have taken only 33 percent and 12 percent, respectively, of their bycatch allowances. The Regional Administrator anticipates that the non-pelagic trawl gear closure of the red king crab savings area in Zone 1 will continue to result in low red king crab bycatch rates for the remainder of the year and is maintaining the 2.5 red king crab/mt of groundfish bycatch rate standard.

The Regional Administrator has determined that the bycatch rate standards set forth in Table 1 for the 2nd half of 2000 are appropriately based on the information and considerations necessary for such determinations under § 679.21(f). These bycatch rate standards may be revised and published in the **Federal Register** when deemed appropriate by the Regional Administrator, pending his consideration of the information set forth at § 679.21(f)(4).

Classification

This action is taken under 50 CFR 679.21(f) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

Dated: June 21, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–16227 Filed 6–26–00; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 124
Tuesday, June 27, 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.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 134 and 140

Administrative Wage Garnishment.

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: SBA is issuing a proposed rule adopting administrative wage garnishment regulations to implement the Debt Collection Improvement Act of 1996. The rule would allow SBA to garnish the wages of a person indebted to the United States for any non-tax debt without first obtaining a judgment. The debtor generally would be entitled to a hearing before a Judge assigned to SBA's Office of Hearings and Appeals.

DATES: Submit comments on or before August 28, 2000.

ADDRESSES: Send all comments concerning this proposed rule to: Arnold S. Rosenthal, Assistant Administrator, Office of Portfolio Management, Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Submit electronic comments and other data to: Walter.Intlekofer@sba.gov. See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Arnold S. Rosenthal, Assistant Administrator, Office of Portfolio Management, (202) 205–6481.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit comments and data by sending electronic mail (E-mail) to: Walter.Intlekofer@sba.gov. Submit comments as Microsoft Word 97 or as ASCII files avoiding the use of special characters and any form of encryption. Identify all comments and data in electronic form with the title, "Administrative Wage Garnishment Regulations." You may file electronic comments on this proposed rule online at many Federal Depository Libraries.

Public Review of Comments

Whether you comment on paper or electronically, your comments, including name, street address, or other contact information (such as e-mail address, FAX, or phone number), will be available for public review at this address during regular business hours (8 a.m. to 5 p.m.), Monday through Friday, except federal holidays. You may request confidentiality. If you want us to consider withholding your contact information from public review or from FOIA disclosure, you must state this prominently at the beginning of your comment. We will honor requests for confidentiality, to the extent the law allows, on a case-by-case basis. If you are an organization or business, or identify yourself as a representative or official of an organization or business, we will make your entire submission available for public inspection.

Background

SBA is issuing a proposed rule adopting administrative wage garnishment regulations implementing the Debt Collection Improvement Act (DCIA) of 1996. The Department of the Treasury garnishment regulations require agencies to publish regulations for administrative wage garnishment hearings.

Rulemaking History

Department of the Treasury (Treasury) published its proposed rules, with detailed analysis, at 62 FR 62458, Nov. 21, 1997 (Treasury Proposed Rule). After receiving written comments, Treasury published its final rule, discussing comments and changes in the final rules, at 63 FR 25136, May 6, 1998 (Treasury Final Rule). Treasury has since published a technical amendment at 64 FR 22906, April 28, 1999 (Treasury Technical Amendment). The rule, with the technical amendment, is now published in the Code of Federal Regulations as 31 CFR 285.11.

SBA issued a proposed rule amending its debt collection through offset regulations, 13 CFR part 140, to conform to the Debt Collection Procedures Act of 1996 and the DCIA, at 64 FR 3454, Jan 22, 1999 (Proposed Offset Rule). In anticipation of the administrative wage garnishment regulations, the Proposed Offset Rule sets forth general rules, applicable to offset collections and administrative wage garnishments, at subpart A of 13 CFR part 140 and rules pertaining only to offset at subpart B of 13 CFR part 140. The comment period for the Proposed Offset Rule ended February 22, 1999, and the SBA anticipates issuing a final rule (Final Offset Rule) shortly. This proposed rule takes into account SBA's regulations as the Final Offset Rule would amend them; therefore, this proposed rule includes citations that now do not exist as such but will be effected by the Proposed Offset Rule.

Same Organization as Treasury Final Rule

The core of this proposed rule, to be published in the Code of Federal Regulations as 13 CFR 140.11, is identical in subsection, paragraph, and subparagraph organization to 31 CFR 285.11. Thus, for example, section 285.11(f)(11) of the Treasury Final Rule corresponds to section 140.11(f)(11) of this proposed rule.

Conformity in Substance to Treasury Final Rule

Except as stated below, this proposed rule is substantially identical to the Treasury Final Rule.

Variation in Substance From Treasury Final Rule

This proposed rule provides for a hearing by a Judge assigned to the case by SBA's Assistant Administrator for Hearings and Appeals (AA/OHA), rather than a hearing official designated by the Administrator. Additionally, it makes minor editorial changes in accordance with Administration plain-language directives.

Basic Provisions

The rule would permit SBA to garnish the wages of a person indebted to the United States for any non-tax debt without first obtaining a judgment. SBA merely notifies the debtor it intends to garnish his/her wages. Subject to the exercise of appeal rights, SBA then may notify the debtor's employer (any state or local government or private employer, but not the federal government) to begin the garnishment. The OHA hearing, with a written decision by a Judge, will enhance the credibility and fairness of SBA's garnishment appeal procedure and will ensure due process.

Rules and Procedures

Except as stated below, this proposed rule would establish for the SBA the substantive and procedural requirements of the Treasury Final Rule.

Section Analysis

The following is a section-by-section analysis of how this proposed rule would affect SBA's regulations. This proposed rule would:

- Amend Section 134.101 (Definitions) to define "business day," used in § 134.202(c)(ii);
- Amend Section 134.102(i) (Jurisdiction of OHA) to add collection of debts under DCIA to the jurisdiction of SBA's Office of Hearings and Appeals (OHA);
- Amend Section 134.202 (Commencement of cases) to specify the time limit for requesting a hearing on an administrative wage garnishment;
- Amend Section 134.222(a) (Availability of oral hearing) to add administrative wage garnishment to that group of cases in which a party might obtain an oral hearing;
- Amend Section 134.226(b) (Time limits for decision) to add collection of debts under DCIA to that group of cases in which OHA must render a decision within 60 days;
- Amend Section 134.227(a) (Final decisions) to add collection of debts under DCIA to that group of cases in which OHA's decision constitutes a final agency decision;
- Amend Section 140.1 (Coverage) to specify the coverage of subpart A of part 140;
- Amend Section 140.2 (Definitions) to add definitions pertaining to administrative wage garnishment;
- Add Section 140.3, a table showing features of part 140's debt collection methods;
- Add Section 140.10 (Coverage) to specify the coverage of subpart C of part 140; and
- Add Section 140.11 (Administrative wage garnishment) to implement the Treasury Final Rule, with the following modifications:

1. Definitions.

Section 285.11(c) of the Treasury Final Rule contains definitions. Section 140.11(c) contains no definitions, but incorporates by reference § 140.2, which defines terms applicable to debt collections through both offset and administrative wage garnishment. Except as stated below, the definitions pertaining to administrative wage garnishment are substantially identical to those in the Treasury Final Rule.

Business day. Section 285.11(c) of the Treasury Final Rule defines "business day" as "Monday through Friday," then tells the reader to count the last day of the period unless it was a Federal legal holiday. The SBA believes all federal legal holidays, not merely those on the last day of a given period, are properly excluded from the term "business day." Therefore, proposed § 140.2(c) would define "business day" as "Monday through Friday, excluding federal legal holidays."

Certificate of service. Both the Treasury Final Rule, 31 CFR 285.11(c), and SBA's procedural rules, 13 CFR 134.204 (d), define "certificate of service." In the Treasury Final Rule, "Certificate of service" refers only to documentation by the Agency, not by a party or by counsel, of which documents it mailed to the debtor and when it mailed them.

Under SBA's procedural rules, such a certificate of service is inadequate to document service of pleadings: A party serving pleadings must prepare a certificate of service conforming with 13 CFR 134.204(d).

Therefore, proposed § 140.11(d) applies only to a certificate signed by an SBA official and retained as evidence of mailing of a part 140 document, such as a notice of proposed garnishment or a garnishment order. When, for example, a debtor serves a request for hearing under proposed § 140.11(f)(2), the certificate of service must conform to § 134.204(d).

Debt or claim. The Treasury Final Rule defined "debt" or "claim" as "any amount of money, funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by an individual, including debt administered by a third party as an agent for the Federal Government." 31 CFR 285.11(c). The SBA believes this definition raises more questions than it answers: For example, the meaning of "appropriate official," which is defined neither in statute nor in case law. Because many SBA collections arise from loan defaults, proposed § 140.2(g) defines "debt," in accordance with 31 U.S.C. § 3701(b): "*Debt* means money owed to the United States for any reason, including loans made or guaranteed by the United States, fees, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, or forfeitures."

Additionally, the Treasury Final Rule defines "delinquent" and "non-tax" under the definition for "debt or claim." 31 CFR 285.11(c). Proposed §§ 140.2(n) and 140.2(m) would define these key terms separately.

Delinquent or past due. The Treasury Final Rule uses "delinquent," while the offset regulations use "past due." The garnishment statute, 31 U.S.C. § 3720D, refers to neither. Because "past due" is clearer than "delinquent," the SBA adopted "past due." However, the Treasury Final Rule's definition of "delinquent" for purposes of garnishment differs from that of "past due" for purposes of offset. Therefore, the SBA would adopt two definitions of "past due": One, proposed § 140.2(n)(1), would apply to offset only; the other, proposed § 140.2(n)(2), would apply to garnishment only.

Disposable pay. "Disposable pay" is defined differently in 5 U.S.C. § 5514 and in the Treasury Final Rule. The garnishment statute, 31 U.S.C. § 3720D, defines "disposable pay" broadly, as does 5 U.S.C. § 5514; however, the Treasury Final Rule excludes "health insurance premiums." 31 CFR 285.11(c). The analysis did not suggest a rationale. Treasury Final Rule, 63 FR 25136 at 25137; Treasury Proposed Rule, 62 FR 62458 at 62459.

The SBA is reluctant to define "disposable pay" more broadly than in the Treasury Final Rule. Additionally, one could argue that sound public policy favors encouraging debtors to maintain health insurance, which may reduce time lost from work and promote healthy families and businesses. Therefore, and because this definition varies from that used in the offset regulations, the SBA would adopt two definitions: One, proposed § 140.2(i)(1), would apply to offset only; the other, § 140.2(i)(2), would apply to garnishment only.

2. Hearing

Section 285.11(f)(1) allows agencies either to prescribe their own regulations or to adopt § 285.11 without change. Proposed § 140.11(f)(1) states that all procedures set forth in § 140.11, as well as the provisions of part 134, subparts A and B, consistent with § 140.11, will apply to any hearing on an administrative wage garnishment.

Additionally, SBA is adding two sentences to proposed § 140.11(f)(1). These sentences, now part of § 285.11(f)(9), state that a hearing need not be a formal judicial hearing, but that witnesses who testify in oral hearings must do so under oath or affirmation. Because these statements more directly relate to hearings rather than to the record, SBA is placing them in proposed 140.11(f)(1).

Section 285.11(f)(2) allows the debtor to request a hearing concerning the existence or amount of the debt or the terms of the repayment schedule unless the repayment schedule is based on a written agreement under paragraph (e)(2)(ii). Proposed § 140.11(f)(2) also contains this provision. In addition, it requires the debtor to specifically state in the request for hearing that the debtor deserves a hearing because of questions concerning the existence or amount of the debt or the terms of the repayment schedule. The debtor also must file the

request for hearing with OHA, serving a copy on the office initiating the garnishment action. Subsequent references to the entity to which a debtor directs a request for hearing (specifically, (f)(4), (f)(5), and (f)(10)) will substitute "OHA" for the Treasury Final Rule's "agency."

Section 285.11(f)(3)(i) states the agency will determine whether an oral hearing is required. To ensure a fair process and decision, proposed § 140.11(f)(3)(i) requires the OHA Judge appointed to the case, rather than SBA, to determine whether an oral hearing is justified and to conduct any hearing. Subsequent paragraphs (specifically, (f)(4), (f)(5), (f)(6), (f)(7), (f)(9), (f)(10), (f)(11), (f)(12), and (n)(1)) substitute "Judge" for the Treasury Final Rule's "hearing official."

Similarly, section 285.11(f)(3)(ii) requires the agency to set the time and location of any oral hearing. OHA's Judges have authority to "take all appropriate action to ensure the efficient, prompt, and fair determination of a case." 13 CFR 134.218(b). Therefore, proposed § 140.11(f)(3)(ii) places this determination in the hands of the OHA Judge assigned to the case.

If an oral hearing is not required, § 285.11(f)(3)(iii) requires a "paper hearing," defined as a resolution based on the written record. Proposed § 140.11(f)(3)(iii) also requires a resolution based on the written record, but refers to it as a "written hearing."

Additionally, section 285.11(f)(3)(iii) requires the agency to set the deadline for the submission of evidence. Proposed § 140.11(f)(7)(iii) states the Judge will notify the debtor of this deadline, and proposed § 140.11(f)(3)(iii) omits the requirement to set the deadline.

Section 285.11(f)(4) provides that an agency will conduct a hearing before issuing a withholding order if the agency receives the debtor's request for a hearing within 15 business days after the agency mails the notice described in § 285.11(e)(1) of this section. This deadline is inconsistent with proposed § 134.202(b), which states that a pre-garnishment hearing will be given if the debtor files a petition within 15 business days after SBA mails the notification letter to the debtor. Filing is effective, not only on receipt of a pleading by personal delivery, express mail, or commercial delivery service, but also on the postmark date of first-class mail or the transmission date of a facsimile. 13 CFR 134.204(e). Therefore, proposed § 140.11(f)(4) reads, "if you file your written request," rather than, "if [your written request] is received by [SBA]."

Section 285.11(f)(5) provides that an agency need not delay issuing a withholding order unless the agency receives the debtor's request for a hearing within 15 business days after the agency mails the notice described in § 285.11(e)(1). Like that in § 285.11(f)(4), above, this deadline is inconsistent with proposed § 134.202(b). Therefore, proposed § 140.11(f)(5) reads, "if you file your written request," rather than, "if [your written request] is received by [SBA]."

Section 185.11(f)(5) states the agency will determine whether a request for hearing was untimely for reasons beyond the debtor's control or whether other circumstances justify delaying or canceling the withholding order. Proposed 140.11(f)(5) authorizes the assigned Judge to make this decision.

Section 285.11(f)(6) authorizes the head of the agency to designate any qualified individual as a hearing official, including an Administrative Law Judge (ALJ). Proposed § 140.11(f)(6) states that a Judge assigned to OHA will conduct the hearing. The Assistant Administrator for Hearings and Appeals (AA/OHA) may assign any OHA case not subject to the Administrative Procedure Act to an ALJ or Administrative Judge or, if an attorney, may decide it personally, 13 CFR 134.218(a). Therefore, proposed § 140.11(f)(6) is substantially identical to § 285.11(f)(6), except that the AA/OHA, rather than the SBA Administrator, actually assigns the Judge to each case.

Paragraph (f)(8) describes the burden of proof on the respective parties to a hearing. Consistent with the Treasury Final Rule, proposed § 140.11(f)(8) requires the debtor to show, by a preponderance of the evidence, that no debt exists or that the amount of the debt is incorrect. Proposed 140.11(f)(8) also briefly defines "preponderance of the evidence" in plain English.

Section 285.11(f)(9), first sentence, requires the hearing official to maintain a summary record. The term "summary" is not defined; therefore, SBA is omitting it from proposed § 140.11(f)(9). OHA's regulations require a verbatim record for oral hearings, and any party can purchase a transcript. 13 CFR 134.222(e). Thus, any record the Judge keeps will not be verbatim, but will consist of the entire written record on appeal.

Additionally, § 285.11(f)(9), in its second and third sentences, states that the hearing need not be a formal judicial hearing, but that witnesses who testify in oral hearings must do so under oath or affirmation. These statements more directly relate to hearings rather than to the record. Therefore, SBA is placing those sentences in proposed § 140.11(f)(1).

Section 285.11(f)(10) provides that the hearing official must issue a written decision within 60 days after receipt of a hearing request. This deadline is inconsistent with proposed § 134.226(b), which provides that a decision pertaining to debt collection must be made within 60 days after a petition is filed. Filing is effective, not only on receipt of a pleading by personal delivery, express mail, or commercial delivery service, but also on the postmark date of first-class mail or the transmission date of a facsimile. 13 CFR 134.204(e). Therefore, proposed § 140.11(f)(10)) reads, "after you filed your request for a hearing," rather than, "after receipt of [your written request]." Similarly, proposed § 285.11(f)(10)(ii) requires SBA to suspend previously issued withholding orders beginning on the 61st day after filing, rather than receipt, of the hearing request.

3. Wage Garnishment Order.

Section 285.11(g)(1) requires the agency to send a garnishment order within specified time limits unless it receives "information that the agency believes justifies a delay or cancellation of the withholding order." This wording appears to render the Judge's decision irrelevant or, at best, advisory. Therefore, proposed § 140.11(g)(1) requires the SBA to send a garnishment order within specified time limits unless it receives "an adverse decision from the Judge or other justification to delay or cancel the withholding order."

In the Treasury Final Rule, § 285.11(g)(2) provided in part that the withholding order sent to an employer must be on the garnishing agency's letterhead. The Treasury Technical Amendment deleted the words "on the agency's letterhead" from § 285.11(g)(2). This amendment "allows * * * agencies to use [Standard Form (SF) 329 (11–98).] prescribed by [Treasury] for the issuance of an administrative wage garnishment order[,] without preparing the form on agency letterhead." Treasury Technical Amendment, 64 FR 22906, 22908 (1999). Because the form will clearly identify SBA as the garnishing agency and requiring SBA letterhead would interfere with use of SF 329, SBA is adopting this amendment.

Section 285.11(g)(3), second sentence, allows the agency to retain an electronic copy of the certificate of service. Because the SBA chooses not to exercise this option, the second sentence does not appear in proposed § 140.11(g)(3).

4. Amounts Withheld.

Section 285.11(i)(2)(i)(B) clarifies that the amount of garnishment is limited by the Consumer Credit Protection Act (CCPA). The CCPA, § 303(a)(2), codified at 15 U.S.C. 1673(a)(2) (maximum allowable garnishment), sets an additional limit on the amount of disposable pay that may be collected from a debtor's wages: The difference between 30 times the minimum hourly wage and the debtor's weekly disposable pay. This subparagraph did not appear in the Treasury Proposed Rule; Treasury added it to the final rule based upon the recommendations of two commenters. Treasury Final Rule, 63 FR 25136, 25138–39 (1998). However, the terms "hourly" and "weekly" do not appear in § 285.11(i)(2)(i)(B). Because both the comments on the final rule, 63 FR at 25139, and SF 329C (Wage Garnishment Worksheet), block 9, clearly indicate those terms are necessary to understand the limit set by CCPA, the SBA is inserting them in proposed § 285.11(i)(2)(i)(B).

Section 285.11(i)(3), introductory clause, purports to discuss "withholding orders with priority." However, the subparagraphs of § 285.11(i)(3) describe how to determine whether another withholding order has priority. Therefore, proposed § 140.11(i)(3) replaces "withholding orders with priority" with "other withholding orders."

Compliance With the Regulatory Flexibility Act (5 U.S.C. 601–12); the Paperwork Reduction Act (44 U.S.C. ch. 35); and Executive Orders 12866, 12988, and 13132

1. Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. §§ 601–12), has reviewed this regulation and certifies that this rule, including the certification contained in proposed section 140.11(h), would 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. 601–12.

This proposed rule applies only to individuals, as well as employers of such individuals, with outstanding debts to the United States. Though a substantial number of small entities will be subject to this proposed regulation and to its certification requirement, the requirements will not have a significant economic impact on these entities. Though a delinquent debtor's employer must certify certain information about the debtor, including the debtor's employment status and earnings, the employer's payroll records already contain this information. Therefore, an employer will not expend significant time or expense completing the certification form. Even if an employer received withholding orders on several employees during the year, the cost imposed on the employer to complete the certifications would not be significant. Employers need not vary normal pay cycles to comply with withholding orders issued under this proposed rule.

2. Paperwork Reduction Act of 1995

For purposes of the Paperwork Reduction Act (44 U.S.C. ch. 35), we certify this proposed rule would impose no new reporting or record-keeping requirements on employers. As noted at 1, above, though an employer of a delinquent debtor must certify certain information about the debtor, the employer's payroll records already contain this information; and, even if an employer received withholding orders on several employees, the burden of completing the certifications would not be significant.

3. Executive Order 12866

a. Significance of This Regulation

We have drafted and reviewed this regulation in accordance with Executive Order 12866, section 1(b), Principles of Regulation. This regulation falls within a category of regulatory actions that the Office of Management and Budget (OMB) does not constitute as "significant" within the meaning of section 3(f) of Executive Order 12866. Accordingly, OMB did not require review of this regulation.

b. Clarity of This Regulation

Executive Order 12866 and the President's memorandum of June 1, 1998, require us to write all rules in plain language. Other "Plain Language" directives include Writing User-Friendly Documents (visited March 22, 2000) <*http://www.blm.gov/nhp/NPR/pe_toc.html*>; and the Federal Register Document Drafting Handbook, October 1998 Revision (visited March 22, 2000) <*http://www.nara.gov/fedreg/ddhhome.html#top*>. Following these directives, we have reworded many provisions to help you understand them.

4. Executive Order 12988

For purposes of Executive Order 12988, we certify we drafted this rule, to the extent practicable, in accordance with the standards set forth in Section 3 of that Order.

5. Executive Order 13132

For purposes of Executive Order 13132, we determine this proposed rule does not have federalism implications to justify preparing a Federalism Assessment.

List of Subjects

13 CFR Part 134

Administrative practice and procedure, Claims, Equal access to justice, Lawyers, Organization and functions (Government agencies).

13 CFR Part 140

Administrative practice and procedure, Claims, Debts, Hearing and appeal procedures, Salaries, Wages.

Accordingly, under the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA proposes to amend 13 CFR parts 134 and 140 as follows:

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

1. The authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), and 637(a).

2. Amend § 134.101 by adding a new definition for "Business day" in alphabetical order to read as follows:

§ 134.101 Definitions.

* * * * *

Business day means Monday through Friday, excluding federal legal holidays.

* * * * *

3. Revise § 134.102(i) to read as follows:

§ 134.102 Jurisdiction of OHA.

* * * * *

(i) Collection of debts owed to SBA and the United States under the Debt Collection Act of 1982, the Debt Collection Improvement Act of 1996, and part 140 of this chapter;

* * * * *

4. Amend § 134.202 as follows:

a. Redesignate paragraphs (c) and (d) as paragraphs (d) and (e), respectively.

b. Add a new paragraph (c) to read as follows:

§ 134.202 Commencement of cases.

* * * * *

(c) In proceedings for debt collection by administrative wage garnishment under part 140, subpart B, of this chapter:

(1) At any time after SBA mails to you, as the debtor, the notification letter described in § 140.11(e)(1);

(2) But no later than 15 business days after SBA mails the notification letter to

you, if you desire a hearing before SBA issues the withholding order to your employer;

* * * * *

5. Amend § 134.222(a) by adding paragraph (a)(3) to read as follows:

§ 134.222 Oral hearing.

* * * * *

(a) * * *

(3) In administrative wage garnishment proceedings under the Debt Collection Improvement Act of 1996 and part 140, subpart C, of this chapter, you make a timely request under § 140.11(f)(3)(i) of this chapter, and the Judge finds a genuine dispute as to a material fact that cannot be resolved solely by reviewing documents.

* * * * *

6. Revise § 134.226(b) to read as follows:

§ 134.226 The decision.

* * * * *

(b) *Time limits.* Decisions pertaining to the collection of debts owed to SBA and the United States under the Debt Collection Act of 1982, the Debt Collection Improvement Act of 1996, and part 140 of this chapter must be made within 60 days after a petition is filed.

* * * * *

7. Revise § 134.227(a) to read as follows:

§ 134.227 Finality of decisions.

(a) *Final decisions.* A decision on the merits will be a final decision, when issued, in proceedings concerning the collection of debts owed to SBA and the United States, under the Debt Collection Act of 1982, the Debt Collection Improvement Act of 1996, and part 140 of this chapter.

* * * * *

PART 140—DEBT COLLECTION

8. Revise part 140 to read as follows:

PART 140—DEBT COLLECTION

Subpart A—General Rules

Sec.

Subpart B—Debt Collection Through Offset [Reserved]

Subpart C—Debt Collection Through Administrative Wage Garnishment

Authority: 31 U.S.C. 3711, Collection and compromise; 31 U.S.C. 3720A, Reduction of tax refund by amount of debt; 5 U.S.C. 5514, Installment deduction for indebtedness to the United States; 31 U.S.C. 3716, Administrative offset; 15 U.S.C. 634(b)(6), Small Business Act; 31 U.S.C. 3720, Collection of payments; 31 U.S.C. 3720D, Garnishment.

Subpart A—General Rules

§ 140.1 What does this subpart cover?

This subpart establishes general rules for subparts B and C of this part.

§ 140.2 Definitions.

Unless otherwise noted, the following definitions apply to both subpart B and subpart C of this part.

(a) *Administrative offset.* To satisfy a debt, we may withhold money we owe you or another federal agency owes you. This procedure is an *administrative offset* and is authorized by 31 U.S.C. 3716.

(b) *Agency. Agency* includes a department, agency, court, or court administrative office, in the executive, judicial, or legislative branch of the federal government, including government corporations. For purposes of this section, agency means either the agency administering the program giving rise to the debt or the agency attempting to recover the debt.

(c) *Business day. Business day* means Monday through Friday, excluding federal legal holidays. To count business days after an event, count every day from the day after the event through the last day, but exclude Saturdays, Sundays, and federal legal holidays.

(d) *Certificate of service.* For purposes of this part only, *certificate of service* means a certificate signed by an agency official showing the type of document being sent, the mailing date, and to whom it was sent. When preparing a certificate of service for any other purpose, see § 134.204(d) of this chapter.

(e) *Creditor agency. Creditor agency* means any agency owed a debt that seeks to collect that debt through administrative offset.

(f) *Day. Day* means calendar day. To count days after an event, count every day from the day after the event through the last day, unless the last day is a Saturday, a Sunday, or a federal legal holiday; if so, the next working day will be the last day.

(g) *Debt. Debt* means money owed to the United States for any reason, including loans made or guaranteed by the United States, fees, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, or forfeitures. A debtor is someone who owes money to the United States from any source.

(h) *Debtor/You/Your. Debtor/You/Your* means a person, organization, or entity, other than a federal, state, or local agency, that owes a debt.

(i) *Disposable pay.* (1) As used in subpart B of this part (offset), *disposable pay* means what remains of your pay after any amounts required by law are deducted.

(2) As used in subpart C of this part (garnishment), *disposable pay* means what remains of your pay (including salary, bonuses, commissions, and vacation pay) after health insurance premiums and any amounts required by law are deducted. "Amounts required by law" include social security deductions and withholding taxes, but do not include amounts withheld because of a court order.

(j) *Employer. Employer* means a person or entity that employs the services of others and pays their wages or salaries. The term *employer* includes state and local governments, but does not include a federal agency.

(k) *Garnishment. Garnishment* means the process of withholding amounts from your disposable pay and then paying those amounts to a creditor to satisfy a withholding order.

(l) *Legally enforceable.* As used in subpart B of this part (offset), a debt is *legally enforceable* if, on the date of offset, SBA's claim would not be barred in even one forum, including a state or federal court or administrative agency. Non-judgment debts are enforceable for ten years; judgment debts are enforceable beyond ten years.

(m) *Non-tax. Non-tax* means not related to an obligation under the Internal Revenue Code of 1986, as amended.

(n) *Past due.* (1) As used in subpart B of this part (offset), a debt is *past due* if it has been reduced to judgment, accelerated, or due for at least 90 days.

(2) As used in subpart C of this part (garnishment), a *past-due* debt is one you have not paid by the date specified in our initial written demand for payment or applicable agreement, unless you have made other satisfactory payment arrangements.

(o) *Salary offset.* If you are an active or retired federal employee (a civilian employee as defined by 5 U.S.C. 2105, an employee of the U.S. Postal Service or Postal Rate Commission, or a member of the Uniformed Services or Reserve of the Uniformed Services), we may

deduct payments owed to the United States from your paycheck. This procedure is a *salary offset* and is authorized by 5 U.S.C. 5514, 31 U.S.C. 3716, and subpart B of this part.

(1) Any amount deducted from your salary in any one pay period will not exceed 15 percent of your disposable pay, unless you agree in writing to a greater percentage.

(2) A federal agency also may collect against travel advances, training expenses, disallowed payments, retirement benefits, or any other amount due you, including lump sum payments. These collection efforts are not subject to the 15-percent limitation in paragraph (o)(1) of this section.

(p) *Tax refund offset.* We may request that the Department of the Treasury (Treasury) reduce your tax refund by the amount of the debt, as authorized by 31 U.S.C. 3720A. A federal agency, at the same time, may take additional action against you to collect the debt. Even if SBA refers your debt to other agencies (within six months of the initial notice), it must review your debt only once under subpart B and its authorizing statutes.

(q) *Treasury Offset Program.* The Treasury Offset Program, operated through the Financial Management Service, is a centralized process that provides for the offset of federal payments, including federal tax refunds, federal salary payments, retirement payments, and other types of payments, to collect debts you owe the federal government.

(r) *We/Our/Us. We/Our/Us* refers to the SBA.

(s) *Withholding order/wage garnishment order/garnishment order. Withholding order/wage garnishment order/garnishment order* refers to an order issued by an agency or a judicial or administrative body for withholding or garnishing pay.

§ 140.3 What debt collection methods does part 140 provide?.

This table shows some features of the debt collection methods discussed in this part.

SBA may use	To collect from	Under provisions of	Subject to review by
(a) Salary offset	Paychecks (including travel advances, training expenses, disallowed payments, retirement benefits, and lump sum payments) of active or retired federal employees or members, including those U.S. Postal Service, Postal Rate Commission, and active or reserve uniformed services.	Part 140, subparts A and B, especially § 140.2(o), § 140.6(a)(4) & (b)–(d); part 134, subparts A and B).	Administrative Law Judge, Office of Hearings and Appeals (OHA).
(b) Administrative offset	Money any agency owes to the debtor.	Part 140, subparts A and B, especially § 140.2(a), § 140.6(a)(5) & (b)–(d).	SBA official identified in notice.
(c) Administrative wage garnishment.	Disposable pay from employer (including state or local government, but not federal government).	Part 140, subparts A and C, especially § 140.2(i), (k); § 140.11; part 134, subparts A and B.	Judge, Office of Hearings and Appeals (OHA).

Subpart B—Debt Collection Through Offset [Reserved]

§ 140.5 What does this subpart cover? [Reserved]

§ 140.6 How does SBA verify whether I owe a debt, or collect a debt from me through offset? [Reserved]

Subpart C—Debt Collection Through Administrative Wage Garnishment

§ 140.10 What does this subpart cover?

This subpart establishes procedures we may use when we undertake an administrative wage garnishment. An administrative wage garnishment allows us to collect money for past-due non-tax debt owed to the United States. You cannot use our failure to follow these regulations to defend against a suit to collect a debt.

§ 140.11 What type of debt is subject to administrative wage garnishment, and how can the SBA get an administrative wage garnishment of my pay?

(a) We may collect money from your disposable pay by an administrative wage garnishment. This money is used to satisfy past-due non-tax debt you owe the United States.

(b) *Scope.* (1) This section applies to past-due non-tax debt owed to the United States arising from an SBA program or being collected by us.

(2) This section applies despite any State law.

(3) Nothing in this section prevents us from settling for less than the full amount of a debt or suspending or stopping a debt collection action authorized by law. See, for example, the Federal Claims Collection Standards (FCCS), 4 CFR parts 101–105; see also part 140, subpart A, of this chapter.

(4) Our receipt of payments under this section does not prevent us from pursuing other debt collection remedies. We may do so separately or together with administrative wage garnishment.

(5) This section does not apply to the collection of past-due non-tax debt owed to the United States from the wages of federal employees. Federal pay is subject to the federal salary offset procedures set forth in 5 U.S.C. 5514 and other laws, including subpart B of this part.

(6) Nothing in this section requires us to duplicate notices or hold administrative proceedings required by contract, other laws, or regulations.

(c) *Definitions.* Unless otherwise stated, the definitions in § 140.2 apply to terms used in this section.

(d) *When may the SBA initiate administrative wage garnishment proceedings?* When we determine you owe a past-due non-tax debt, we may initiate administrative wage garnishment proceedings to withhold a portion of your wages to satisfy the debt.

(e) *What notice must the SBA give the debtor before beginning an administrative wage garnishment?* (1) We must send a written notice by first-class mail to your last known address at least 30 days before we begin garnishment proceedings. The notice must inform you of:

(i) The type and amount of the debt;

(ii) SBA's plans to collect the debt by making deductions from your pay until the debt and all interest, penalties, and administrative costs are paid in full; and

(iii) An explanation of your rights, including those in paragraph (e)(2) of

this section, and a statement about the amount of time you have to take action before wage garnishment begins.

(2) We must give you the opportunity to:

(i) Inspect and copy our records related to the debt;

(ii) Enter into a written repayment agreement with us under terms agreeable to us; and

(iii) Have a hearing as described in paragraph (f) of this section. The hearing may address the existence of the debt, the amount of the debt, or the terms of the proposed repayment schedule under the withholding order. You are not entitled to a hearing about the terms of a written repayment schedule, as described in paragraph (e)(2)(ii) of this section.

(3) We will retain a copy of a certificate of service showing when we mailed the notice of wage garnishment proceedings.

(f) *Hearing.* (1) *What type of hearing must SBA give me?* The procedures in this section, as well as procedures in part 134, subparts A and B of this chapter (Rules of Procedure Governing Cases Before the Office of Hearings and Appeals) that are consistent with this section, apply to your SBA hearing. A hearing need not be a formal judicial hearing. However, witnesses who testify in oral hearings must do so under oath or affirmation.

(2) *Request for hearing.* We must provide you with a hearing if you request one. Your request for a hearing must be in writing. You must send the original request to SBA's Office of Hearings and Appeals (OHA) and a copy to the office initiating the garnishment action. Your written request must state you deserve a hearing because of questions about whether the debt exists, the amount of the debt, or the repayment terms. You must specifically describe the basis for each of these questions. You cannot raise questions about a written debt repayment agreement under paragraph (e)(2)(ii) of this section.

(3) *Type of hearing.* (i) We must provide you with an oral hearing when the Judge appointed to conduct the hearing determines that he or she cannot resolve the issues by reviewing documents.

(ii) If the Judge determines that you should have an oral hearing, he or she will set the time and location. You may choose whether the oral hearing is conducted in person or by telephone. You must pay all travel expenses resulting from an in-person hearing. We will pay telephone charges for telephone hearings.

(iii) When an oral hearing is not required, the Judge must conduct a "written hearing," after which the Judge decides the issues based upon a review of documents.

(4) *Effect of a timely request for a hearing.* We will not issue a withholding order if you file your written request for a hearing on or before the 15th business day after we mailed the notice informing you of the wage garnishment. We will not issue the withholding order until a Judge conducts a hearing and makes a decision, as required in paragraphs (f)(10) and (f)(11) of this section.

(5) *Effect of an untimely request for a hearing.* If you file your written request for a hearing more than 15 business days after we mailed your garnishment notice, the Judge still will give you a hearing. However, we will not delay issuing the withholding order to your employer. We will delay issuing a withholding order only if the Judge decides your request was untimely for reasons beyond your control or other information justifies delaying or canceling the withholding order.

(6) *Hearing official.* An OHA Judge will conduct the hearing.

(7) *Procedure.* After you request a hearing, the Judge must notify you of the following:

(i) The date and time of any telephone oral hearing;

(ii) The date, time, and location of any in-person oral hearing; and

(iii) The deadline to send evidence for a written hearing.

(8) *Burden of proof.* (i) We have the burden of first showing that you probably have a past-due non-tax debt and the amount of the debt.

(ii) If we show the probable existence and amount of the debt, you must prove by a preponderance of the evidence (meaning that it is more likely than not) that no debt exists or that the debt amount is incorrect. In addition, you may present evidence proving by a preponderance of the evidence that the terms of the repayment schedule are illegal or would cause you a financial hardship; or that collection of the debt is illegal.

(9) *Record.* The Judge must maintain a record of any hearing provided under this section.

(10) *Date of decision.* The Judge must issue a written opinion stating his or her decision as soon as possible but no later than sixty (60) days after you filed your request for a hearing. If the Judge does not do so—

(i) We cannot issue a withholding order until the Judge holds a hearing and makes a decision; or

(ii) We must suspend any previously issued withholding orders beginning on the 61st day after you filed your hearing request. This suspension must continue until the Judge holds a hearing and makes a decision.

(11) *Content of the decision.* The Judge's written decision must include:

(i) A summary of the facts presented;

(ii) The findings, analysis, and conclusions; and

(iii) The terms of any repayment schedule.

(12) *Final SBA action.* The Judge's decision will be our final action for the purposes of judicial review under the Administrative Procedure Act, 5 U.S.C. 701–706.

(13) *Failure to appear.* If you fail to appear at a hearing without a good reason, we will treat you as if you did not file a timely request for a hearing, as described in paragraph (f)(5) of this section.

(g) *Wage garnishment order.* (1) Unless we receive an adverse decision from the Judge or other justification to delay or cancel the withholding order, we will send a withholding order to your employer by first-class mail. If you made a timely request for a hearing, we would mail the withholding order within 30 days after the final SBA action, as stated in paragraph (f)(12) of this section. If you did not make a timely request for a hearing, we would mail the withholding order within 30 days after the time in paragraphs (f)(4) and (f)(5) of this section had ended (that is, 15 business days after we mailed you the notice described in paragraph (e)(1) of this section).

(2) The withholding order we send to your employer under paragraph (g)(1) of this section must be in a form determined by the Secretary of the Treasury. It must be signed by the SBA's Administrator or someone he or she designates. The withholding order must contain the information your employer needs to comply with it. Such information includes your name, address, and social security number; instructions for withholding pay; and the address for payments.

(3) We will retain a copy of a certificate of service showing when we mailed the withholding order.

(h) *Certification by employer.* Along with the withholding order, we will send your employer a certification, in a form determined by the Secretary of the Treasury. Your employer must complete and return this certification to us within the time stated in the certification instructions. The certification will include information about your employment status and the amount of

your disposable pay available for withholding.

(i) *Amounts withheld.* (1) Your employer must deduct from your disposable pay during each pay period the garnishment amount described in paragraph (i)(2) of this section.

(2) Except as shown in paragraphs (i)(3) and (i)(4) of this section, the amount of garnishment will be the lesser of:

(i) The amount stated on the garnishment order, not to exceed 15% of your disposable pay; or

(ii) The amount in 15 U.S.C. 1673(a)(2) (Restriction on Garnishment). The amount in 15 U.S.C. 1673(a)(2) is the amount by which your weekly disposable pay is greater than thirty times the minimum hourly wage. See 29 CFR 870.10.

(3) If your pay is subject to other withholding orders, the following applies:

(i) Unless otherwise provided by federal law, withholding orders issued by us must be paid in the amounts in paragraph (i)(2) of this section, and will have priority over other withholding orders issued later. However, withholding orders for family support have priority over withholding orders issued by us.

(ii) If amounts are being withheld from your pay because of a withholding order issued before we issued our withholding order, or because of a withholding order for family support issued at any time, the earlier or family support order will have priority, and the amount withheld because of the SBA withholding order will be the lesser of:

(A) The amount calculated under paragraph (i)(2) of this section, or

(B) An amount equal to 25% of your disposable pay minus the amount withheld under the withholding order with priority.

(iii) If you owe more than one debt to an agency, we may issue multiple withholding orders if the amount withheld from your pay does not exceed the amount in paragraph (i)(2) of this section.

(4) You may give written consent for us to withhold from your pay an amount greater than that in paragraphs (i)(2) and (i)(3) of this section.

(5) Your employer must pay to us as soon as possible all amounts withheld under a withholding order.

(6) Your employer is not required to change normal pay cycles to provide for the withholding order.

(7) No assignment or allotment of your earnings you have requested may interfere with or prohibit our withholding order. The one exception to this rule is that you may assign or allot earnings because of a family support judgment or order.

(8) The withholding order will state a reasonable time period within which your employer must begin wage withholding. Your employer must withhold the designated amount from your wages each pay period until we notify your employer to stop wage withholding.

(j) *Exclusions from garnishment.* We may not garnish your wages if we know you have been involuntarily unemployed at any time during the last 12 months. You are responsible for informing us of the facts and circumstances of your unemployment.

(k) *Financial hardship.* (1) You may request us to review the amount being withheld from your wages. You must base this request on a material change in circumstances that causes you financial hardship, such as disability, divorce, or catastrophic illness.

(2) If you request review under paragraph (k)(1) of this section, you must specifically state why the current amount of garnishment causes you financial hardship and you must send documentation supporting your claim.

(3) If we find financial hardship, we will decide how much and how long to reduce the amount withheld from your pay. We will notify your employer of any reductions.

(l) *Ending garnishment.* (1) After we have recovered the amount you owe, including interest, penalties, and administrative costs consistent with the FCCS, we will send a notice to your employer to stop wage withholding.

(2) At least annually, we will review your account to ensure that withholding has stopped if you have paid your debt in full.

(m) *Prohibited actions by the employer.* No employer may fire, refuse to employ, or take disciplinary action against you because of a withholding order.

(n) *Refunds.* (1) We must promptly refund any amount collected by administrative wage garnishment if either—

(i) A Judge, after a hearing held under paragraph (f)(3) of this section, determines you do not owe a debt to the United States; or

(ii) We determine that your employer continued withholding wages after you had paid your debt in full.

(2) Refunds of amounts collected will not earn interest unless required by federal law or contract.

(o) *Right of action.* We may sue your employer if your employer fails to comply with the order to withhold from your wages. However, we may not file a suit until your collection action has ended unless the expiration of a statute of limitations period requires action. Your collection action ends when we stop the collection action as required by the FCCS or other applicable standards. Your collection action also ends if we do not receive any garnishment payments from your employer for one (1) year.

Dated: June 7, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–15923 Filed 6–26–00; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–146–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 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 737–100, –200, –300, –400, and –500 series airplanes. This proposal would require inspection of wire bundles in two junction boxes in the main wheel well to detect chafing or damage, and follow-on actions. This action is necessary to prevent wire damage, which could result in arcing and consequent fire in the main wheel well or passenger cabin, or inability to stop the flow of fuel to an engine or to the auxiliary power unit in the event of a fire. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–146–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–146–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: Stephen Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; 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–146–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–146–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that damaged electrical wiring has been found in a junction box formed by electrical disconnect brackets on the right side of the main wheel well on certain Boeing Model 737 series airplanes. Several airplane systems—including the autopilot, the fuel shutoff valve for the right engine, and the fuel shutoff valve for the auxiliary power unit (APU)—failed as a result of the damaged wiring. The damaged wiring has been attributed to wire bundles chafing against the inside surface of the cover of the junction box. A similar junction box is located on the left side of the main wheel well. Damaged wiring in these junction boxes, if not corrected, could result in arcing and consequent fire in the main wheel well or passenger cabin, or inability to stop the flow of fuel to an engine or to the APU in the event of a fire.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Letter 737–SL–24–111, dated February 27, 1996, which describes procedures for a one-time inspection to detect chafing or damage of wire bundles in two junction boxes in the main wheel well. The subject junction boxes are located on the left and right sides of the main wheel well, between body stations 716 and 727 at water line 202, where the wire bundles pass through the pressure seals to connectors on the disconnect brackets. The service letter also describes procedures for protecting the wiring from future damage by tying or supporting the wire bundles to prevent them from chafing against the cover plate of the junction box during airplane operations, or wrapping the wire bundles in Teflon tape or Teflon sleeving and lacing tape. The service letter references Boeing Standard Wiring Practices Manual D6–54446, Subjects 20–10–13 and 20–00–11, as the appropriate sources of repair instructions if any damaged wiring is found. Accomplishment of the actions specified in the service letter 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 service letter described previously, except as discussed below.

Difference Between Service Letter and This Proposed AD

Operators should note that, while the service letter does not specify the type of inspection of the wire bundles to detect chafing, this proposed AD would require a detailed visual inspection to detect chafing of the wire bundles. A note has been included in this proposed rule to define that inspection.

Operators also should note that this proposed AD would require the inspection be accomplished within 12 months after the effective date of the AD. The service letter does not specify a compliance time for the described actions. In developing an appropriate compliance time for this proposed AD, the FAA considered the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the actions (approximately 4 hours). In light of all of these factors, the FAA finds a 12-month compliance time for initiating the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 2,462 airplanes of the affected design in the worldwide fleet. The FAA estimates that 971 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The cost of required parts would be negligible. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $233,040, or $240 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 2000–NM–146–AD.

Applicability: Model 737–100, –200, –300, –400, and –500 series airplanes; line numbers 1 through 2707 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 chafing of wire bundles in two junction boxes in the main wheel well, which could result in arcing and consequent fire in the main wheel well or passenger cabin, or inability to stop the flow of fuel to an engine or to the auxiliary power unit in the event of fire, accomplish the following:

Inspection

(a) Within 12 months after the effective date of this AD, perform a detailed visual inspection of the wire bundles in the junction boxes formed by electrical disconnect brackets on the left and right sides of the main wheel wells to detect damage or chafing, as specified in Boeing Service Letter 737–SL–24–111, dated February 27, 1996.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: 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 no chafing is detected, prior to further flight, protect the wire bundles from chafing against the cover plate of the junction box, in accordance with Method 1, Method 2, or Method 3, as specified in the service letter.

(2) If any chafing is detected, prior to further flight, repair the wiring in accordance with the service letter, and protect the wire bundles from chafing against the cover plate of the junction box, in accordance with Method 1, Method 2, or Method 3, as specified in the service letter.

Note 3: Boeing Service Letter 737–SL–24–111 references Boeing Standard Wiring Practices Manual D6–54446, Subjects 20–10–13 and 20–00–11, as the appropriate sources of repair instructions if any damaged wiring is found.

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 4: 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 June 21, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–16237 Filed 6–26–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–122–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120, EMB–120ER, and EMB–120RT 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, EMB–120ER, and EMB–120RT series airplanes. This proposal would require removal of a certain fastener, if applicable, and sealing of the corresponding fastener hole. This action is necessary to prevent contact between one of the bolts that attaches the direct current (DC) relay box on the left-hand side of the airplane and one of the power terminals of electrical emergency contactor 2, which could result in a short circuit in the DC relay box, and consequent partial loss of the electrical system, and degraded operation of airplane systems. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 27, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–122–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. 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-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–122–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 and Systems 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–122-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–122–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, EMB–120ER, and EMB–120RT series airplanes. The DAC advises that one of the bolts that attaches the direct current (DC) relay box on the left-hand side of the airplane (hereinafter referred to as the "LH DC relay box") is located close enough to one of the power terminals of electrical emergency contactor 2 (K0519) that contact between the bolt and the contactor may occur. This condition, if not corrected, could result in a short circuit in the LH DC relay box, and consequent partial loss of the electrical system and degraded operation of airplane systems.

Explanation of Relevant Service Information

EMBRAER has issued Alert Service Bulletin 120–24–A057, dated November 14, 1996, which describes procedures for removal of a certain bolt and washer on the LH DC relay box in the vicinity of electrical emergency contactor 2 (K0519), if applicable, and sealing of the corresponding fastener hole. If no bolt and washer is installed, the alert service bulletin describes procedures for sealing of the corresponding fastener hole only. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition. The DAC classified this alert service bulletin as mandatory and issued Brazilian airworthiness directive 96–12–02, dated December 13, 1996, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

These airplane models are manufactured in Brazil 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 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 alert 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 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $14,400, or $60 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have 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–122–AD.

Applicability: Model EMB–120, EMB–120ER, and EMB–120RT series airplanes; serial numbers 120004 and 120006 through 120321 inclusive; certificated in any category; on which EMBRAER Service Bulletin 120–24–0051, dated March 1, 1994, Revision 1, dated May 5, 1994, Revision 2, dated May 31, 1994, Revision 3, dated November 3, 1994, or Revision 4, dated March 8, 1995, or the production equivalent, has been accomplished.

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 contact between one of the bolts that attaches the direct current (DC) relay box on the left-hand (LH) side of the airplane (hereinafter referred to as the "LH DC relay box") and one of the power terminals of electrical emergency contactor 2 (K0519), which could result in a short circuit in the LH DC relay box, and consequent partial loss of the electrical system, and degraded operation of airplane systems, accomplish the following:

Bolt/Washer Removal and Hole Sealing

(a) Within 75 flight hours after the effective date of this AD, remove the bolt and washer on the LH DC relay box that is in the area of electrical emergency contactor 2 (K0519) and seal the corresponding fastener hole, in accordance with EMBRAER Alert Service Bulletin 120–24–A057, dated November 14, 1996. If no fastener is installed, seal the corresponding fastener hole only, in accordance with the alert 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, 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 96–12–02, dated December 13, 1996.

Issued in Renton, Washington, on June 21, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–16236 Filed 6–26–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–132–AD]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 45 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 Learjet Model 45 series airplanes. This proposal would require repetitive application of grease to the rotating disk assembly of the nose landing gear squat switch mechanism. Application of grease to the squat switch assembly is necessary to prevent moisture contamination and subsequent formation of ice. Such ice formation could result in bending or damaging of the nose landing gear squat switch assembly, which could drive the nose wheel to an uncommanded angle against the force of the steering system. This condition, if not corrected, could result in the airplane departing from the runway at high speeds during landing.

DATES: Comments must be received by August 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–132–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. 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-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000-NM–132-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 Learjet Inc., One Learjet Way, Wichita, Kansas 67209–2942. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate,

Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Shane Bertish, Aerospace Engineer, Systems and Equipment Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4156; fax (316) 946–4407.

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–132–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–132–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The manufacturer of Learjet Model 45 series airplanes has conducted tests in a laboratory that indicate a potential unsafe condition exists involving damage or bending of the squat switch assembly of the nose landing gear. Freezing of moisture in the squat switch assembly may cause restriction of movement of the subcomponents of the assembly and result in bending or damage of the squat switch assembly. (If certain movement is restricted, the loads imposed from the nose landing gear exceed the structural capability of the squat switch assembly and bending and damage occur.) The laboratory tests indicate that appropriate application of grease to the squat switch assembly will prevent moisture contamination of the assembly. Bending and damage of the squat switch assembly could result in driving the nose wheel to an uncommanded angle against the force of the steering system. This condition, if not corrected, could result in the airplane departing from the runway at high speeds during landing.

Explanation of Relevant Service Information

The FAA has reviewed and approved Bombardier Aerospace Service Information Letter SIL 32–016, dated March 30, 2000, which describes procedures for lubricating the rotating-disc assembly of the nose landing gear squat switch mechanism.

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 service information described previously.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and parts are available, the FAA may consider additional rulemaking.

Cost Impact

There are approximately 69 Learjet Model 45 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 45 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,700, or $60 per airplane, per application.

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:

Learjet: Docket 2000–NM–132–AD.

Applicability: Model 45 series airplanes, serial numbers 45–001 through 45–114 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 the airplane from departing the runway at high speeds during landing due to bending and damage to the squat switch assembly of the nose landing gear; accomplish the following:

Application of Grease

(a) Within 30 days after the effective date of this AD, apply grease to the rotating disk assembly of the squat switch mechanism of the nose wheel in accordance with Bombardier Aerospace Service Information Letter SIL 32–016, dated March 30, 2000. Thereafter, repeat this application at intervals not to exceed 30 days.

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, Wichita 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, Wichita ACO.

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

Special Flight Permit

(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 June 21, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–16235 Filed 6–26–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AJ55

Certification of Evidence for Proof of Service

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) adjudication regulations concerning the nature of evidence that VA will accept as proof of military service. Currently, VA will only accept original service documents or copies of service documents issued by the service department or by a public custodian of records. This change would authorize VA to accept photocopies of service documents as evidence of military service if they are certified to be true copies of documents acceptable to VA by an accredited agent, attorney, or service organization representative who has successfully completed VA-prescribed training on military records. The intended effect of this amendment is to streamline the processing of claims for benefits.

DATES: Comments must be received on or before August 28, 2000.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to "OGCRegulations@mail.va.gov". Comments should indicate that they are submitted in response to "RIN 2900–AJ55." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Bill Russo, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: The cornerstone of eligibility to VA benefits is active military, naval or air service. VA regulations at 38 CFR 3.203 establish the nature of the evidence VA will accept as proof of active military service. In general, those regulations require original service documents; VA will accept copies of those documents only if the copies are issued by the military service department or by a public custodian of records.

VA has initiated a business process reengineering (BPR) effort to improve the adjudication of claims for VA benefits. Two goals of this BPR effort are to establish a partnership with VA accredited representatives and to improve the timeliness of claims processing. Therefore, VA proposes to accept copies of discharge documents as evidence of military service, if they are certified as being true and exact copies of the originals by an accredited agent, attorney, or service organization representative who has successfully completed VA-prescribed training on military records.

We propose to amend 38 CFR 3.203 to allow VA to accept photocopies of service documents as proof of service if they are certified by a claimant's representative who has successfully completed VA-prescribed training on military records, to be true copies of the original documents. This proposed amendment will help streamline claims processing because it will reduce the number of instances where VA must seek verification of military service from the service department. We believe this can be done without compromising program integrity.

Under this proposed amendment, the claimant's representative must certify that the document is a true and exact copy either of an original document or of a copy issued by the service department or a public custodian of records.

However, under the amendment, VA would accept such certification only from VA accredited representatives who have successfully completed VA-prescribed training. These are representatives who, under the authority of 38 U.S.C. 5902 and 5904 and 38 CFR 14.626–14.629, the Secretary has authorized to prepare, present, and prosecute claims under laws administered by VA. Specifically, this includes accredited agents, attorneys, or accredited representatives of service organizations recognized by VA.

The Secretary hereby certifies that the adoption of the proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612.

The proposed rule would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

(The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, 64.110, and 64.127.)

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: June 14, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR Part 3 is proposed to be amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for Part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.203 [Amended]

2. In § 3.203, paragraph (a)(1) is revised by adding "or, if the copy was submitted by an accredited agent, attorney, or service organization representative who has successfully completed VA-prescribed training on military records, and who certifies that it is a true and exact copy of either an original document or of a copy issued by the service department or a public custodian of records;" after "custody;".

[FR Doc. 00–16163 Filed 6–26–00; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 266

[FRL–6721–8]

NESHAPS: Standards for Hazardous Air Pollutants for Hazardous Waste Boilers and Industrial Furnaces; Notice of Data Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability for future Phase II combustion rulemaking.

SUMMARY: This notice of data availability presents for public comment the data base the Environmental Protection Agency (EPA or Agency) plans to use to propose National Emission Standards for Hazardous Air Pollutants (NESHAPs) for hazardous waste burning boilers, halogen acid furnaces, and sulfuric acid recovery furnaces (our Phase II combustion rulemaking). We are providing this opportunity for comment to ensure that the data base used to establish standards in the Phase II combustion rulemaking is as accurate and complete as possible.

DATES: Comments must be submitted by August 28, 2000.

ADDRESSES: If you wish to comment on this NODA, you must send an original and two copies of the comments referencing Docket Number F–2000–RC2A–FFFFF to: RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002; or, (2) if using special delivery, such as overnight express service: RIC, Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. You may also submit comments electronically following the directions in the **SUPPLEMENTARY INFORMATION** section below.

You may view public comments and supporting materials in the RIC. The RIC is open from 9 am to 4 pm Monday through Friday, excluding Federal holidays. To review docket materials, we recommend that you make an appointment by calling 703–603–9230. You may copy up to 100 pages from any regulatory document at no charge. Additional copies cost $ 0.15 per page. For information on accessing an electronic copy of the data base, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Hotline is open Monday'–Friday, 9 am to 6 pm, Eastern Standard Time. For more information on specific aspects of this NODA, contact Mr. H. Scott Rauenzahn at 703–308–8477, rauenzahn.scott@epa.gov, or write him at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Submittal of Comments

You may submit comments electronically by sending electronic mail through the Internet to: rcra-docket@epamail.epa.gov. You should identify comments in electronic format with the docket number F–2000–RC2A–FFFFF. You must submit all electronic comments as an ASCII (text) file, avoiding the use of special characters or any type of encryption. The official record for this action will be kept in the paper form. Accordingly, we will transfer all comments received electronically into paper form and place them in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the RIC as described above. We may seek clarification of electronic comments that are garbled in transmission or during conversion to paper form.

You should not electronically submit any confidential business information (CBI). You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

If you do not submit comments electronically, we are asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (text) format or a word processing format that can be converted to ASCII (text). It is essential that you specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow us to convert the comments into one of the word processing formats used by the Agency. Please use mailing envelopes designed to protect the diskettes. We emphasize that submission of diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter.

Obtaining the Database Electronically

The data base can be obtained either from the RIC as described above in the *Addresses* section, or by downloading from the Internet. If you want to download the data base over the Internet, you can do so from our "HWC MACT" web site: http://www.epa.gov/hwcmact/ph2noda1. Please consult the web page for specific instructions on how to download the data base.

Clarification of Comments Requested

In today's NODA we request that owners and operators of hazardous waste burning boilers, halogen acid

furnaces, and sulfuric acid recovery furnaces review our data base to ensure that it is as accurate and complete as possible, and to provide corrections and additions in the form of comments to this notice. We request comment only on the accuracy and completeness of the data base at this time. We do not seek nor will we use or respond to comments on how to use the data base to establish MACT standards. Rather, we will publish for comment this subject and all other aspects of the NESHAPS rulemaking in a future notice of proposed rulemaking.

Table of Contents

I. Background

This is a notice of data availability and invitation for comment on the data base we will use to support the future Phase II Maximum Achievable Control Technology (MACT) standards for hazardous waste combustors (HWCs). The Phase II HWC MACT rulemaking covers boilers, halogen acid furnaces (HAFs), and sulfuric acid recovery furnaces (burning hazardous waste for energy recovery and not those that are just processing spent sulfuric acid) (SARFs). We expect the MACT standards developed under the Phase II rulemaking will supersede the emission standards for these sources under authority of the Resource Conservation and Recovery Act (RCRA), codified at 40 CFR Part 266, Subpart H. Today's document is the first step in developing technology-based MACT emissions standards for hazardous waste burning boilers, HAFs, and SARFs.

Additionally, we are developing MACT standards for nonhazardous waste burning boilers and process heaters under a separate but parallel rulemaking. We divided the boiler universe into two separate rulemakings, because hazardous waste burning may affect the type and concentration of hazardous air pollutants and because hazardous waste burning boilers are currently subject to specific emission controls under RCRA. For information on the nonhazardous waste boiler rulemaking, you may contact Mr. James A. Eddinger on 919–541–5426.

II. Am I Affected by This Document?

Sources affected by this document include all hazardous waste burning boilers, halogen acid furnaces, and sulfuric acid recovery furnaces (not including those furnaces just processing spent sulfuric acid), as defined in 40 CFR 260.10.

III. How Did EPA Obtain These Data?

We gathered these data from information already submitted by these sources to EPA Regional Offices or State agencies about their most recent RCRA compliance testing, including certifications of compliance (CoC), trial burns, and risk burn testing. In total, we obtained test reports for 115 individual sources. An additional 38 sources are "data in lieu of" sources, *i.e.*, sources for which data from a very similar source was accepted in lieu of performing a compliance test for that specific source. Thus, our current data base represents the most recent compliance test results for 153 individual boilers, HAFs, and SARFs (burning hazardous waste for energy recovery and not those that are just processing spent sulfuric acid) nationwide. With the exception of sources currently operating under the small quantity on-site burner exemption in 40 CFR 266.108, we believe this data base represents nearly all boilers, HAFs and SARFs subject to Part 266, Subpart H.

Boilers, HAFs, and SARFs burning small quantities of hazardous waste are exempt from Part 266, Subpart H, under § 266.108. Consequently, we do not have emissions or facility design and operation data for these sources. These sources are nonetheless potentially affected sources that will be evaluated for MACT emission standards at the same time we are evaluating other affected sources. To assist in the evaluation of these small quantity burners, we request that boiler, HAF, and SARF sources that are currently exempt under § 266.108 provide available information on the items listed in the Appendix to today's notice by the close of the comment period.

IV. What Quality Assurance or Quality Control Did EPA Use When Creating the Data Base?

We took steps to ensure that all pertinent data were accurately extracted from the collected test reports and included in the data base. The data base report, explained in Section V below, contains a detailed description of the quality assurance and quality control steps taken to avoid inaccurate data interpretation and data entry errors. We recognize, however, that mistakes can occur and request that owners and operators review the data for their source(s) and provide any necessary corrections.

V. What Data and Information are Available and How Is the Data Base Organized?

Today's document covers: (1) A data base report; (2) performance data and information files for individual sources; (3) an emissions and feedrate data summary sheet; and (4) a facility description summary sheet. Each of these items is explained below. This information is available both at the RCRA docket and electronically on our web site at *www.epa.gov/hwcmact/ph2noda1*.

1. Data Base Report

The *Phase II HWC MACT Data Base Report* discusses the organization of the data base, describes the test report information collected from Regional and state offices, and discusses the quality assurance and quality control plan. This report also describes the type of data and information extracted from the test reports of affected sources.

2. Data and Information File for Individual Sources

Each individual source with test data has a separate file containing performance data and operation information. The data base contains all available stack gas emissions data (including data on metals, chlorine, particulate matter, dioxins and furans, carbon monoxide, and hydrocarbons), process operating data (including hazardous waste and auxiliary fuel compositions and feedrates), and facility equipment design and operational data (including combustor and air pollution control device temperatures, pressures, etc.).

These individual source files are provided on the internet in two electronic file formats: Portable Document Format (PDF) and spreadsheet. PDF files can be viewed and printed using the free software program Adobe Acrobat. One limitation of PDF is that you are unable to see the formulas we used to perform calculations required to present all data in consistent units. If you would like to review these formulas, you need to download the data in spreadsheet format. To use the spreadsheets, you must use Microsoft Excel or another program that can read Excel 97 format files.

3. Emissions and Feedrate Data Summary Sheet

This sheet aggregates key emissions and feedrate information from individual source files. The sheet includes information on the source's air pollution control system, system design, types of hazardous waste and auxiliary fuel used, heat input capacity, stack gas emission concentrations of individual hazardous air pollutants, metals, and chlorine feedrates, and stack gas conditions.

4. Facility Description Summary Sheet

This sheet aggregates descriptive information for sources. The sheet includes the facility name and location, identification number, system design, air pollution control system, types of hazardous waste and auxiliary fuel used, and heat input capacity.

VI. What Data Handling Decisions Did EPA Make and What Are the Data Gaps?

In this section, we describe the data handling protocol used during development of the data base. We also identify additional data that we want and request that commenters submit such information as available.

1. Excluding Data From Sources No Longer Burning Hazardous Waste

The data base does not include information from sources no longer burning hazardous waste. If, during our data collection effort, we learned that a source had stopped burning hazardous waste and is undergoing, or has indicated to regulatory officials its plan to begin, RCRA closure procedures, then we did not obtain a copy of that source's test report(s). Although such data may or may not indicate the capabilities of control equipment in general, we have concluded that the data collected from currently operating combustors represent the source categories and is adequate to develop future emission standards under Section 112(d).

2. Excluding Data From Previous Compliance Testing

As mentioned earlier, we collected only the most recent testing information for a source because these data best represent current design and operation. In nearly all instances, the dates of the test reports collected were either 1998 or 1999. If a *more recent* RCRA compliance test report is available (*i.e.*, more recent than the test report entered into our current data base), we encourage owners and operators to submit a copy of this more recent report as a comment to this notice. We request that commenters not submit data from testing conducted prior to the date of the test report in the data base, nor do we intend to use these older data.

3. The Format of the Feed Constituent Data

The data base contains concentrations of various chemicals in the feed to the boiler or furnace during a given test condition. The units of measurement used to report feed stream concentrations are not uniform across all sources. For example, feed chemicals may be reported as "grams per hour" in one test report, and "parts per million by weight" in another. To make the feed data consistent across all sources, we converted all feedstream concentrations to a common unit called the "maximum theoretical emissions concentration" or MTEC. The MTEC is calculated by dividing the constituent feedrate by the gas flow rate. The MTEC is expressed in the units of the associated emission standard.

4. Missing Source Description Information

Some test reports omitted source description information. For example, many of the boiler source descriptions are incomplete. A report might simply say the source is a boiler, but not whether it is a watertube or firetube boiler. In other cases, we were unable to determine what emission control equipment, if any, is installed on the source. We request that owners and operators provide any such missing source description information as a comment to this notice.

We also request additional information regarding the heat recovery systems used at many HAFs. In a few cases, the test report was not clear whether the HAF has a waste heat boiler (*i.e.*, a boiler that is not integrally designed with the combustion chamber), whether the HAF has a boiler that is integrally designed with the combustion chamber, or whether the HAF has no energy recovery features. This information is useful in evaluating whether design and operating features can affect emissions of hazardous air pollutants and control strategies.

We also request process information for HAFs with waste heat boilers. We would like information on the flue gas temperature profile across the waste heat boiler, or at a minimum, the entrance and exit flue gas temperatures, and the temperature of the inlet water and exit steam (or heated water) across the tubes to accurately evaluate these systems. We ask owners and operators of HAFs with waste heat boilers to provide this information, if it exists, regarding the operation of the waste heat boiler during each test condition.

Some test reports for boilers list "HCl Absorbers" as an emissions control device. However, we understand that HCl absorbers are generally used by HAFs to produce HCl. To properly classify these devices, we request clarification as to whether these sources use the HCl absorber to produce HCl product, or whether the absorber is used as a wet scrubber.

5. Submitting Additional Emissions Data and Corrections to the Data Base

As stated earlier, we encourage submittal of more recent test data than now appear in our data base. If the data are generated during a CoC, Trial Burn, or Risk Burn test that must be submitted to a regulatory authority, we will infer that the QA/QC of your data is satisfactory. In this case, please submit the pages from the test report that document the missing or incorrect results and the cover page of the test report as reference. If the results come from other tests, you should send us the complete test report, including the QA/QC procedures followed.

In addition, we request that you submit the feed constituent information (*i.e.*, the concentration or mass flow rate of metals, chlorine, and when applicable, organic chemicals) and the process information (*i.e.*, how the combustion source and emissions control devices were operating) observed at the time of the test. Both the feed constituent and process conditions impact the resulting emissions and, more importantly, help us to understand the circumstances surrounding a particular test outcome.

Dated: June 16, 2000.

Elizabeth A. Cotsworth,

Director, Office of Solid Waste.

Note: the following appendix will not appear in the CFR.

Appendix

Data Request Information for Small Quantity Burners

1. EPA Facility ID No. (*i.e.*, TXD012345678).
2. Company, Operator, and Facility Name.
3. Facility Location (City, State).
4. Name of Combustor Unit Used by Facility (e.g., Boiler No. 1).
5. Combustor Type and Characteristics including combustion device and design, manufacturer, installation date, size, fuel input capacity, and steam generating characteristics.
6. Air Pollution Control System and Characteristics including device design and operating characteristics.
7. Hazardous Waste Characteristics including types, physical properties

(viscosity, form), heating value, and the concentrations of chlorine, arsenic, beryllium, cadmium, chromium, cobalt, lead, mercury, nickel, and selenium

8. Other Fuels Burned (*e.g.*, natural gas, fuel oil, etc.).

9. Hazardous Waste and Other Fuel Feedrates (*e.g.*, lb/yr for waste streams and fuel oils, ft3/yr for natural gas, etc.).

10. Stack Characteristics including stack height, diameter, and stack gas velocity and temperature.

11. Stack Gas Emissions Testing Results including:

- Stack gas emissions rates of particulate matter
- HCl
- Cl2
- Metals
- CO
- HC
- Information on stack gas flow rate
- Temperature
- Sootblowing (and whether and how PM and metals emissions data have been adjusted to account for soot blowing)
- Oxygen level
- Description of purpose of testing
- Test operating conditions
- Quality assurance/quality control procedures.

[FR Doc. 00–16073 Filed 6–26–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 061500E]

RIN 0648–AL51

Fisheries off West Coast States and in the Western Pacific; Amendment 14

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

ACTION: Notice of availability of amendment to fishery management plan; request for comments.

SUMMARY: NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendment 14 to the Pacific Coast Salmon Plan for Secretarial review. Amendment 14 has multiple parts. The major parts of the amendment include revising the Salmon FMP to bring it into compliance with the 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), including designation of essential fish habitat (EFH) and new requirements to reduce bycatch, prevent overfishing, and rebuild stocks that are overfished; establishing a new recreational allocation for the Port of La Push, Washington and adding flexibility to deviate from specified recreational Port allocations based on the agreement of representatives from the affected Ports; and establishing preseason flexibility to deviate from commercial and recreational gear allocations and recreational port allocations North of Cape Falcon, OR in order to access marked hatchery salmon in selective fisheries. The majority of Amendment 14 changes are to the Salmon FMP, while only some of the changes will be codified in the regulations and are contained in the proposed rule. Specifically, the proposed rule makes minor changes to language regarding escapement and management goals, implements a new recreational allocation to the Port of La Push and adjusts the Neah Bay allocation relative to La Push, adds preseason flexibility for recreational port allocations North of Cape Falcon, and implements preseason flexibility in setting recreational port allocation or recreational and commercial allocations North of Cape Falcon to take advantage of selective fishing opportunities.

DATES: Comments on Amendment 14 must be received at the appropriate address or fax number, (see ADDRESSES) no later than 5 p.m., Pacific daylight time August 28, 2000.

ADDRESSES: Written comments should be sent to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070, or sent via facsimile (fax) to: 206-526-6376; or to Rodney R. McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213, or sent via facsimile (fax) to: 562-980-4018. Comments will not be accepted if submitted via email or Internet.

Copies of Amendment 14 and the Supplemental Environmental Impact Statement/Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis are available from Dr. Donald O. McIsaac, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Ave., Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Christopher L. Wright at 206–526–6140, Svein Fougner at 562–980–4005, or the Pacific Fishery Management Council at 503–326–6352.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each Regional Fishery Management Council submit any new fishery management plan (FMP) or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a notification in the **Federal Register** that the FMP or amendment is available for public review and comment. NMFS will consider the public comments received during the comment period in determining whether to approve the FMP or amendment.

The major provisions of Amendment 14 that will bring the Salmon FMP into compliance with the 1996 amendments to the Magnuson-Stevens Act include: An identification and description of EFH, including a discussion of threats to EFH and recommended measures to conserve and enhance EFH; a new definition of optimum yield; a definition and new requirements for bycatch; and new requirements for prevention of overfishing and rebuilding of stocks that are overfished. A new section has been added to the Salmon FMP in Chapter 1, entitled "What the Plan Covers," that provides a clear description of what the Salmon FMP covers, and places information on fishery impacts to salmon stocks in the chapter on harvest. In addition, the amendment updates the fishery description to reference new appendices to the Salmon FMP.

Amendment 14 also implements a new recreational allocation to the Port of La Push and adjusts the Neah Bay allocation relative to La Push, adds preseason flexibility for recreational port allocations North of Cape Falcon, and implements preseason flexibility in setting recreational port allocations or recreational and commercial allocations North of Cape Falcon to take advantage of selective fishing opportunities.

The EFH provisions of Amendment 14 identify and describe EFH in aquatic areas including the exclusive economic zone, nearshore waters, and rivers. The EFH provisions of the Magnuson-Stevens Act require Federal agencies that authorize, fund, or undertake actions that may adversely affect EFH to consult with NMFS, and require NMFS to provide non-binding conservation recommendations to Federal and state agencies regarding actions that would adversely affect EFH. In most cases EFH consultations can be combined with other environmental reviews that are required under other laws.

The overfishing provisions of Amendment 14 are guided by the conservation needs of the species covered by the Salmon FMP. The management goals of the Salmon FMP, referred to as "conservation objectives," are generally defined in terms of stock-

specific spawning escapement goals. The target control rules for individual stocks are defined by the conservation objectives and generally correspond to Maximum Sustained Yield or Maximum Sustained Production objectives.

Appendix B of Amendment 14 describes the social and economic characteristics of the ocean salmon fishery off the west coast and identifies those fishing communities with annual salmon landings in excess of $10,000 ex-vessel value. A major purpose of the Salmon FMP's allocation objectives is to preserve the economic viability of local ports and/or specific coastal communities.

Public comments on Amendment 14 must be received by August 28, 2000, to be considered by NMFS in the decision to approve Amendment 14. A proposed rule to implement Amendment 14 has been submitted for Secretarial review and approval. NMFS expects to publish and request public comment on the proposed regulations to implement Amendment 14 in the near future.

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

Dated: June 21, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–16225 Filed 6–26–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 062000B]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting/public hearing.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 105th meeting in Midway at Midway Atoll. The Council will hold a Precious Corals Plan Team meeting and a public hearing in Honolulu, Hawaii. The Council intends to take action under the Fishery Management Plan for the Precious Corals Fisheries of the Western Pacific Region (FMP) on the framework process governing established measures for adjustments to the harvest quota for exploratory precious coral permit areas in the Western Pacific Region. A public hearing is scheduled during the Plan Team meeting to receive comments on this action.

DATES: The Plan Team meeting and the public hearing will be held on July 6, 2000, from 9 a.m. to 12 p.m. The public hearing will be held on July 6, 2000, at 11:30 a.m. The Council meeting will be held on July 10–11, 2000, from 8 a.m. to 5 p.m.

ADDRESSES: The Plan Team meeting will be held at the Council Offices, 1164 Bishop Street, Honolulu, Hawaii; telephone 808– 522–8220. The Council meeting will be held at Midway Atoll; telephone 808–874–1111. Copies of documents that provide information on options to be discussed at the public hearing are available from the Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI, 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone 808–522–8220.

SUPPLEMENTARY INFORMATION:

Plan Team Meeting

The agenda for the Plan Team meeting will include the items listed below. The order and time in which agenda items are addressed may change. The Plan Team will meet as late as necessary to complete scheduled business.

1. Introductions
2. Status of the fishery
3. Review of 104th Council Meeting Minutes
4. Adjustment of Exploratory Quota (see agenda item 8 under Council agenda for supplemental information)
5. Confidentiality of Data
6. Other Business
7. Summary of Recommendations
8. Public Hearing

The U.S. Fish and Wildlife Service (FWS) invited the Council to convene a meeting on Midway Atoll to discuss issues relating to the management of fishery resources in the Northwestern Hawaiian Islands (NWHI). The Midway meeting offers Council members and resource managers first-hand interaction with the unique atoll environment and species of the NWHI, National Wildlife Refuges, and ecotourism operation and associated recreational fishing. Discussions will be focused on protected species (seabirds, turtles, monk seals), jurisdiction, research, ecotourism, recreational fishing, and designation of Marine Protected Areas (MPAs).

Council Meeting

The agenda during the Council meeting will include the items listed below. The order and time in which agenda items are addressed may change. The Council will meet as late as necessary to complete scheduled business.

Agenda

1. Introductions
2. Approval of Agenda
3. Approval of Minutes of the Council's 104th meeting
4. Refuge Overview
   a. Report on Midway Atoll National Wildlife Refuge
   b. Report on Midway recreational fisheries program at Midway
   c. Report on research at Midway on monk seals, seabirds, turtles, and coral reefs
   d. Report on Hawaiian Islands National Wildlife Refuge
   e. Report on other wildlife refuges in the PRIAs
   f. Status of Palmyra Atoll
5. Update on activities related to Executive Order 13158 on MPAs and the President's Memorandum on Protection of U.S. Coral Reefs in the NWHI (including ecotourism and bioprospecting)
   a. State of Hawaii
   b. Office of Hawaiian Affairs
   c. FWS
   d. NMFS
   e. MPAs in Hawaii and American Samoa
   f. Research issues including Omnibus Deepwater, monk seals, seabirds, turtles, coral reefs, sharks and lobsters
   g. Status of shark eradication program at French Frigate Shoals and final report on commercial bottom longline fishing for sharks in the NWHI
6. Jurisdictional issues: Council/NMFS, FWS, State of Hawaii, Department of Defense
   a. Midway
   b. Other NHWI
   c. PRIAs
7. Preliminary Draft Environmental Impact Statements
   a. Precious Corals
   b. Crustaceans
   c. Bottomfish
   d. Alternatives
8. Precious Corals FMP exploratory areas

The Council intends to take action under FMP framework process governing established measures for adjustments to the harvest quota for exploratory precious coral permit areas in the Western Pacific Region.

For 20 years, domestic commercial deep-water precious coral harvest has been dormant. In 1999, largely from advances in the industry, researchers have conducted numerous surveys of the resource around the main Hawaiian

Islands and found excellent recovery of the once harvested beds. Newly available highly maneuverable one-manned submersibles are equipped with constant stream video cameras, 180° pilot visibility, on-board computer mapping. and external robotic arms and collecting baskets. This allows for stock assessment concurrent with selective harvest. Because of these advances, the Council has recommended a prohibition on non-selective harvest of precious corals in all waters under its jurisdiction. The Exploratory Area of the Hawaiian Islands, locations where precious corals are believed to exist but have not been investigated, cover 99.97 percent of the viable habitat. Harvesting the current 1,000 kg (2,200 lb) per year Exploratory Area quota has never been attempted. Potential harvesters have claimed that this quota is too low to justify the necessary capital investment required for exploration even using the relatively lower cost non-selective dredging operations. Due to advances in technology and new restrictive harvest guidelines (e.g, proposed prohibition on use of all non-selective gear to harvest precious coral), the Council will consider revising the Exploratory Area quota. Alternatives include: No increase in the quota; increasing the quota to 5,000 kg (11,000 lb) per year with no more than 1,000 kg (2,200 lb) of gold coral; minimum size requirements for gold and pink coral; a maximum harvest quota from any one bank; an increasing the quota to 10,000 kg (22,000 lb) per year with no more than 1,000 kg (2200) of gold coral; minimum size requirements for gold and pink coral; and a maximum harvest quota from any one bank.

9. Other Business

Although non-emergency issues not contained in this agenda may come before the 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 document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act Fishery Conservation and Management 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 Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

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

Dated: June 21, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–16224 Filed 6–26–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 124
Tuesday, June 27, 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

Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a meeting of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

SUPPLEMENTARY INFORMATION: The National Agricultural Research, Extension, Education, and Economics Advisory Board, which represents 30 constituent categories, as specified in section 802 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127), has scheduled a National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting, July 25, 2000.

On Tuesday, July 25, the Advisory Board will sponsor a "Cutting-Edge Science and Technology Meeting" at Radisson Governor's Inn, Research Triangle Park, North Carolina. The objective of this meeting will be to heighten the understanding by the Advisory Board and USDA officials of cutting-edge science and advanced technologies that are not ordinarily considered to be part of the agricultural research portfolio, but are likely to have dramatic impacts on U.S. food, agriculture, and related natural resources. Distinguished speakers will present research in exciting key science and advanced technologies, and will discuss possible implications for agriculture. The Advisory Board members four focus areas are:

A. Information Technologies,

B. Biotechnology (including but not limited to genomics and proteinomics),

C. Nanotechnology, and

D. E-Commerce.

If you wish to be a speaker or to nominate a speaker for Advisory Board consideration, please forward speaker names, phone numbers, and a brief summary, outline, or similar indication of their latest work in one of the four topic areas above to the contact person below. Names for speakers will be reviewed and final selections will be made by the Advisory Board and its Executive Committee. There will be a reception from 6 p.m. to 9 p.m. on Monday evening, July 24, at the Radisson Governor's Inn, where members of the Advisory Board will have an opportunity to interact with speakers and the general public. The "Cutting-Edge Science and Technology Meeting" will begin promptly at 9 a.m. on Tuesday, July 25, and continue until approximately 4:30 p.m. At 4:30 p.m, there is an optional tour of North Carolina State University's Genetics Science Center. On the morning of Wednesday, July 26, at 9 a.m., the Advisory Board members and guests will tour areas of the Research Triangle Park facilities that would be of interest to agricultural-related topics. The second tour will end around noon with return of the members to the Radisson Governor's Inn. This entire meeting will be open to the public. After members and speakers are boarded, the tours will be available to guests on a first come basis as space allows on the buses. No travel expenses will be provided to speaker not on the agenda. Public comments will be welcome near the end of the full-day meeting (July 25), as noted on a forthcoming agenda. Also written comments will be accepted for public record up to 2 weeks following the Board meeting. Final agenda will be available to the public prior to the meeting.

DATES: July 24—6:00 p.m. to 9:00 p.m.—Reception with the Advisory Board.

July 25—9:00 a.m. to 4:30 p.m.—General Session; 4:30 p.m. to 7:00 p.m.—North Carolina State University; Tour (1½ hours at NCSU).

July 26—9:00 a.m. to Noon—Tour of Research Triangle Park Facilities.

PLACE: Radisson Governor's Inn (Rooms to be announced), I–40, Exit 280, Davis Drive, Research Triangle Park, North Carolina.

Type of Meeting: Open to the public.

Comments: The public may file written comments before or after the meeting with the contact person. All statements will become a part of the official records of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Office of the Advisory Board; Research, Education, and Economics; U.S. Department of Agriculture; Washington, DC 20250–2255.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, Research, Education, and Economics Advisory Board Office, Room 344A Jamie L. Whitten Building, U.S. Department of Agriculture, STOP: 2255, 1400 Independence Avenue, SW, Washington, DC 20250–2255. Telephone: 202–720–3684, Fax: 202–720–6199, or e-mail: lshea@reeusda.gov.

Done at Washington, DC this 12th day of May 2000.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

[FR Doc. 00–16059 Filed 6–26–00; 8:45 am]
BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. LS–99–09]

United States Standards for Grades of Feeder Cattle

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service is changing the official U.S. standards for grades of feeder cattle. The changes adjust the minimum requirements for the muscle thickness grades and increase the number of grades from three to four to accommodate thicker muscled cattle and reflect current marketing practices. Also, the frame size grades are updated (increased minimum weights) to reflect the genetic changes that have taken place in the cattle population since the current standards were adopted in 1979. Industry and other groups, including

State Departments of Agriculture that officially grade feeder cattle for marketing programs, requested that these changes be made. The updated standards more accurately represent today's population of feeder cattle and thus should provide the industry with more meaningful market evaluations.

EFFECTIVE DATE: October 1, 2000.

FOR FURTHER INFORMATION CONTACT: Herbert C. Abraham, Chief, Standardization Branch, Livestock and Seed Program, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2603 South Building, STOP 0254, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–4486 or Herbert.Abraham@usda.gov.

The updated U.S. Standards for Grades of Feeder Cattle are available either through the above addresses or by accessing this web site *http://www.ams.usda.gov/lsg/stand/st-pubs.htm.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade, and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *" AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Feeder Cattle do not appear in the Code of Federal Regulations but are maintained by USDA.

AMS is updating the United States Standards for Grades of Feeder Cattle using the procedures that appear in part 36 of title 7 of the Code of Federal Regulations (7 CFR Part 36). These changes are the same as those proposed in the September 23, 1999, **Federal Register** (64 FR 51501).

Background

The United States Standards for Grades of Feeder Cattle were last modified September 2, 1979. These grade standards were originally used more extensively in the Eastern United States where marketing feeder cattle by commingling ownership and packaging by grade and weight is popular due to the small average cow herd size. Nonetheless, the feeder cattle standards have become the descriptive standards of choice by most of the feeder cattle industry nationwide. More importantly, these standards have served to educate the industry about the importance of frame size in feeder cattle and how frame size relates to an animal's predetermined, market ready weight. Additionally, the standards emphasize the importance of muscle thickness as it relates to the beef cattle industry.

Significant changes (genetic and management) have taken place in the feeder cattle segment of the beef industry since the 1979 grade standards were adopted. The industry has moved from essentially four basic breeds in the 1950's to nearly 100 in the 1990's, resulting in a dramatic effect on the basic genetics of the beef cattle population. Consequently, feeder cattle type—as it relates to mature size—has also changed dramatically. This, linked with changes that have occurred during the same time period in feeder cattle management practices, has caused a growing concern by USDA that the feeder cattle standards had become outdated since their adoption 20 years ago.

The feeder cattle grades are based on differences in frame size and muscle thickness—two of the most important genetic factors affecting merit (value) in feeder cattle. Frame size refers to the animal's skeletal size—its height and body length—in relation to its age. Frame size relates to the weight at which, under normal feeding and management practices, an animal will produce a carcass of a given grade. Large framed animals require a longer time in the feedlot to reach a given grade and will weigh more than a small-framed animal would weigh at the same grade. Muscle thickness is related to muscle-to-bone ratio at a given degree of fatness and hence, carcass yield grade. Thicker muscled animals produce a higher percentage yield of lean meat. The 1979 feeder cattle grades recognize three frame size grades and three muscle thickness grades. The three frame sizes were Small Frame, Medium Frame and Large Frame. The three muscle thickness grades from the thickest to the thinnest were No. 1, No. 2 and No. 3.

Proposed Standards

USDA entered into a project with Colorado State University (CSU) funded by the USDA, AMS, Federal/State Market Improvement Program to determine: (1) The live weights at which the current population of Large, Medium, and Small framed feeder steers and heifers attain a degree of finish associated with a carcass quality grade of low Choice, and; (2) an effective approach for stratification of feeder cattle into muscle thickness categories that reflect eventual differences in carcass muscularity and ultimate USDA Yield Grade.

Results of the CSU study showed that the weight limits for Medium frame cattle were too low. The consist of the cattle population had changed drastically over the past 20 years since the standards were initiated. The number of popular breeds in the 1970's was a mere handful compared to nearly 100 registered breeds today. Most of these breeds are larger framed breeds that have had quite an impact on the mature and finished weights of our cattle supply.

The industry also saw a need to change the muscling specifications so thicker muscling is recognized. This was particularly true at graded feeder cattle sales, where under the 1979 system the very best muscled cattle were sold in the same pen with cattle that have muscling "close" to dairy type. These restructured muscling guidelines, recommended by the States through the National Livestock Grading and Marketing Association and used in the CSU study, distribute cattle more evenly among the muscle grades.

Therefore, it was proposed in a September 23, 1999, **Federal Register** notice that the minimum weights specified for frame size grades be increased to more accurately reflect today's beef cattle population. It was also proposed to adjust the muscling grades to more effectively identify carcass USDA Yield Grade differences among feeder cattle and reflect current marketing practices.

Comments

A 60-day comment period, which closed on November 23, 1999, was provided for submission of comments. The number of comments submitted prior to the close of the comment period was 11. In addition, four comments were received after the close of the comment period. These four comments were similar to other timely-received comments that were supportive of the proposed grade change. All submitted comments are part of the public record on the proposed change and are available for public review. The number of comments received from industry segments is as follows: Rancher (1), State Agricultural Associations (3), State Departments of Agriculture (3), University (1), Feedlot (2) and Feeder cattle procurement (1).

Evaluation of Comments

Most of the comments supported the proposed change to the feeder cattle standards, stating that the proposed standards would more accurately represent the industry's population of feeder cattle in relation to frame size and muscle scores. Four of the

supporting comments further expressed concern over the potential impact on the Chicago Mercantile Exchange (CME) Feeder Cattle cash settlement price. They requested AMS analyze the potential impact on the current market situation using the 1979 Feeder Cattle standards and the proposed standards. Market News evaluated a limited number of markets during September/October 1999 and November/December 1999. The evaluation determined the number of cattle identified as No. 1 muscle score will decline, however the average cost per hundred weight will increase. This information will allow the CME to make any appropriate adjustments in feeder cattle future contracts.

One comment focused on muscling and its lack of importance to lean yield. However, current research indicates that truly heavy muscled cattle are not sufficiently recognized by the current standards to have an impact in the price discovery process. One comment interpreted the proposed standard as being initiated by USDA, AMS and not as an industry driven, research supported modification to the current standards. As discussed previously, the update of the standards is supported by the CSU study and the request for the update was initiated by industry and other groups, including State Departments of Agriculture, that officially grade feeder cattle for marketing programs. The updated standards more accurately represent today's population of feeder cattle and thus should provide the industry with more meaningful market evaluations.

In consideration of the submitted public comments, and all other available information, USDA is revising the official U.S. Standards for Grades of Feeder Cattle by modifying the frame size parameters as shown in Table 1.

TABLE 1.—WEIGHT/FRAME SIZE

Frame size	Steers weight, lbs.	Heifers weight, lbs.
Small	<1100	<1000
Medium	1100–1250	1000–1150
Large	>1250	>1150

Also, the changes adjust the minimum requirements for the muscle thickness grades and increase the number of grades from three (3) to four (4) to accommodate thicker muscled cattle. In order to allow the industry sufficient time to update its current system, the updated standards will be implemented October 1, 2000.

Authority: 7 U.S.C. 1621–1627.

Dated: June 21, 2000.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 00–16150 Filed 6–26–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child and Adult Care Food Program: National Average Payment Rates, Day Care Home Food Service Payment Rates, and Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes for the Period July 1, 2000–June 30, 2001

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustments to: the national average payment rates for meals and supplements served in child care centers, outside-school-hours care centers, at-risk afterschool care centers, and adult day care centers; the food service payment rates for meals and supplements served in day care homes; and the administrative reimbursement rates for sponsoring organizations of day care homes, to reflect changes in the Consumer Price Index. Further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii. The adjustments contained in this notice are made on an annual basis each July, as required by the statutes and regulations governing the Child and Adult Care Food Program (CACFP).

EFFECTIVE DATE: July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Melissa Rothstein, Section Chief, Child and Adult Care and Summer Programs Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia, 22302, (703) 305–2620.

SUPPLEMENTARY INFORMATION:

Definitions

The terms used in this notice shall have the meanings ascribed to them in the regulations governing the CACFP (7 CFR part 226).

Background

Pursuant to sections 4, 11 and 17 of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1753, 1759a and 1766), section 4 of the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1773) and sections 226.4, 226.12 and 226.13 of the regulations governing the CACFP (7 CFR part 226), notice is hereby given of the new payment rates for institutions participating in CACFP. These rates shall be in effect during the period July 1, 2000 through June 30, 2001.

As provided for under the NSLA and the CNA, all rates in the CACFP must be revised annually on July 1 to reflect changes in the Consumer Price Index (CPI) for the most recent 12-month period. In accordance with this mandate, the Department last published the adjusted national average payment rates for centers, the food service payment rates for day care homes, and the administrative reimbursement rates for sponsors of day care homes on July 9, 1999 at 64 FR 37087 (for the period July 1, 1999—June 30, 2000).

CHILD AND ADULT CARE FOOD PROGRAM (CACFP)
Per Meal Rates in Whole or Fractions of U.S. Dollars
Effective from July 1, 2000 - June 30, 2001

CENTERS		BREAKFAST	LUNCH AND SUPPER[1]	SUPPLEMENT
CONTIGUOUS STATES	PAID	.21	.19	.05
	REDUCED PRICE	.82	1.62	.27
	FREE	1.12	2.02	.55
ALASKA	PAID	.30	.31	.08
	REDUCED PRICE	1.47	2.88	.45
	FREE	1.77	3.28	.90
HAWAII	PAID	.23	.22	.05
	REDUCED PRICE	1.00	1.97	.32
	FREE	1.30	2.37	.65

DAY CARE HOMES	BREAKFAST		LUNCH AND SUPPER		SUPPLEMENT	
	TIER I	TIER II	TIER I	TIER II	TIER I	TIER II
CONTIGUOUS STATES	.94	.35	1.72	1.04	.51	.14
ALASKA	1.48	.54	2.79	1.68	.83	.23
HAWAII	1.09	.40	2.02	1.22	.60	.16

ADMINISTRATIVE REIMBURSEMENT RATES FOR SPONSORING ORGANIZATIONS OF DAY CARE HOMES PER HOME/PER MONTH RATES IN U.S. DOLLARS	Initial 50	Next 150	Next 800	Each Additional
CONTIGUOUS STATES	80	61	48	42
ALASKA	130	99	77	68
HAWAII	94	71	56	49

[1]These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. A notice announcing the value of commodities and cash-in-lieu of commodities is published separately in the *Federal Register.*

The changes in the national average payment rates for centers reflect a 2.25 percent increase during the 12-month period, May 1999 to May 2000, (from 164.6 in May 1999 to 168.3 in May 2000) in the food away from home series of the CPI for All Urban Consumers.

The changes in the food service payment rates for day care homes reflect a 2.19 percent increase during the 12-month period, May 1999 to May 2000, (from 163.9 in May 1999 to 167.5 in May 2000) in the food at home series of the CPI for All Urban Consumers.

The changes in the administrative reimbursement rates for sponsoring organizations of day care homes reflect a 3.07 percent increase during the 12-month period, May 1999 to May 2000, (from 166.2 in May 1999 to 171.3 in May 2000) in the series for all items of the CPI for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The total amount of payments available to each State agency for distribution to institutions participating in the program is based on the rates contained in this notice.

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3518).

Authority: Sections 4(b)(2), 11a, 17(c) and 17(f)(3)(B) of the Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1753(b)(2), 1759a, 1766(f)(3)(B)) and section 4(b)(1)(B) of the Child Nutrition Act of 1966, as amended 42 U.S.C. 1773(b)(1)(B).

Dated: June 21, 2000.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 00–16169 Filed 6–26–00; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National School Lunch, Special Milk, and School Breakfast Programs; National Average Payments/Maximum Reimbursement Rates

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the annual adjustments to: (1) The "national average payments," the amount of money the Federal Government provides States for lunches, afterschool snacks and breakfasts served to children participating in the National School Lunch and School Breakfast Programs; (2) the "maximum reimbursement rates," the maximum per lunch rate from Federal funds that a State can provide a school food authority for lunches served to children participating in the National School Lunch Program; and (3) the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. The payments and rates are prescribed on an annual basis each July. The annual payments and rates adjustments for the National School Lunch and School Breakfast Programs reflect changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers. The annual rate adjustment for the Special Milk Program reflects changes in the Producer Price Index for Fluid Milk Products. These payments and rates are in effect from July 1, 2000 through June 30, 2001.

EFFECTIVE DATE: July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Jane Whitney, Section Chief, School Programs Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1007, Alexandria, VA 22302 or phone (703) 305–2620.

SUPPLEMENTARY INFORMATION:

Background

Special Milk Program for Children

Pursuant to section 3 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1772), the Department announces the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. This rate is adjusted annually to reflect changes in the Producer Price Index for Fresh Processed Milk, published by the Bureau of Labor Statistics of the Department of Labor.

For the period July 1, 2000 to June 30, 2001, the rate of reimbursement for a half-pint of milk served to a nonneedy child in a school or institution which participates in the Special Milk Program is 13 cents. This reflects an increase of 2.0 percent in the Producer Price Index for Fresh Processed Milk from May 1999 to May 2000 (from a level of 139.7 in May 1999 to 142.5 in May 2000).

As a reminder, schools or institutions with pricing programs which elect to serve milk free to eligible children continue to receive the average cost of a half-pint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased half-pints) for each half-pint served to an eligible child.

National School Lunch and School Breakfast Programs

Pursuant to sections 11 and 17A of the National School Lunch Act, (42 U.S.C. 1759a and 1766a), and section 4 of the Child Nutrition Act of 1966, (42 U.S.C. 1773), the Department annually announces the adjustments to the National Average Payment Factors and to the maximum Federal reimbursement rates for lunches and afterschool snacks served to children participating in the National School Lunch Program and breakfasts served to children participating in the School Breakfast Program. Adjustments are prescribed each July 1, based on changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the national average payment rates for schools and residential child care institutions for the period July 1, 2000 through June 30, 2001 reflect a 2.25 percent increase in the Consumer Price Index for All Urban Consumers during the 12-month period May 1999 to May 2000 (from a level of 164.6 in May 1999 to 168.3 in May 2000). Adjustments to the national average payment rates for all lunches served under the National School Lunch Program, breakfasts served under the School Breakfast Program, and afterschool snacks served under the National School Lunch Program are rounded down to the nearest whole cent.

Lunch Payment Levels

Section 4 of the National School Lunch Act (42 U.S.C. § 1753) provides general cash for food assistance payments to States to assist schools in purchasing food. The National School Lunch Act provides two different section 4 payment levels for lunches served under the National School Lunch Program. The lower payment level applies to lunches served by school food authorities in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment level applies to lunches served by school food authorities in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced price.

To supplement these section 4 payments, section 11 of the National School Lunch Act provides special cash assistance payments to aid schools in providing free and reduced price lunches. The section 11 National Average Payment Factor for each reduced price lunch served is set at 40 cents less than the factor for each free lunch.

As authorized under sections 8 and 11 of the National School Lunch Act (42 U.S.C. 1757, 1759a), maximum reimbursement rates for each type of lunch are prescribed by the Department in this notice. These maximum rates are to ensure equitable disbursement of Federal funds to school food authorities.

Afterschool Snack Payments in Afterschool Care Programs

Section 17A of the National School Lunch Act (42 U.S.C. 1766a) establishes National Average Payments for free, reduced price and paid afterschool snacks as part of the National School Lunch Program.

Breakfast Payment Factors

Section 4 of the Child Nutrition Act of 1966 (42 U.S.C. § 1773) establishes National Average Payment Factors for free, reduced price and paid breakfasts served under the School Breakfast Program and additional payments for free and reduced price breakfasts served in schools determined to be in "severe need" because they serve a high percentage of needy children.

Revised Payments

The following specific section 4, section 11 and section 17A National Average Payment Factors and maximum reimbursement rates for lunch, the afterschool snack rates, and the breakfast rates are in effect from July 1, 2000 through June 30, 2001. Due to a higher cost of living, the average payments and maximum reimbursements for Alaska and Hawaii are higher than those for all other States. The District of Columbia, Virgin Islands, Puerto Rico and Guam use the figures specified for the contiguous States.

National School Lunch Program Payments

Section 4 National Average Payment Factors

In school food authorities which served *less than 60 percent* free and reduced price lunches in School Year 1998–99, the payments for meals served are: *Contiguous States*—paid rate—19 cents, free and reduced price rate—19 cents, maximum rate—27 cents; *Alaska*—paid rate—31 cents, free and reduced price rate—31 cents, maximum rate—42 cents; *Hawaii*—paid rate—22 cents, free and reduced price rate—22 cents, maximum rate—31 cents.

In school food authorities which served *60 percent or more* free and reduced price lunches in School Year 1998–99, payments are: *Contiguous States*—paid rate—21 cents, free and reduced price rate—21 cents, maximum rate—27 cents; *Alaska*—paid rate—33 cents, free and reduced price rate—33 cents, maximum rate—42 cents; *Hawaii*—paid rate—24 cents, free and reduced price rate—24 cents, maximum rate—31 cents.

Section 11 National Average Payment Factors

Contiguous States—free lunch—183 cents, reduced price lunch—143 cents; *Alaska*—free lunch—297 cents, reduced price lunch—257 cents; *Hawaii*—free lunch—215 cents, reduced price lunch—175 cents.

Afterschool Snacks in Afterschool Care Programs

The payments are: *Contiguous States*—free snack—55 cents, reduced price snack—27 cents, paid snack—5 cents; *Alaska*—free snack—90 cents, reduced price snack—45 cents, paid snack—8 cents; *Hawaii*—free snack—65 cents, reduced price snack—32 cents, paid snack—5 cents.

School Breakfast Program Payments

For schools "not in severe need" the payments are: *Contiguous States*—free

breakfast—112 cents, reduced price breakfast—82 cents, paid breakfast—21 cents; *Alaska*—free breakfast—177 cents, reduced price breakfast—147 cents, paid breakfast—30 cents; *Hawaii*—free breakfast—130 cents, reduced price breakfast—100 cents, paid breakfast—23 cents.

For schools in "severe need" the payments are: *Contiguous States*—free breakfast—133 cents, reduced price breakfast—103 cents, paid breakfast—21 cents; *Alaska*—free breakfast—212 cents, reduced price breakfast—182 cents, paid breakfast—30 cents; *Hawaii*—free breakfast—155 cents, reduced price breakfast—125 cents, paid breakfast—23 cents.

Payment Chart

The following chart illustrates: The lunch National Average Payment Factors with the Sections 4 and 11 already combined to indicate the per lunch amount; the maximum lunch reimbursement rates; the reimbursement rates for afterschool snacks served in afterschool care programs; the breakfast National Average Payment Factors including "severe need" schools; and the milk reimbursement rate. All amounts are expressed in dollars or fractions thereof. The payment factors and reimbursement rates used for the District of Columbia, Virgin Islands, Puerto Rico and Guam are those specified for the contiguous States.

SCHOOL PROGRAMS—MEAL, SNACK AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES

[Expressed in dollars or fractions thereof Effective from July 1, 2000–June 30, 2001]

National School Lunch Program*	Less than 60%	60% or more	Maximum rate
Contiguous States:			
Paid	$.19	$.21	$.27
Reduced price	1.62	1.64	1.79
Free	2.02	2.04	2.19
Alaska:			
Paid	.31	.33	.42
Reduced price	2.88	2.90	3.13
Free	3.28	3.30	3.53
Hawaii			
Paid	.22	.24	.31
Reduced price	1.97	1.99	2.15
Free	2.37	2.39	2.55

*Payments listed for Free & Reduced Price Lunches include both sections 4 and 11 funds.

School Breakfast Program	Non-severe need	Severe need
Contiguous States:		
Paid	$.21	$.21
Reduced price	.82	1.03
Free	1.12	1.33
Alaska:		
Paid	.30	.30
Reduced price	1.47	1.82
Free	1.77	2.12
Hawaii		
Paid	.23	.23
Reduced price	1.00	1.25
Free	1.30	1.55

Special Milk Program	All milk	Paid milk	Free milk
Pricing programs without free option	$.13	N/A	N/A
Pricing programs with free option	N/A	$.13	(1)
Nonpricing programs	.13	N/A	N/A

[1] Average cost per ½ pint of milk.

AFTERSCHOOL SNACKS SERVED IN AFTERSCHOOL CARE PROGRAMS

Contiguous States:	
Paid	$.05
Reduced price	.27
Free	.55
Alaska:	
Paid	.08
Reduced price	.45
Free	.90
Hawaii:	
Paid	.05
Reduced price	.32
Free	.65

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. § § 601–612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. § 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This action is exempted from review by the Office of Management and Budget under Executive Order 12866.

National School Lunch, School Breakfast and Special Milk Programs are listed in the Catalog of Federal Domestic Assistance under No. 10.555, No. 10.553 and No. 10.556, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983.)

Authority: Sections 4, 8, 11 and 17A of the National School Lunch Act, as amended, 42 U.S.C. 1753, 1757, 1759a, 1766a and sections 3 and 4(b) of the Child Nutrition Act, as amended, 42 U.S.C. 1772 and 42 U.S.C. 1773(b).

Dated: June 21, 2000.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 00–16168 Filed 6–26–00; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; Timber Sale Operating Plans

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intention to extend a previously approved information collection. The collected information will help the Forest Service facilitate contract administration of timber sales on timber on National Forest System lands. Information will be collected from purchasers of this timber.

DATES: Comments must be received in writing on or before August 28, 2000.

ADDRESSES: All comments should be addressed to Rex Baumback, Forest Management, Mail Stop 1105, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

Comments also may be submitted via facsimile to (202) 205–1045 or by email to rbaumback@fs.fed.us.

The public may inspect comments received in the Office of the Director, Forest Management Staff, Forest Service, USDA, Room 3NW, Yates Building, 201 14th Street, SW., Washington, D.C. Callers are urged to call ahead to facilitate entrance into the building.

FOR FURTHER INFORMATION CONTACT: Rex Baumback, Timber Sale Contract Administration Specialist, Forest Management, at (202) 205–0855.

SUPPLEMENTARY INFORMATION:

Background

The National Forest Management Act of 1976 (16 U.S.C. 472a(14)(c)) requires timber sale purchasers to provide the Forest Service with timber sale operating plans on timber sales with contracts that exceed 2 years in length. The timber sale operating plans are collected within 60 days following the award of timber sale contracts and annually, thereafter, until the timber has been harvested. The timber sale contract requires the timber sale purchaser to update the timber sale operating plan annually.

Description of Information Collection

The following describes the information collection to be extended:

Title: Timber Operating Plans.

OMB Number: 0596–0086.

Expiration Date of Approval: May 31, 2000.

Type of Request: Extension of an information collection previously approved by the Office of Management and Budget.

Abstract: The collected information is used by the agency to plan the agency's timber sale contract administration workload and to determine whether a timber sale purchaser's scheduled timber operation has been delayed and is, therefore, eligible for an extension of the contract termination date. The collected information also is used to facilitate the administration of a timber sale contract.

Timber sale purchasers provide information that includes planned periods of major activity, how the activity will be conducted, and any anticipated road construction. The timber sale purchaser also outlines time frames and methods of accomplishing road construction, timber harvesting, and other contract requirements.

There is no prescribed format for the collection of this information. Timber sale purchasers may submit the required information in the form of a chart or letter using surface mail, electronic mail, or via facsimile. The information is based on the timber sale purchaser's business plan.

Respondents are National Forest System timber sale purchasers who prepare a chart or letter within 60 days of a timber sale contract award and annually thereafter, until the contract has been completed.

Data gathered in this information collection are not available from other sources.

Estimate of Annual Burden: 30 minutes.

Type of Respondents: Purchasers of National Forest System timber.

Estimated Annual Number of Respondents: 2500.

Estimated Annual Number of Responses per Respondent: 1.5.

Estimated Total Annual Burden on Respondents: 1,875 hours.

Comment Is Invited

The agency invites comments on (a) whether the proposed collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including names and addresses when provided, will become a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: June 15, 2000.

Paul Brouha,

Associate Deputy Chief, NFS.

[FR Doc. 00–16211 Filed 6–26–00; 8:45 am]

BILLING CODE 3410–11–U

DEPARTMENT OF AGRICULTURE

Forest Service

Eldorado National Forest, CA; Environmental Impact Statement

AGENCY: Forest Service, USDA Forest Service.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for resource management activities, including road construction, road reconstruction, biomass removal, understory thinning, prescribed burning and wildlife habitat improvement work on the Airport Forest Health Project involving a total planning area size of about 11,000 acres on the Pacific Ranger District of the Eldorado National Forest. The agency invites written comments and suggestions on the analysis. The agency also gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Scoping and subsequent environmental analysis began on the Airport Forest Health Project in January 1998. Scoping was completed and an environmental assessment (EA) was published and made available to the public in March 2000. Based upon environmental analysis and public comments to the environmental assessment, the Forest Supervisor of the Eldorado National Forest has determined that an environmental impact statement is the appropriate environmental document for this project.

ADDRESSES: Submit written comments and suggestions concerning the analysis to Don Errington, Pacific Ranger Station, Pollock Pines, California, 95726.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS should be directed to Don Errington, Pacific Ranger Station, Pollock Pines, California, 95726, Phone (530) 644–2349.

SUPPLEMENTARY INFORMATION: The Eldorado National Forest Land and Resource Management Plan was completed in January 1989. The Airport Forest Health Project EIS will tier to the approved Eldorado National Forest Land and Resource Management Plan. There are no known permits or licenses required to implement the proposed action.

Public comments previously received during scoping and in response to the completed environmental assessment will be considered in preparing the Final EIS. The Forest Service will identify and consider a range of alternatives for this project. The proposed alternatives will include the following:

1. No Action;
2. Understory thinning on approximately 180 acres and follow-up fuels reduction immediately around public use developments and public use areas using ground based equipment;
3. Understory thinning on approximately 2,200 acres and follow-up fuels reduction around public use developments and public use areas and other selected areas using ground based equipment; and
4. Understory thinning on approximately 2,900 acres and fuels reduction around public use developments and public use areas and on other selected areas using ground based and helicopter equipment.

These alternatives will consider varying levels and distribution of vegetative manipulation, timber harvest and fuels management. Specified new road construction will vary by alternative (0.1 miles in Alternative 2 and 2.2 miles in Alternatives 3 and 4). Road reconstruction will vary by alternative (0.3 miles in Alternative 2 and 18.2 miles in Alternatives 3 and 4. Road reconstruction will include road rocking, surface drainage work, clearing and minor realignment. Harvest prescriptions will include understory removal of both merchantable and sub-merchantable trees and commercial thinning of merchantable trees. All harvest prescriptions will conform with the California Spotted Owl Sierran Province Interim Guidelines Environmental Assessment and Decision Notice. Volume estimates of timber to be harvested range from 0 to 11 million boardfeet of commercial sawtimber. Biomass removal estimates range from 0 to 40,000 tons. Post-harvest herbicide use is proposed on 180 acres to help achieve reforestation of understocked areas. All estimates will be dependent on which alternative is chosen.

Preliminary issues that have been identified during the environmental analysis process include:

1. The concern that valuable developments may be destroyed by wildfire.
2. The concern that public recreational experiences may be affected by catastrophic fire or project activities.
3. The concern that healthy, functioning watersheds may be impacted by wildfire or selected treatments.
4. The concern that the socioeconomic well-being of local communities may be affected by wildfire.
5. The concern that the project may not be economically viable.
6. The concern that late seral habitat may be affected by project activities or wildfire.
7. The concern that air quality may be adversely affected by project activities or wildfire.
8. The concern that cultural resources may be adversely affected by project activities or wildfire.
9. The concern that herbicide use may adversely affect the environment.
10. The concern that road reconstruction, construction or decommissioning may cause undesirable environmental effects.
11. The concern that meadows are being invaded by conifer species and could be damaged by wildfire.

Public participation is especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service has sought information, comments, and assistance from federal, state and local agencies and other individuals or organizations that may be interested in or affected by the proposed project.

John Berry, Forest Supervisor, Eldorado National Forest, is the responsible official. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by August, 2000. At that time, EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date that EPA's notice of availability appears in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposals so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978)*). Also, environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel, 803 F2.d 1016, 1022 9th Cir. 1986)*) and (*Wisconsin Heritiges Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)*).

Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so

that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. Comments previously received in response to the Airport Forest Health Project environmental assessment will be considered in the Final EIS. In the Final EIS the Forest Service is required to respond to the comments and responses received (40 CFR 1503.4). The Final EIS is scheduled to be completed by September, 2000. The responsible official will consider the comments, responses, and environmental consequences discussed in the Final EIS; and applicable laws, regulations, and policies in making a decision regarding this project. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal pursuant to 36 CFR 215.

Dated: June 20, 2000.

John Berry,

Forest Supervisor, Eldorado National Forest.

[FR Doc. 00–16171 Filed 6–26–00: 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Oil and Gas Leasing, Finger Lakes National Forest, Seneca and Schuyler Counties, NY

AGENCY: USDA Forest Service.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Proponents have requested the Bureau of Land Management Eastern States Office to offer for lease the Federal oil and gas resources found within the Finger Lakes National Forest. The Mineral Leasing Act for Acquired Lands (Act of August 7, 1947) requires U.S. Department of Agriculture Forest Service consent prior to the leasing of an acquired mineral estate in National Forest System lands. The Forest Service further has the right to specify terms and conditions under which a lease will be issued to protect the surface resources and to provide for their continued use for other program purposes. The BLM has requested consent from the Forest Service to lease these lands. The 1986 Finger Lakes National Forest Land and Resource Management Plan determined that these lands are administratively available for oil and gas leasing with certain stipulations.

The Forest Service and BLM have determined that an Environmental Impact Statement is necessary to assess the environmental impacts that may occur as a result of leasing Federal lands for the exploration, development and production of oil and gas on the Finger Lakes National Forest, and reaffirm the availability decision. The range of potential post-leasing impacts will be based on the Reasonable Foreseeable Development Scenario (RFDS).

The decision to be made by the Forest Service is whether or not to provide consent to the Bureau of Land Management to offer National Forest System lands for competitive oil and gas leasing, and identify any stipulations required for protection of surface resources and for access, construction, or use and protection of existing roads. If consent is given, the Bureau of Land Management will use the EIS to make leasing decision on Finger Lake National Forest and split estate lands.

DATES: Written comments concerning the scope of the analysis should be received by July 28, 2000 to ensure timely consideration. The Forest Service will also conduct one or more public scoping meetings regarding this leasing proposal. The public will be notified as to the date, time and location of these meetings as they are scheduled.

ADDRESSES: Please send written comments to: Martha Twarkins, District Ranger, Finger Lakes National Forest, 5218 State Route 414, Hector, New York 14841

FOR FURTHER INFORMATION CONTACT: Contact Martha Twarkins either by writing to her at the Finger Lakes National Forest, 5218 State Route 414, Hector, New York 14841 or by telephone at (607) 546–4470 Ext: 314 if you have questions about the project and the preparation of the EIS or if you would like to be on the mailing list for this project.

SUPPLEMENTARY INFORMATION: The project area is located within Seneca and Schuyler Counties of New York. It encompasses approximately 16,176 acres of the Finger Lakes National Forest. There are also private lands where the United States owns the mineral rights, except gold and silver (split estate land). These lands encompass 47.35 acres, more or less, and will also be considered for leasing and will be analyzed as part of the project area.

The RFDS includes a reasonable projection of post-lease oil and gas development for each alternative. This projection includes potential number of wells, production facilities and equipment, acres disturbed, and typical operations. These reasonable foreseeable post-leasing activities will be used to assess potential impacts associated with leasing Federal oil and gas resources on the Finger Lakes National Forest.

The 1986 Finger Lakes National Forest Land and Resource Management Plan determined that these public and private lands are administratively available for oil and gas leasing with certain stipulations. Typical restrictions found in the Forest Plan include no surface occupancy: (1) On open water, streams and riparian areas; (2) on wet, steep, and shallow soils; (3) on municipal watersheds; (4) on administrative sites; (5) on range; (6) on or within 200 feet of designated trails; (7) on developed recreational areas; (8) on Special Areas (Management Area 8.1); and (9) on lands within Management Area 9.2. There are no outstanding oil and gas mineral rights or mineral withdrawals.

Public participation has been and will be an integral component of the study process, and will be especially important at several points during the analysis. The first is during the scoping process. The Forest Service will be seeking information, comments and assistance from federal, state county and local agencies, individuals and organizations that may be interested in or affected by the proposed activities. Initial public scoping was held on March 3, 1999 and April 13, 1999, and an open house was held on May 18, 1999. Preliminary issues identified for analysis in the EIS include the potential effects on: (1) Threatened, endangered and sensitive species; including the Federally-listed Indiana bat, Henslow's sparrow, and grasshopper sparrow; (2) grazing; (3) surface and groundwater, including the cumulative effects to the Forest's watersheds; (4) heritage

resources; (5) recreation opportunities; (6) visual quality; (7) noise; (8) air quality; (9) economic and social conditions; and (10) public safety.

Based on the results of scoping and the resource conditions within the project area, alternatives (including a no-action alternative) will be developed for the Draft EIS. There may be stipulations that require a minor amendment to the Forest Plan. The Draft EIS is expected to be filed with the U.S. Environmental Protection Agency (EPA) and be available for review in March 2001. At that time, EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date EPA's Notice of Availability appears in the **Federal Register**. The final EIS is anticipated in August 2001.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact stage, but are not raised until after completion of the final environmental impact statement, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that publics interested in this proposed action participate by the close of the 45 day comment period on the draft EIS, so that substantive comments and objections are made available to the Forest Service at a time when the agency can meaningfully consider and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Interested parties may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.

Lead and Cooperating Agencies: The USDA Forest Service, Finger Lakes National Forest is the lead agency for preparation of this document. The Bureau of Land Management is a cooperating agency on this project.

Responsible Officials: Paul K. Brewster, Forest Supervisor, Green Mountain and Finger Lake National Forests, is the responsible Forest Service official. James W. Dryden, Manager, Milwaukee Field Office, Bureau of Land Management is the responsible BLM official. In making the decisions, the responsible officials will consider the comments; responses; disclosure of environmental consequences; and applicable laws, regulations and policies. The responsible officials will state the rationale for the chosen alternative in the Records of Decision.

Dated: June 20, 2000.

Paul K. Brewster,

Forest Supervisor.

[FR Doc. 00–16172 Filed 6–26–00; 8:45 am]

BILLING CODE 3401–11–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD MAY 26, 2000–JUNE 21, 2000

Firm name	Address	Date petition accepted	Product
Mearthan, Inc	16 Western Industrial Dr., Cranston, RI 02921.	5–31–2000	Custom fabricated polyurethane components for business equipment, industrial applications, recreational products, and automotive industries.
Environmental Elements Corp	3700 Koppers Street, Baltimore, MD 21227.	5–31–2000	Dust collection and air purification equipment.
American Conveyor, Inc	Route 1 Box 46, Altavista. VA 24517.	5–31–2000	Standard and custom designed belt continuous conveyors used in the material handling and storage industries.
Chain Technology, Inc	88 Niantic Avenue, Providence, RI 02907.	5–31–2000	Gold chains.
M.W. Bevins Company	9903 East 54th Street, Tulsa, OK 74146.	5–31–2000	Phasing testers for distribution circuits.
Surface Mount Depot, Inc	4001 Will Rogers Pky., Oklahoma City, OK 73108.	5–31–2000	Printed circuit boards.
Rolite Manufacturing Co., Inc	10 Wendling Court. Lancaster, NY 14086.	5–31–2000	Metal stamped lamp parts including canopies, bases, arm plates, cups, cross bars, and glass holders arm plates, cups, cross.
Amtab Manufacturing Co., Inc	1747 West Grand Ave., Chicago, IL 60622.	6–1–2000	Wooden tables with folding metal legs.
Adobe Air, Inc	500 South 15th Street, Phoenix, AZ 85034.	6–1–2000	Portable space heaters.
Thompson Dental Manufacturing Company, Inc.	1201 South 6th West, Missouri, MT 59801.	6–7–2000	Dental hand instruments.
Central Chair Company	277 North Park Street, Asheboro, NC 27204.	6–7–2000	Bar stools of wood.
American Folk Art Furnituure Co.	Rt. 3, Box 1647, Afton, OK 74331.	6–21–2000	Wooden carved furniture.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: June 19, 2000.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 00–16173 Filed 6–26–00; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on July 13 & 14, 2000, 9:00 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania Avenue and Constitution Avenue, NW., Washington, DC. The ISTAC advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

July 13

Public Session

1. Discussion on activities related to development of an alternative to Composite Theoretical Performance (CTP)

2. Presentation on Inter-processors communications: the Infiniband and the Intel 870 chipset

3. Industry proposal for Commerce Control List item 5E001

4. Additional comments or presentations from the public

July 13 & 14

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the ISTAC. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the ISTAC suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, OSIES/EA/BXA MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., N.W., Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 10, 1999, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of this Committee and of any Subcommittees thereof dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of this Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For more information or copies of the minutes call Lee Ann Carpenter, 202–482–2583.

Dated: June 21, 2000.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 00–16194 Filed 6–26–00; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–853]

Notice of Amended Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China

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

EFFECTIVE DATE: June 27, 2000.

FOR FURTHER INFORMATION CONTACT: Rosa Jeong or Ryan Langan, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–3853 or 482–1279, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to provisions of the Tariff Act of 1930 ("the Act") as amended by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations refer to 19 CFR part 351 (April 1999).

Scope of Investigation

The product covered by this investigation is bulk acetylsalicylic acid, commonly referred to as bulk aspirin, whether or not in pharmaceutical or compound form, not put up in dosage form (tablet, capsule, powders or similar form for direct human consumption). Bulk aspirin may be imported in two forms, as pure ortho-acetylsalicylic acid or as mixed ortho-acetylsalicylic acid. Pure ortho-acetylsalicyclic acid can be either in crystal form or granulated into a fine powder (pharmaceutical form). This product has the chemical formula $C_9H_8O_4$. It is defined by the official monograph of the United States Pharmacopoeia ("USP") 23. It is classified under the Harmonized Tariff Schedule of the United States ("HTSUS") subheading 2918.22.1000.

Mixed ortho-acetylsalicylic acid consists of ortho-acetylsalicylic acid combined with other inactive substances such as starch, lactose, cellulose, or coloring materials and/or other active substances. The presence of other active substances must be in concentrations less than that specified for particular nonprescription drug combinations of aspirin and active substances as published in the Handbook of Nonprescription Drugs,

eighth edition, American Pharmaceutical Association. This product is classified under HTSUS subheading 3003.90.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is October 1, 1998, through March 31, 1999.

Amended Final Determination

In accordance with section 735(a) of the Act, on May 25, 2000, the Department published its final determination of the antidumping duty investigation of bulk aspirin from the People's Republic of China ("PRC") in which the Department determined that U.S. sales of bulk aspirin from the PRC were made at less than fair value (65 FR 33805 ("Final Determination")). On June 1, 2000, we received ministerial error allegations, timely filed pursuant to 19 CFR 351.224(c)(2), from the respondents, Jilin Pharmaceutical Import and Export Corporation ("Jilin") and Shandong Xinhua Pharmaceutical Factory ("Shandong"), regarding our final margin calculations. On June 6, 2000, we received comments on the respondents' ministerial error allegations from Rhodia Inc., the petitioner in this proceeding.

After anaylzing the submissions, we have determined in accordance with section 735(e) of the Act and 19 CFR 351.224 that we made ministerial errors in the margin calculations for both respondents. The ministerial errors include three errors alleged by Shandong pertaining to Shandong's margin calculations and two additional errors with respect to Jilin that were not raised by any party which we discovered. Specifically:

- We inadvertently neglected to offset Shandong's material cost for aspirin for recycled material inputs.
- We inadvertently added packing costs twice in the calculation of normal value of aspirin.
- We inadvertently neglected to adjust Shandong's overhead expenses caculated for salicylic acid and acetic anhydride processes for aspirin consumption rates.
- We inadvertently neglected to deduct Jilin's movement charges incurred in the United States.
- We inadvertently applied an incorrect surrogate value for freight to one of Jilin's sales.

For a detailed discussion of the ministerial error allegations and the Department's analysis, see Memorandum from Team to Richard W. Moreland, Deputy Assistant Secretary, dated June 20, 2000.

We are amending the final determination of the antidumping duty investigation of bulk aspirin from the PRC to reflect the correction of the above-cited ministerial errors. The revised final weighted-average dumping margins are as follows:

Exporter/manufacturer	Original weighted-average margin percentage	Revised weighted-average margin percentage
Shandong Xinhua Pharmaceutical Factory	42.77	16.51
Jilin Pharmaceutical Co., Ltd./Jilin Pharmaceutical Import and Export Corporation	4.72	10.85
PRC-wide Rate	144.02	144.02

The PRC-wide rate, which is unchanged, applies to all entries of the subject merchandise except for entries from exporters that are identified individually above.

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service ("Customs") to continue suspending liquidation on all imports of the subject merchandise from the PRC. Customs shall require a cash deposit or the posting of a bond equal to the weighted-average amount by which normal value exceeds the export price as indicated in the chart above. These suspension-of-liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission of our amended final determination.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: June 21, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–16238 Filed 6–26–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 00061475–0175–01]

RIN 0607–XX24

International Buyer Program; Support for Domestic Trade Shows

AGENCY: International Trade Administration, Commerce.

ACTION: Notice and call for applications for the FY 2002 International Buyer Program (October 1, 2001 through September 30, 2002).

SUMMARY: This notice sets forth objectives, procedures and application review criteria associated with the U.S. Department of Commerce's International Buyer Program (IBP), to support domestic trade shows. Selection is for the International Buyer Program for Fiscal Year 2002 (October 1, 2001 through September 30, 2002).

The International Buyer Program was established to bring international buyers together with U.S. firms by promoting leading U.S. trade shows in industries with high export potential. The International Buyer Program emphasizes cooperation between the U.S. Department of Commerce (DOC) and trade show organizers to benefit U.S. firms exhibiting at selected events and provides practical, hands-on assistance such as export counseling and market analysis to U.S. companies interested in exporting. The assistance provided to show organizers includes worldwide overseas promotion of selected shows to potential international buyers, end-users, representatives and distributors. The worldwide promotion is executed through the offices of the United States and Foreign Commercial Service (hereinafter referred to as the Commercial Service) in 74 countries representing America's major trading partners, and also in U.S. Embassies in countries where the Commercial Service does not maintain offices. The

Department expects to select approximately 28 shows for FY2002 from among applicants to the program. Shows selected for the International Buyer Program will provide a venue for U.S. companies interested in expanding their sales into international markets. Successful applicants will be required to enter into a Memorandum of Understanding (MOU) that sets forth the specific actions to be performed by the show organizer and the DOC. The MOU constitutes an agreement between the DOC and the show organizer specifying which services are to be rendered by DOC as part of the IBP and, in turn, what responsibilities are agreed to be performed by the show organizer. *Anyone wishing to apply will be sent a copy of the MOU along with the application package.* The services to be rendered by DOC will be carried out by the Commercial Service.

DATES: Applications must be received by August 11, 2000. Contributions are for shows selected and promoted during the October 1, 2001 and September 30, 2002, period.

ADDRESSES: Export Promotion Services/ International Buyer Program, Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue, NW., H2116, Washington, DC 20230. Telephone: (202) 482–0146 (For deadline purposes, facsimile or email applications will be accepted as interim applications, to be followed by signed original applications).

FOR FURTHER INFORMATION CONTACT: Jim Boney, Product Manager, International Buyer Program, Room 2116, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC 20230. Telephone (202) 482–0146; Fax: (202) 482–0115; Email: Jim.Boney@mail.doc.gov.

SUPPLEMENTARY INFORMATION: The Commercial Service is accepting applications for the International Buyer Program (IBP) for events taking place between October 1, 2001 and September 30, 2002. A contribution of *$6,000* for shows of five days or less is required. Shows more than five days in duration, or requiring more than one International Business Center, a contribution of *$8,000* is required.

Under the IBP, the Commercial Service seeks to bring together international buyers with U.S. firms by selecting and promoting in international markets domestic trade shows in industries with high export potential. Selection of a trade show is one-time, *i.e., a trade show organizer seeking selection for a recurring event must submit a new application for selection for each occurrence of the event.* If the event occurs more than once in the 12-month period covering this announcement, the trade show organizer must submit a separate application for each event.

The Commercial Service will select approximately 28 events to support between October 1, 2001, through September 30, 2002. The Commercial Service will select those events that, in its judgment, most clearly meet the Commercial Service's objective and selection criteria mentioned below.

The Department selects events which it determines to be a leading international trade show appropriate for participation by U.S. exporting firms and promotion in overseas markets by U.S. Embassies and Consulates. Selection does not constitute a guarantee by the U.S. Government of the show's success. Selection is not an endorsement of the show organizer except as to its international buyer activities. Non-selection should not be viewed as a finding that the event will not be successful in the promotion of U.S. exports.

Exclusions. Trade shows will not be considered that are either first-time or horizontal (non-industry specific) events. Annual trade shows will not be selected for this program more than twice in any three-year period (*e.g.*, shows selected for fiscal years 2000 and 2001 are not eligible for inclusion in this program in fiscal year 2002, but can be considered in subsequent years).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

The Office of Management and Budget has approved the information collection requirements of the application to this program under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 2501 *et seq.*) (OMB control no. 0625–0151).

General Selection Criteria

Those events will be selected that, in the judgment of the Department, most clearly meet the following criteria:

(a) *Export Potential:* The products and services to be promoted at the trade show are from U.S. industries that have high export potential, as determined by U.S. Department of Commerce sources, *i.e.*, best prospects lists and U.S. export statistics (certain industries are rated as priorities by our domestic and international commercial officers in their Country Commercial Guides).

(b) *International Interest:* The trade show meets the needs of a significant number of overseas markets and corresponds to marketing opportunities as identified by the posts in their Country Commercial Guides (*e.g.* best prospect lists). Previous international attendance at the show may be used as an indicator.

(c) *Scope of the Show:* The trade show offers a broad spectrum of U.S.-made products and/or services for the subject industry. Trade shows with a majority of United States businesses, as defined in 15 U.S.C. 4724, will be given preference.

(d) *Stature of the show:* The trade show is clearly recognized by the industry it covers as a leading event for the promotion of that industry's products and services both domestically and internationally and as a showplace for the latest technology or services in that industry or sector.

(e) *Exhibitor Interest:* There is demonstrated interest on the part of U.S. exhibitors in receiving international business visitors during the trade show. A significant number of these exhibitors should be new-to-export or seeking to expand sales into additional international markets.

(f) *Overseas Marketing:* There has been demonstrated effort made to market prior shows overseas. In addition, the applicant should describe in detail the international marketing program to be conducted for the event, explaining how efforts should increase individual and group international attendance.

(g) *Logistics:* The trade show site, facilities, transportation services and availability of accommodations are in the stature of an international-class trade show.

(h) *Cooperation:* The applicant demonstrates a willingness to cooperate with the Commercial Service of the United States of America to fulfill the program's goals and to adhere to target dates set out in the Memorandum of Understanding and the even timetable, both of which are available from the program office (see For Further Information on When, Where, and How to apply). Past experience in the IBP will be taken into account in evaluating current applications to the program.

Legal Authority: The Commercial Service has the legal authority to enter into the above-mentioned memorandum of understanding with the show organizer under the provisions of the Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. 2455(f)). The

statutory authority for the Commercial Service to conduct the International Buyer Program is 15 U.S.C. 4724.

John Klingelhut,

Director, Office of Public/Private Initiatives, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 00–16188 Filed 6–26–00; 8:45 am]

BILLING CODE 3510–FP–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of Radio and Telephone Terminal Equipment Directive Training Workshop

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to attend a two-day Radio and Telephone Terminal Equipment (R&TTE) Directive training workshop. The workshop is aimed at providing information to potential U.S. conformity assessment bodies (CABs) for compliance with the requirement of the R&TTE Directive 1999/5/EC and its impact on the current EMC Directive 89/336/EEC. The morning session of the first day of the workshop will be devoted to general introduction to EMC Directive including operation of Competent Bodies and the use of Technical Construction Files. The afternoon of the first day and the second full day of the workshop will be devoted to the requirements of R&TTE Directive.

The European Union (EU) personnel will conduct this workshop. NIST and Federal Communications Commission personnel will participate. There is a fee of $175 for each attendee of the training workshop. All attendees must register no later than July 7, 2000.

DATES: The EMC Directive component of the training workshop will be held on July 17, 2000, from 9:00 AM to Noon. The R&TTE Directive component will be held on July 17 from 1:00 to 5:00 PM and on July 18, 2000, from 9:00 AM to 5:00 PM.

ADDRESSES: Both days of the training workshop will be held at the Quality Suites-Shady Grove, 3 Research Court, Rockville, Maryland 20850 (near Shady Grove exit off Interstate I-270).

FOR FURTHER INFORMATION CONTACT: For registration information, you may telephone R&TTE Workshop Coordinator, Lori Buckland at (301) 975–3881. You may register for the workshop by E-mail addressed to lori.buckland@nist.gov or by facsimilie at (301) 948–2067. You may also register by U.S. mail addressed to Lori Buckland, R&TTE Workshop Coordinator, NIST, 100 Bureau Drive, Mail Stop 3461, Gaithersburg, MD 20899–3461. Training program information and the registration form is available at the NIST Web site at http://www.nist.gov/public_affairs/confpage/conffutr.htm. For technical information regarding the workshop, please call Jogindar Dhillon at 301–975–5521 or send on E-mail to dhillon@nist.gov.

SUPPLEMENTARY INFORMATION: Section VIII, of the Telecommunication Equipment and Electromagnetic Compatibility Sectoral Annexes of the U.S./EU Mutual Recognition Agreement (MRA), recommends that the MRA partners sponsor seminars concerning the relevant technical and product approval requirements. A copy of the U.S./EU MRA can be accessed at http://www/ustr.gov/agreements/mra/mral.pdf. The new R&TTE Directive 1999/5/EC came into force on March 9, 1999, that replaced the old TTE Directive 98/13/EC. The text of the R&TTE Directive can be accessed through http://www.europa.eu.int/comm/dgs_en.htm.

Before the training workshop, the Telecommunication Certification Bodies (TCB) Council (a product certifiers' group) will meet on Sunday, July 16, 2000, between 4:00 and 6:00 PM the Quality Suites-Shady Grove. All registered participants for the R&TTE Training Workshop are welcome to attend the TCB Council meeting.

Dated: June 20, 2000.

Karen H. Brown,

Deputy Director.

[FR Doc. 00–16242 Filed 6–26–00; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052400G]

Marine Mammals

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

ACTION: Issuance of photography permit No. 980–1570.

SUMMARY: Notice is hereby given that Lonsdale Productions, 113 Fakenham Road, Great Ryburgh, Norfolk NR21 7AQ, United Kingdom, has been issued a permit to take by Level B harassment two species, gray whale (*Eschrichtius robustus*) and killer whale (*Orcinus orca*) of non-threatened, non-endangered marine mammals for purposes of commercial photography.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, 709 W. 9th Street, Federal Building Room 461, P.O. Box 21668, Juneau, AK 99802 (907/586–7235).

SUPPLEMENTARY INFORMATION: On April 25, 2000, notice was published in the **Federal Register** (65 FR 24185) that the above-named applicant had submitted a request for a permit to take two species of marine mammals by Level B harassment during the course of commercial photographic activities in Alaska waters. The requested permit has been issued, under the authority of section 104(c)(6) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*).

Dated: June 21, 2000.

Ann D. Terbush,

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

[FR Doc. 00–16226 Filed 6–26–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Reopening of the Time Period for Acceptance of Comments on Issues Related to Policies and Agenda for the National Intellectual Property Law Enforcement Coordination Council

AGENCY: U.S. Patent and Trademark Office, Co-Chair, National Intellectual Property Law Enforcement Coordination Council.

ACTION: Reopening of time period for acceptance of comments.

SUMMARY: On Monday, June 5, 2000, the members of the National Intellectual Property Law Enforcement Coordination Council (the Council) published a Notice seeking public comment on issues associated with the Council's mission (65 F.R. 35611 (2000)). Interested members of the public were invited to present written comments on the topics outlined in the

Supplementary Information section of the Notice by June 20, 2000. This notice reopens the time period for submission of comments. Comments will be accepted through July 7, 2000.

DATES: All comments are due by July 7, 2000.

ADDRESSES: Persons wishing to offer written comments should address those comments to Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, Box 4, Washington, DC 20231, marked to the attention of Elizabeth Shaw. Comments may also be submitted by facsimile transmission to (703) 305–7575, or by electronic mail through the Internet to elizabeth.shaw2@uspto.gov. All comments will be maintained for public inspection in Room 902, Crystal Park II, 2121 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Elizabeth Shaw by telephone at (703) 305–1033, by fax at (703) 305–7575, or by mail marked to her attention and addressed to Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, Box 4, Washington, DC 20231.

Dated: June 22, 2000.

Albin F. Drost,

Acting Solicitor.

[FR Doc. 00–16213 Filed 6–26–00; 8:45 am]

BILLING CODE 3510–16–U

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0369]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Rights in Technical Data and Computer Software

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through September 30, 2000. DoD proposes that OMB extend its approval for use through September 30, 2003.

DATES: DoD will consider all comments received by August 28, 2000.

ADDRESSES: Interested parties should submit written comments and recommendations on the proposed information collection to: Defense Acquisition Regulations Council, Attn: Ms. Melissa D. Rider, OUSD(AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted via the Internet should be addressed to: dfars@acq.osd.mil.

Please cite OMB Control Number 0704–0369 in all correspondence related to this issue. E-mail comments should cite OMB Control Number 0704–0369 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa D. Rider, (703) 602–4245. The information collection requirements addressed in this notice are available electronically via the Internet at: http://www.acq.osd.mil/dp/dars/dfars.html. Paper copies are available from Ms. Melissa D. Rider, OUSD(AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 227.71, Rights in Technical data, and Subpart 227.72, Rights in Computer Software and Computer Software Documentation, and related provisions and clauses of the Defense federal acquisition Regulation Supplement (DFARS); OMB Control Number 0704–0369.

Needs and Uses: DFARS Subparts 227.71 and 227.72 prescribe the use of solicitation provisions and contract clauses containing information collection requirements that are associated with rights in technical data and computer software. DoD needs this information to implement 10 U.S.C. 2320, Rights in technical data, and 10 U.S.C. 2321, Validation of proprietary data restrictions. DoD uses the information to recognize and protect contractor rights in technical data and computer software that are associated with privately funded developments; and to ensure that technical data delivered under a contract is complete and accurate and satisfies contract requirements.

Affected Public: Businesses or other for-profit and no-for-profit institutions.

Annual Burden Hours: 1,299,698.

Number of Respondents: 56,044.

Responses Per Respondent: 15.

Average Burden Per Response: 1.5 hours.

Frequency: On occasion.

Summary of Information Collection

DoD uses the following DFARS provisions and clauses in solicitations and contracts to require offerors and contractors to identify and mark data or software requiring protection from unauthorized release or disclosure in accordance with 10 U.S.C. 2320:

252.227–7013, Rights in Technical Data-Noncommercial Items.

252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

252.227–7017, Identification and Assertion of Use, Release, or Disclosure Restrictions.

252.227–7018, Rights in Noncommercial Technical Data and Computer Software-Small Business Innovation Research (SBIR) Program.

In accordance with 10 U.S.C. 2320(a)(2)(D), DoD may disclose limited rights data to persons outside the Government, or allow those persons to use limited rights data, if the recipient agrees not to further release, disclose, or use the data. Therefore, the clause at DFARS 252.227–7013, Rights in Technical Data-Noncommercial Items, requires the contractor to identify and mark data or software that it provides with limited rights.

In accordance with 10 U.S.C. 2321(b), contractors and subcontractors at any tier must be prepared to furnish written justification for any asserted restriction on the Government's rights to use or release data. The following DFARs clauses require contractors and subcontractors to maintain adequate records and procedures to justify any asserted restrictions:

225.227–7019, Validation of Asserted Restrictions-Computer Software.

252.227–7037, Validation of Restrictive Markings on Technical Data.

In accordance with 10 U.S.C. 2320, DoD must protect the rights of contractors that have developed items, components, or processes at private expense. Therefore, the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive

Legends, requires a contractor or subcontractor to submit a use and non-disclosure agreement when it obtains data from the Government to which the Government has only limited rights.

The provision at DFARS 252.227–7028, Technical Data or Computer Software Previously Delivered to the Government, requires an offeror to identify any technical data or computer software that it previously delivered, or will deliver, under any Government contract. DoD needs this information to avoid paying for rights in technical data or computer software that the Government already owns.

In accordance with 10 U.S.C. 2320(b)(7), a contractor that delivers or makes technical data available to the Government must furnish written assurance that the technical data is complete and accurate and satisfies contract requirements. The clause at DFARS 252.227–7036, Declaration of Technical Data Conformity, implements this requirement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 00–15814 Filed 6–26–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Institute of Technology; Evaluation for Continued Accreditation

AGENCY: Department of the Air Force, (DOD).

ACTION: Notice of evaluation for continued accreditation.

SUMMARY: The Air Force Institute of Technology (AFIT) is seeking comments from the public about the Institute in preparation for its periodic evaluation by its regional accrediting agency. The Institute will undergo a comprehensive evaluation visit October 16–18, 2000, by a team representing the Commission on Institutions of Higher Education of the North Central Association of Colleges and Schools. The AFIT has been accredited by the Commission since 1960. The team will review the institution's ongoing ability to meet the Commission's Criteria for Accreditation and General Institutional Requirements.

DATES: All comments must be received by September 15, 2000.

ADDRESSES: The public is invited to submit comments regarding the Institute to: Public Comment on the Air Force Institute of Technology, Commission on Institutions of Higher Education, North Central Association of Colleges and Schools, 30 North LaSalle Street, Suite 2400, Chicago, IL 60602.

FOR FURTHER INFORMATION CONTACT: Dr. James M. Horner at 937–255–4808.

SUPPLEMENTARY INFORMATION: Comments must address substantive matters related to the quality of the institution or its academic programs. Comments must be in writing and signed comments cannot be treated as confidential.

Authority: 10 U.S.C. 9314.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–16218 Filed 6–26–00; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability Inventions for Licensing; Government-Owned Inventions

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

U.S. Patent Application Serial No. 09/533,954 entitled, "Chemical Warfare Agent Decontamination Foaming Composition and Method", filing date: March 22, 2000, Navy Case No. 82169.

ADDRESSES: Requests for copies of the patent applications cited should be directed to the Naval Surface Warfare Center, Dahlgren Laboratory, Code CD222, 17320 Dahlgren Road, Building 183, Room 015, Dahlgren, VA 22448–5100, and must include the Navy Case number. Interested parties will be required to sign a Confidentiality, Non-Disclosure and Non-Use Agreement before receiving copies of requested patent applications.

FOR FURTHER INFORMATION CONTACT: James B. Bechtel, Patent Counsel, Naval Surface Warfare Center, Dahlgren Laboratory, Code CD222, 17320 Dahlgren Road, Building 183, Room 015, Dahlgren, VA 22448–5100. telephone (540)-653–8016.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: June 14, 2000.

J.L. Roth,

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

[FR Doc. 00–16215 Filed 6–26–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability Inventions for Licensing; Government-Owned Inventions

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

U.S. Patent Application Serial No. 09/573,152 entitled, "Decontamination Solution and Method", filing date: May 19, 2000, Navy Case No. 82505.

ADDRESSES: Requests for copies of the patent applications cited should be directed to the Naval Surface Warfare Center, Dahlgren Laboratory, Code CD222, 17320 Dahlgren Road, Building 183, Room 015, Dahlgren, VA 22448–5100, and must include the Navy Case number. Interested parties will be required to sign a Confidentiality, Non-Disclosure and Non-Use Agreement before receiving copies of requested patent applications.

FOR FURTHER INFORMATION CONTACT: James B. Bechtel, Patent Counsel, Naval Surface Warfare Center, Dahlgren Laboratory, Code CD222, 17320 Dahlgren Road, Building 183, Room 015, Dahlgren, VA 22448–5100, telephone (540) 653–8016.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: June 14, 2000.

J.L. Roth,

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

[FR Doc. 00–16216 Filed 6–26–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before August 28, 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, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

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

Dated: June 21, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Revision.

Title: Student Aid Report (SAR).

Frequency: Annually.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden: Responses: 17,234,692. Burden Hours: 4,386,515.

Abstract: The Student Aid Report (SAR) is used to notify students of their eligibility to receive Federal student aid for postsecondary education. The form is submitted by the student to the institution of their choice.

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 5624, 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. 00–16158 Filed 6–26–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 27, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Waisinn Chan, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

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

Dated: June 22, 2000

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs.

Type of Review: Extension.

Title: Lender's Application for Payment of Insurance Claims, ED Form 1207.

Frequency: On Occasion.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden: Responses: 2,588; Burden Hours: 699.

Abstract: The Ed Form 1207—Lender's Application for Payment of Insurance Claim-is completed for each borrower for whom the lender is filing a Federal claim. Lenders must file for payment within 90 days of the default, depending on the type of claim filed.

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. 00–16239 Filed 6–26–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

National Commission on Mathematics and Science Teaching for the 21st Century; Meeting

AGENCY: National Commission on Mathematics and Science Teaching for the 21st Century, Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Commission on Mathematics and Science Teaching for the 21st Century (Commission). This notice also describes the functions of the Commission. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the general public of their opportunity to attend.

DATES AND TIMES: Thursday, July 13, 2000 from 3:30 p.m. to approximately 6:30 p.m. and Friday, July 15 from 8:30 a.m. to adjournment at approximately 4:30 p.m.

ADDRESSES: Jurys Washington Hotel, Doyle Room, 1500 New Hampshire Avenue, NW., Washington, DC 20036, telephone: (202) 483–6000, (800) 423–6953, fax: (202) 328–3265.

FOR FURTHER INFORMATION CONTACT: Linda P. Rosen, Executive Director, The National Commission on Mathematics and Science Teaching for the 21st Century, U.S. Department of Education, Room 6W252, 400 Maryland Avenue, SW., Washington, DC 20202, telephone: (202) 260–8229, fax: (202) 260–7216.

SUPPLEMENTARY INFORMATION: The National Commission on Mathematics and Science Teaching for the 21st Century was established by the Secretary of Education and is governed by the provisions of the Federal Advisory Committee Act (FACA) (P.L. 92–463, as amended; 5 U.S.C.A. Appendix 2). The Commission was established to address the pressing need to significantly raise student achievement in mathematics and science by focusing on the quality of mathematics and science instruction in K–12 classrooms nationwide. The Commission will develop a set of recommendations with a corresponding, multifaceted action strategy to improve the quality of teaching in mathematics and science.

The meeting of the Commission is open to the public. The proposed agenda will focus on a draft of the Commission's report, related Commission products, and plans for dissemination.

Space may be limited and you are encouraged to register in advance if you plan to attend. You may register through the Internet at America_Counts@ed.gov or Jamila_Rattler@ed.gov. Please include your name, title, affiliation, complete address (including e-mail, if available), telephone and fax numbers. If you are unable to register through the Internet, you may fax your registration information to The National Commission on Mathematics and Science Teaching for the 21st Century at (202) 260–7216 or mail to The National Commission on Mathematics and Science Teaching for the 21st Century, U.S. Department of Education, Room 6W252, 400 Maryland Avenue, SW., Washington, DC 20202. Any individual who will need accommodations for a disability in order to attend the meeting (*i.e.,* interpreting services, assistive listening devices, materials in alternative format) should notify Jamila Rattler at (202) 260–8229 by no later than July 3, 2000. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

Records will be kept of all Commission proceedings, and will be available for public inspection at The National Commission on Mathematics and Science Teaching for the 21st Century, 400 Maryland Avenue, SW., Room 6W252 from the hours of 8:30 a.m. to 5 p.m. weekdays, except Federal holidays.

Frank S. Holleman III,

Deputy Secretary.

[FR Doc. 00–16121 Filed 6–26–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Compliance Filing; Regulation of Short-Term Natural Gas Transportation Services; Docket No. RM98–10–000; Regulation of Interstate Natural Gas Transportation Services, Docket No. RM98–12–000

June 21, 2000.

In the matter of: RP00–331–000, RP00–328–000, RP00–332–000, RP00–323–000, RP00–339–000, RP00–324–000, RP00–347–000, RP00–320–000, RP00–325–000, RP00–327–000, RP00–326–000, RP00–333–000, RP00–346–000, RP00–321–000, RP00–319–000, RP00–344–000, RP00–341–000, RP00–336–000, RP00–322–000, RP00–329–000, RP00–318–000, RP00–337–000, RP00–343–000, RP00–334–000, RP00–340–000, RP00–342–000, RP00–338–000; Algonquin Gas Transmission Company, Algonquin LNG, Inc., ANR Pipeline Company, ANR Storage Company, Arkansas Western Pipeline, L.L.C., Blue Lake Gas Storage Company, Canyon Creek Compression Company, Chandeleur Pipe Line Company, Colorado Interstate Gas Company, Columbia Gas Transmission Company, Columbia Gulf Transmission Company, Crossroads Pipeline Company, Dauphin Island Gathering Partners, Destin Pipeline Company, Discovery Gas Transmission LLC, Dominion Transmission, Inc. (Formerly CNG Transmission Corporation), Egan Hub Partnerships, L.P., El Paso Natural Gas Company, Garden Banks Gas Pipeline, LLC, Great Lakes Gas Transmission Limited Partnership, Kansas Pipeline Company, Kern River Gas Transmission Company, Kinder Morgan Interstate Gas Transmission LLC, KN Wattenberg Transmission L.L.C, Koch Gateway Pipeline Company, MIGC, Inc., Mojave Pipeline Company

Take notice that on June 15 and 16, 2000, the above-referenced pipelines tendered for filing their *pro forma* tariff sheets respectively, in compliance with Order Nos. 637 and 637–A.

On February 9 and May 19, 2000, the Commission issued Order Nos. 637 and 637–A, respectively, which prescribed new regulations, implemented new policies and revised certain existing regulations respecting natural gas transportation in interstate commerce. The Commission directed pipelines to file *pro forma* tariff sheets to comply with the new regulatory requirements regarding scheduling procedures, capacity segmentation, imbalance management services and penalty credits, or in the alternative, to explain why no changes to existing tariff provisions are necessary.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 17, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

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

David P. Boergers,

Secretary.

[FR Doc. 00–16143 Filed 6–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–353–000]

Black Marlin Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

June 21, 2000.

Take notice that on June 16, 2000, Black Marlin Pipe Line Company (BMPL) tendered for filing to become part of its FERC Gas Tariff, first Revised Volume No. 1, the following tariff sheets:

Second Revised Sheet No. 213B,
Third Revised Sheet No. 213D, and
Third Revised Sheet No. 217

BMPL states that on February 9, 2000, the Commission issued its final rule regarding the regulation of short-term interstate natural gas transportation services in Docket Nos. RM98–10–000 and RM–12–000 (Order No. 637). Subsequent to issuing Order No. 637, on May 19, 2000, the Commission issued an Order on Rehearing (Order No. 637–A) which generally affirmed the provisions adopted in Order No. 637. In the instant filing, BMPL is filing to implement provisions of Order Nos. 637 and 637–A regarding the waiver of the rate ceiling for short-term capacity release transactions and the prospective limitations on the availability of the Right-of-First Refusal (ROFR).

BMPL states that Order No. 637 provides for a waiver of the rate ceiling for short-term (less than one year) capacity release transactions until September 30, 2002 and requires pipelines to file tariff revisions within 180 days of the effective date of the rule, i.e., March 26, 2000, to remove tariff provisions which are inconsistent with the removal of the rate ceiling. Accordingly, BMPL is filing revised tariff sheets as required.

BMPL also states it is filing revised tariff sheets implementing portions of Order Nos. 637 and 637–A which provide that the Right-of-First Refusal be applicable to grandfathered discounted contracts and prospectively only to contracts at the maximum tariff rate having a term of twelve consecutive months or longer of service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16139 Filed 6–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–335–000]

Black Marlin Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 21, 2000.

Take notice that on June 15, 2000, Black Marlin Pipeline Company (BMPL) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Second Revised Sheet No. 109
First Revised Sheet No. 110
Third Revised Sheet No. 111
First Revised Sheet No. 133
Second Revised Sheet No. 134
Third Revised Sheet No. 135
Fifth Revised Sheet No. 212
Fifth Revised Sheet No. 213
First Revised Sheet No. 213.01
First Revised Sheet No. 213E

BMPL states that on February 9, 2000, the Commission issued its final rule regarding the regulation of interstate natural gas transportation services in Docket Nos. RM98–10–000 and RM98–12–000 (Order No. 637). In Order No. 637, the Commission made changes to its current regulatory model to enhance the effectiveness and efficiency of the gas markets as they have evolved since Order No. 636. Specifically, in Order No. 637 the Commission:

- Granted, for a limited period, a waiver of the price ceiling for short-term released capacity
- Narrowed the right of first refusal ("ROFR")
- Addressed alternatives to traditional pipeline pricing by permitting pipelines to proposed peak/off-peak and term differentiated rate structures
- Revised certain reporting requirements
- Made changes in regulations related to (1) scheduling equality for released capacity, (2) capacity segmentation, and (3) pipeline imbalance services, cash-out provisions, operational flow orders (OFOs) and penalties.

Subsequent to issuing Order No. 637, on May 19, 2000, the Commission issued an Order on Rehearing (Order 637–A) which largely approved the provisions as adopted in Order No. 637.

BMPL states that in a separate filing, BMPL will file revisions to its Tariff to comply with the Order Nos. 637 and 637–A. BMPL will comply with the provisions of Order Nos. 637 and 637–A regarding reporting requirements by September 1, 2000.

Also, BMPL states that in the instant filing, BMPL is filing revisions to its Tariff to comply with requirements in Order Nos. 637 and 637–A related to scheduling equality, capacity segmentation and pipeline imbalance services, OFOs and penalties. As required by the Order Extending Time for Compliance, issued April 12, 2000 in Docket NOs. RM98–10–002 and RM98–12–002, BMPL is making the instant filing on or before June 15, 2000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sectinos 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance.

Davis P. Boergers,

Secretary.

[FR Doc. 00–16133 Filed 6–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–348–000]

Canyon Creek Compression Company; Notice of Proposed Changes in FERC Gas Tariff

June 21, 2000.

Take notice that on June 16, 2000, Canyon Creek Compression Company (Canyon) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective March 27, 2000:

Third Revised Sheet No. 143
Second Revised Sheet No. 145
Fourth Revised Sheet No. 148
Second Revised Sheet No. 150
First Revised Sheet No. 167

Canyon states that on February 9, 2000, the Federal Energy Regulatory Commission (Commission) issued its final rule regarding the regulation of short-term interstate natural gas transportation services in Docket Nos. RM98–10–000 and RM98–12–000 (Order No. 637). In the instant filing, Canyon is filing to implement provisions of Order No. 637 regarding the waiver of the rate ceiling for short-term capacity release transactions and the prospective limitations on the availability of the Right of First Refusal (ROFR).

Canyon states that Order No. 637 provides for a waiver of the rate ceiling for short-term (less than one year) capacity release transactions until September 30, 2002 and requires pipeline to file tariff revisions within 180 days of the effective date of the rule, *i.e.*, March 27, 2000, to remove tariff sheets as required. Unless extended by Commission action, the tariff provisions removing the price cap submitted herin shall not be effective after September 30, 2002.

Canyon also states that it is filing revised tariff sheets implementing portions of Order No. 637 which provide that the ROFR be applicable only to contracts at the maximum tariff rate having a term of twelve consecutive months or longer of service.

Canyon respectfully requests waiver of any provisions of its Tariff and/or the Commission's Regulations required to permit the instant filing to become effective as proposed.

Canyon states that copies of the filing have been mailed to its customers and interstate state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16135 Filed 6–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–247–001]

Colorado Interstate Gas Company; Notice of Tariff Compliance Filing

June 21, 2000.

Take notice that on June 13, 2000, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the substitute tariff sheets listed in Appendix A to the filing, to be effective June 1, 2000.

CIG states that these tariff sheets are being filed in compliance with the order issued May 31, 2000 in Docket No. RP00–247.

CIG states these tariff sheets reflect the change to reinstate the imbalance payback period that is currently available during the first week of the month following the transportation activities causing the imbalance.

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

David P. Boergers,

Secretary.

[FR Doc. 00–16128 Filed 6–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–330–000]

Dauphin Island Gathering Partners; Notice of Proposed Changes in FERC Gas Tariff

June 21, 2000.

Take notice that on June 15, 2000, Dauphin Island Gathering Partners (DIGP) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of March 27, 2000. The tariff sheets remove the rate ceiling for short term capacity release transactions and are proposed to become effective on March 27, 2000:

First Revised Sheet No. 218
First Revised Sheet No. 221

DIGP states that on February 9, 2000, the Federal Energy Regulatory Commission issued its final rule regarding the regulation of short-term interstate natural gas transportation services in Docket Nos. RM98–10 and RM98–12 (Order No. 637). In the instant filing, DIGP is filing to implement provisions of Order No. 637 regarding the waiver of the rate ceiling for short-term capacity release transactions.

DIGP states that copies of the filing are being served contemporaneously on all participants listed on the service list in this proceeding and on all persons who are required by the Commission's regulations to be served with the application initiating these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's

Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16132 Filed 6–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–310–001]

Discovery Gas Transmission LLC; Notice of Request for Waiver

June 21, 2000.

Take notice that on June 14, 2000, Discovery Gas Transmission LLC (Discovery) tendered for filing a Request for Waiver of section 4 of its FT–1, FT–2, and IT Rate Schedules related to the recovery mechanism for lost and unaccounted for gas.

Discovery states that the request for a waiver is intended to supplement Discovery's May 31, 2000, filing in this proceeding to retain a .5 percent retention rate for lost and unaccounted for gas during the one-year period commencing July 1, 2000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 28, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www/ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16130 Filed 6–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–262–001]

Florida Gas Transmission Company; Notice of Proposed Compliance Filing

June 21, 2000.

Take notice that on June 15, 2000, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, effective March 26, 2000:

Substitute Fourth Revised Sheet No. 164
Substitute Fourth Revised Sheet No. 165
Third Revised Sheet No. 165A
Fourth Revised Sheet No. 166
Substitute Second Revised Sheet No. 168A
Substitute First Revised Sheet No. 185

FGT states that on May 1, 2000, FGT filed in Docket No. RP00–262–000 (May 1, Filing) to implement provisions of Order No. 637 regarding the waiver of the rate ceiling for short-term capacity release transactions and the prospective limitations on the availability of the Right-of-Refusal (ROFR). Subsequently, on May 31, 2000, the Commission issued an order in the referenced docket accepting FGT's May 1 Filing subject to conditions and required FGT to file tariff revisions within 15 days to 1) include the September 30, 2002 expiration date for the waiver of the rate ceiling for short-term capacity release transactions, 2) clarify the bidding requirements related to certain releases, 3) provide for the grandfathering of existing discounted long-term contracts with respect to the application of the ROFR, and 4) state that electronic information will be provided on FGT's internet website. In the instant filing FGT is proposing tariff revisions to comply with the Commission's May 31 order.

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

David P. Boergers,

Secretary.

[FR Doc. 00–16129 Filed 6–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR00–18–000]

Great Lakes Energy Partners, L.L.C.; Notice of Petition for Rate Approval

June 21, 2000.

Take notice that on June 19, 2000, Great Lakes Energy Partners, L.L.C. (GLEP) filed, pursuant to Section 284.123(b)(2) of the Commission's Regulations, a petition for rate approval requesting that the Commission approve a system-wide maximum rate of 71.4¢ per MMBtu applicable to interruptible transportation service rendered on its system in the State of Pennsylvania. GLEP states that this rate will be applicable to the transportation of natural gas under Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of this filing the rates will be deemed to be fair and equitable and not to excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may within such 150 day period extend the time for action or institute a proceeding in which all interested parties will be afforded an opportunity for written comments and the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must 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 motions must be filed with the Secretary of the Commission on or before July 5, 2000. This petition for rate approval is on file with the Commission and is available for public inspection. This filing may be viewed on the web

at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16141 Filed 6–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–352–000]

Gulf States Transmission Corporation; Notice of Tariff Filing

June 21, 2000.

Take notice that on June 16, 2000, Gulf States Transmission Corporation (Gulf States), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the revised tariff sheets listed in Appendix A to the filing. Gulf States proposes that the tariff sheets be made effective on July 1, 2000.

Gulf States states this filing is made to reflect changes relating to the implementation of a new Interactive Internet Website.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16138 Filed 6–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–345–000]

K N Wattenberg Transmission L.L.C; Notice of Proposed Changes in FERC Gas Tariff

June 21, 2000.

Take notice that on June 15, 2000, K N Wattenberg Transmission L.L.C. (KNW) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective August 1, 2000:

First Revised Sheet No. 85D
Second Revised Sheet No. 86
First Revised Sheet No. 86B
First Revised Sheet No. 86D
First Revised Sheet No. 87A
First Revised Sheet No. 87D

KNW states that on February 9, 2000, the Commission issued its final rule regarding the regulations of short-term interstate natural gas transportation services in Docket Nos. RM98–10–000 and RM98–12–000 (Order No. 637). In the instant filing, KNW is filing to implement provisions of Order No. 637 regarding the waiver of the rate ceiling for short-term capacity release transactions.

KNW states that Order No. 637 provides for a waiver of the rate ceiling for short-term (less than one year) capacity release transactions until September 30, 2002 and requires pipelines to file tariff revisions within 180 days of the effective date of the rule, *i.e.,* March 27, 2000, to remove tariff sheets as required. Unless extended by Commission action, the tariff provisions removing the price cap submitted herein shall not be effective after September 30, 2002, and KNW shall file revised tariff sheets as required.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers.

Secretary.

[FR Doc. 00–16134 Filed 6–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–317–000]

Mississippi Canyon Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

June 21, 2000.

Take notice that on June 15, 2000, Mississippi Canyon Gas Pipeline, LLC (MCGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, revised tariff sheets listed in Appendix A to the filing, proposed to be effective July 15, 2000.

MCGP states that the purpose of this filing is to revise MCGP's Original Volume No. 1 FERC Gas Tariff to remove the maximum price cap or short-term capacity release transactions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16131 Filed 6–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM00–1–25–003]

Mississippi River Transmission Corporation; Notice of Compliance Filing

June 21, 2000.

Take notice that on June 14, 2000, Mississippi River Transmission Corporation (MRT) filed with the Commission a compliance filing revising MRT's annual fuel filing pursuant to the FERC Order Accepting Tariff Sheets Subject to Conditions, issued on May 31, 2000 in Docket No. TM00–1–25–002.

MRT requests permission to place the fuel rates into effect July 1, 2000, and states that Customers have already scheduled and nominated June Business based on fuel rates in effect prior to the Commission's Order.

MRT states that a copy of this filing is being mailed to each of MRT's customers and to the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 28, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16142 Filed 6–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–388–000]

PNM Electric and Gas Services, Inc.; Notice of Application

June 21, 2000.

Take notice that on June 13, 2000 PNM Electric and Gas Services, Inc. (UtilityCo), filed in Docket No. CP00–388–000, an application pursuant to section 7(c) of the Natural Gas Act and section 284.224 of the Rules and Regulations of the Federal Energy Commission (Commission) for a blanket certificate of public convenience and necessity authorizing the transportation and sale of natural gas in interstate commerce and the assignment of contractual rights to natural gas to the same extent and in the manner that intrastate pipelines are authorized to engage in such activities under Section 311 and 312 of the Natural Gas Policy Act of 1978.

This filing is being made in connection with a corporate reorganization by Public Service Company of New Mexico mandated by the Electric Utility Industry Restructuring Act of 1999 (Restructuring Act). The purpose and substantive effect will be to permit the PNM corporate family to continue to conduct the same business activity previously authorized by the Commission but using new corporate entities required by the Restructuring Act. UtilityCo is not seeking any authorizations that are different from those currently held by PNM. Upon the receipt of the necessary regulatory approvals, including the Commission's disposition of this application, the existing gas transmission and distribution facilities and operations of PNM will be acquired and operated by UtilityCo. UtilityCo, as the successor to PNM, will be a natural gas distribution company with facilities located entirely within the State of New Mexico. All of the gas purchased by UtilityCo will be consumed within the state and UtilityCo, like PNM, will be subject to regulation by a state commission with respect to its natural gas rates, services, and facilities. The present operations of PNM are the subject of a section 1(c) exemption from the jurisdiction of the Natural Gas Act by Commission order issued January 17, 1985, in Docket No. CP84–683–000. UtilityCo states that PNM is exempt from the provisions of the Natural Gas Act pursuant to section 1(c) thereof. Therefore, UtilityCo, as successor to PNM, will be a Hinshaw pipeline eligible to perform certain transportation, sales and assignments of natural gas pursuant to Section 284.224 of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 12, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for UtilityCo to appear or to be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–16126 Filed 6–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–387–000]

PNM Gas Services, a Division of Public Service Company of New Mexico, and PNM Electric and Gas Services, Inc.; Notice of Application

June 21, 2000.

Take notice that on June 13, 2000, PNM Electric and Gas Services, Inc. (UtilityCo) and PNM Gas Services, A Division of Public Service Company of New Mexico (PNM), collectively referred to as applicants, both at Alvarda Square, Albuquerque, New Mexico, 87158, jointly filed an application in the above referenced docket pursuant to Section 7 of the Natural Gas Act to allow PNM to transfer its one-third undivided interest in certain natural gas facilities, designated as the Blanco Hub, to

UtilityCo, all as more fully set forth in the application which is on file with the Commission and which is open to the public for inspection. The filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Applicants state their filing is being made in connection with the corporate reorganization of Public Service Company of New Mexico mandated by the state of New Mexico's Electric Utility Industry Restructuring Act of 1999 (Restructuring Act). Applicants further state the purpose and substantive effect of their proposals will be to permit the PNM corporate family to continue to conduct the same business activity previously authorized by the Commission but using new corporate entities required by the Restructuring Act. Thus, UtilityCo is not seeking in Docket No. CP00–387–000 any authorizations that are different from those currently held by PNM. In addition, the applicants state that there will be no change in rates charged by UtilityCo.

Pursuant to Section 7(b) of the NGA and Part 157 of the Commission's Regulations, PNM seeks approval to abandon by sale and conveyance to UtilityCo its one-third interest in the Blanco Hub facilities. At the same time, UtilityCo requests that the Commission grant it a certificate of public convenience and necessity asserting only limited jurisdiction over UtilityCo's acquired interest in the Blanco Hub. The filing indicates that UtilityCo will acquire this interest at net book value. In addition, PNM requests that the Commission: (1) Determine that UtilityCo may own and use its share of the Blanco Hub without jeopardizing its Hinshaw exemption; (2) authorize UtilityCo to participate in any additional construction or changes that Northwest and Transwestern are authorized to make under their respective blanket authorizations to the same extent as if UtilityCo held such blanket authorization; [1] and (3) waive all reporting, filing, and accounting requirements that normally apply to natural gas companies to the extent UtilityCo uses its interest in the facilities for transportation or sales under either its Subpart G blanket certificate or its marketing certificate.[2]

[1] In order to permit UtilityCo to construct, own, and operate its *pro rata* share of any additional facilities that may be added to the Blanco Hub, UtilityCo requests the Commission grant UtiliyCo the same limited blanket authorization that was granted to PNM. See 59 FERC at 62,493.

[2] On June 13, 2000, PNM and UtilityCo concurrently filed a joint application in Docket No. CP00–388–000 requesting among other things a blanket certificate for UtilityCo authorizing it to transport and sell natural gas in interstate commerce pursuant to sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).

Any person desiring to be heard or to make any protest with reference to said application should on or before July 10, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filings it makes with the Commission to every other intervenor in the proceeding, as well as an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have environmental comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–16125 Filed 6–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2878–000]

St. Joseph Light & Power Company; Notice of Filing

June 21, 2000.

Take notice that on June 12, 200, St. Joseph Light & Power company (SJLP), tendered for filing with the Federal Energy Regulatory Commission a letter stating that SJLP's open access transmission tariff has been modified, effective May 1, 2000, to incorporate the Mid-Continent Area Power Pool's Line Loading Relief (LLR) procedures proposed in Docket No. ER99–2649–002. SJLP's filing states further that the proposed LLR procedures incorporate the North American Electric Reliability Council's transmission loading relief (TLR) procedures for curtailments of non-firm transmission service.

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 July 3, 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. 00–16127 Filed 6–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–351–000]

Stingray Pipeline Company; Notice of Tariff Filing

June 21, 2000.

Take notice that on June 16, 2000, Stingray Pipeline Company (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume 1, the revised tariff sheets listed in Appendix A to the filing. Stingray proposes that the foregoing tariff sheets be made effective on July 1, 2000.

Stingray states this filing is made to reflect changes relating to the implementation of a new Interactive Internet Website.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16137 Filed 6–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR00–17–000]

Transok, LLC; Notice of Petition for Rate Approval

June 21, 2000.

Take notice that on June 15, 2000, Transok, LLC ("Transok") filed a petition for rate approval to establish rates for interruptible Section 311 transportation services on Transok's Palo Duro System. Transok asks that the rates become effective July 1, 2000.

Pursuant to Section 284.123(b)(2)(ii) of the Commission's regulations, if the Commission does not act within 150 days of the filing date, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentations of views, data and arguments.

Any person desiring to participate in this rate proceeding must 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 motions must be filed with the Secretary of the Commission on or before July 5, 2000. This petition for rate approval is on file with the Commission and is available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16140 Filed 6–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERY

Federal Energy Regulatory Commission

[Docket No. RP00–350–000]

Williston Basis Interstate Pipeline Company; Notice of Request for Waiver

June 21, 2000.

Take notice that on June 8, 2000, Williston Basis Interstate Pipeline Company (Williston Basin), tendered for filing a request for waiver of the provisions of the electronic data interchange (EDI) processing requirements related to the Gas Industry Standards Board (GISB) Verion 1.4 standards, except those Capacity Release standards which are necessary to conduct data retrieval transactions.

Williston Basin states that it requests waiver of the following GISB Version 1.4 standards; Nominations standards 1.4.1 through 1.4.7; Flowing Gas standards 2.4.1 through 2.4.6; Invoicing standards 3.4.1 through 3.4.4; and Capacity Release standards 5.4.4, 5.4.6 through 5.4.12, and 5.4.18 through 5.4.19. In the alternative, Williston Basin states that it respectfully requests that the Commission grant the Company an extension of time to implement the GISB Version 1.4 EDI processing requirements until such time that a Part 284 customer, which pays for service on Williston Basin's system, requests that the Company offer such EDI transactions and fully executes a Trading Partner Agreement with Williston Basin.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before June 28, 2000. 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 procedings. Any person wishing to become a party must gile a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16136 Filed 6–26–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6725–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NESHAP, Pharmaceuticals Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NESHAP, Subpart GGG, Pharmaceutical Production, OMB Control Number 2060–0358, expiration date 7/31/00. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 27, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E–Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1781.02. For technical questions about the ICR contact Marcia Mia at 202–564–7042.

SUPPLEMENTARY INFORMATION:

Title: NESHAP, subpart GGG, Pharmaceuticals Production (OMB Control No. 2060–0358; EPA ICR No. 1781.02) expiring 07/31/00. This is a request for extension of a currently approved collection.

Abstract: In general all NESHAP require initial notifications, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least 5 years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated State or Local authority and are entered into the AIRS database.

The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Pharmaceuticals Production were proposed on April 2, 1997 and promulgated on September 21, 1998. These standards apply to the facilities in Pharmaceuticals Production that are major sources of hazardous air pollutants (HAP). The affected facility is all pharmaceutical manufacturing operations including process vents, storage tanks, equipment components, and wastewater systems commencing construction or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 63, subpart GGG.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 03/31/00 (65 FR 17258); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 409 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Pharmaceutical Production Plants.

Estimated Number of Respondents: 103.

Frequency of Response: Initial, quarterly, semiannually and on occasion.

Estimated Total Annual Hour Burden: 84,275 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1781.02 and OMB Control No. 2060–0358 in any correspondence.

Ms. Sandy Farmer,
U.S. Environmental Protection Agency,
Office of Environmental Information,
Collection Strategies Division (2822),
1200 Pennsylvania Ave., NW,
Washington, DC 20460; and

Office of Information and Regulatory Affairs,
Office of Management and Budget,
Attention: Desk Officer for EPA,
725 17th Street, NW,
Washington, DC 20503.

Dated: June 19, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–16178 Filed 6–26–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6725–5]

National Drinking Water Advisory Council; Contaminant Candidate List and 6-Year Review of Existing Regulations Working Group; Notice of Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the Contaminant Candidate List (CCL) Regulatory Determination and 6-Year Review of Existing Regulations Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held July 10, 2000, from 1:00 pm–5:00 pm ET (approximately), at the U.S. EPA, 401 M Street, S.W., Suite 925B, Washington, D.C. 20460. The meeting is open to the public to observe and statements will be taken from the public as time allows. Seating is limited.

This is the second of three scheduled meetings to address the 6-Year Review of Existing Regulations. The Working Group will recommend a protocol for selecting existing NPDWRs for possible revision and develop specific recommendations for analyzing and presenting the available scientific data (The Working Group does not plan to discuss specific contaminants as a part of this exercise.) Final recommendations will be forwarded to the full NDWAC for further consideration.

At the last meeting, the Working Group formed three sub-groups to revise specific portions of the strawman protocol. The sub-groups will forward their final products to EPA for consolidation. EPA will consolidate comments and distribute a revised draft to Working Group members for discussion on July 10, 2000.

For more information, contact April McLaughlin, Designated Federal Officer,

Contaminant Candidate List and Regulatory Determination and 6-Year Review of Existing Regulations Working Group, U.S. EPA (4607), Office of Ground Water and Drinking Water, 401 M Street SW, Washington, DC 20460. The email address is: mclaughlin.april@epa.gov. or call 202–260–5524.

Dated: June 20, 2000.

Janet Pawlukiewicz,

Acting Deputy Director, Office of Ground Water and Drinking Water.

[FR Doc. 00–16179 Filed 6–26–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6725–3]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Meeting Notice—Executive Committee—July 12–13, 2000

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB's) Executive Committee will conduct a public meeting on Wednesday and Thursday, July 12–13, 2000. The meeting will convene each day at 8:30 am at the EPA Office of Administration Auditorium located at 79 T.W. Alexander Drive in Research Triangle Park, NC and adjourn no later than 5:30 pm. All times noted are Eastern Daylight Time. The meeting is open to the public, however, seating is limited and available on a first come basis.

Purpose of the Meeting—At this meeting, the Executive Committee will receive updates from its committees and subcommittees concerning their recent and planned activities. As part of these updates, some committees will present draft reports for Executive Committee review and approval. Tentatively anticipated drafts include, but are not limited to the *Executive Committee Scientific and Technological Achievement Awards Subcommittee:* Review of the Report on "Scientific and Technological Achievement Awards."

As part of this two day meeting, the Executive Committee will also: (a) meet with various Agency officials to discuss matters of mutual interest such as the scope and breadth of R&D activities performed at RTP, including a poster presentation the afternoon of July 12 to be held in Classroom One of the Environmental Research Center, Highway 54 and T. W. Alexander Drive, Research Triangle Park, NC; (b) receive briefings from Agency staff on various topics, including an update of the Integrated Risk Information System (IRIS) project; (c) conduct the third in a series of Workshops on the role of science in some of the Agency's innovative approaches to environmental decisionmaking focusing on new approaches to stakeholder involvement; and, (d) discuss options for activities the Board might undertake to improve the use of science at the science policy interface.

Availability of Materials—The timing of these events will be included in an agenda for the meeting that should be available one week prior to the meeting. Drafts of the reports that will be reviewed at the meeting should be available to the public at the SAB website (http://www.epa.gov/sab) by close-of-business on July 5.

For Further Information—Any member of the public wishing further information concerning this meeting or wishing to submit *brief* oral comments should contact Dr. John R. Fowle III, Designated Federal Officer (DFO) for the Executive Committee, *in writing,* no later than close of business July 7, 2000 at USEPA Science Advisory Board (1400A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; fax (202) 501–0323; or via e-mail at <fowle.john@epa.gov>. Those wishing further information concerning the meeting should contact Dr. Fowle at (202) 564–4533.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (http://www.epa.gov/sab) and in *The FY1999 Annual Report of the Staff Director* which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: June 19, 2000.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 00–16177 Filed 6–26–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6725–7]

Regulatory Reinvention (XL) Pilot Projects; Project XL Proposed Final Project Agreement: Progressive Insurance Company

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of the Project XL Proposed Final Project Agreement: Progressive Insurance Project—Pay-as-you-Drive Auto Insurance.

SUMMARY: EPA is requesting comments on a proposed Project XL Final Project Agreement (FPA) for the Progressive Auto Insurance Company (hereafter "Progressive"). The FPA is a voluntary agreement developed collaboratively by Progressive and the EPA.

DATES: Comments are due on or before July 11, 2000.

ADDRESSES: All comments on the proposed FPA should be sent to: Janet Murray, EPA Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, mail code 1802, Washington DC 20460. Comments may also be faxed to Ms. Murray at (202) 260–3125. Comments may also be received via electronic mail sent to: murray.janet@epa.gov.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the proposed FPA or a Fact Sheet, contact: Janet Murray, EPA Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, mail code 1802, Washington DC 20460. The FPA and related documents are also available via the Internet at *http://www.epa.gov/ProjectXL*. Questions to EPA regarding the documents can be directed to Janet Murray at (202) 260–7570. To be included on the Progressive Project XL mailing list for information about future meetings, or XL Progress Reports, contact Janet Murray at (202) 260–7570. Information on other aspects of Project XL, descriptions of other XL projects and proposals, and application information is available via the Internet at *http://www.epa.gov/ProjectXL*.

SUPPLEMENTARY INFORMATION: Project XL, first announced in the **Federal Register** on May 23,1995 (60 FR 27282), gives regulated entities the flexibility to develop alternative strategies that will replace or modify specific regulatory or procedural requirements on the condition that they produce greater environmental benefits. EPA has set a goal of implementing fifty XL projects in full partnership with the states.

The Progressive Insurance Company has piloted a new type of voluntary auto insurance program in the state of Texas. Most auto insurance rates are based on a number of factors, including: age, sex, marital status, and where the driver lives, while more specific information about customer driving patterns such as mileage driven, time of day and location of driving, are generally not taken into account because of the difficulty involved in monitoring and tracking the information. In response to this, Progressive has worked cooperatively with a technology firm to install in their customers' vehicles a global positioning system device which, in addition to providing personal security, and roadside and directional assistance, also monitors a number of other factors, including: time of day, amount of driving, and estimated geographic location of driving. The company can then use these additional factors in its "Autograph" Program in determining auto insurance rates which are more specific to individuals' driving habits.

It has been estimated that roughly 80% of an individual's transportation costs are fixed once one purchases a car; that is, 80% of costs remain the same on a monthly basis regardless of how much or how little one drives. With the Progressive system, some of the fixed costs now become variable costs which will be influenced by the customer's monthly driving activity.

By offering this product, Progressive is providing its customers a financial incentive to drive less and choose alternate forms of transportation, such as public transit or walking, and in so doing reduce the negative environmental impact resulting from higher levels of automobile usage. In this XL Project, EPA will initiate a study to determine the environmental impact of this insurance product.

While the company has not yet directly measured environmental impacts, if consumers respond to the increased per mile cost of driving resulting from converting automotive insurance from a fixed to variable cost the same way they do to the increased per mile cost of driving resulting from fuel price increases, a significant reduction in driving would be expected. Initial cost figures appear to show that drivers are paying close attention to their driving patterns and the information supplied to them by the company, in order to minimize their insurance costs.

The focus of this XL Project is an analytical study, which will determine the extent to which the Progressive Program has an effect on the environment. EPA, in partnership with USDOT and the Insurance Institute for Highway Safety, is developing a study methodology to determine if indeed the anecdotal evidence is accurate, and drivers are driving less as a result of their participation in the program. EPA's interest in the program derives from the possibility that insurance pricing plans like Autograph might alter driving habits, as well as distinguish existing differences in habits, as drivers learn how their driving habits affect their costs. Recognizing that factors such as total driving and driving during congested traffic periods, can also affect air quality, EPA is interested in whether people who sign up for a voluntary program like Autograph will reduce their total driving or their driving during congested periods.

Reducing vehicle miles traveled (VMT) is essential to promoting many of EPA's environmental objectives. U.S. travel is responsible for a substantial portion of U.S. ozone precursor emissions (31% of volatile organic compounds and 36% of nitrogen oxides) 61% of nationwide carbon monoxide emissions, and 31% of carbon dioxide emissions. Reducing VMT is a fundamental strategy in addressing the full range of environmental harms related to travel.

The company has already piloted the technology and the insurance product. Progressive's commitment to this XL Project involves making available to EPA, aggregated data on participants' driving mileage and times of day that participants are driving. This will allow the Agency to analyze Progressive's data and make determinations regarding increases or decreases in driving mileage in response to the use of this product.

The public comment period on this project will be 14 days.

Dated: June 21, 2000.

Elizabeth Shaw,

Deputy Associate Administrator for Reinvention Programs.

[FR Doc. 00–16180 Filed 6–26–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6725–6]

Interim Guidance on the CERCLA Section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions; Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is announcing that it will revise the Interim Guidance on the CERCLA Section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions. EPA has suspended the Interim Guidance until revised guidance is published.

EPA published the Interim Guidance in the **Federal Register** on December 21, 1999. EPA stated in the Interim Guidance that "EPA will revise the guidance if, after reviewing the comments, the Agency believes that the guidance warrants modification." EPA provided extensive opportunity for comment. The Interim Guidance public comment period was extended twice and EPA also held a public meeting on the Interim Guidance on February 24, 2000. EPA received numerous comments on the Interim Guidance. Upon review of these comments, EPA has decided to revise the Interim Guidance. EPA expects to issue revised guidance to replace the Interim Guidance in July 2000.

On March 17 and March 20, 2000, several petitioners filed challenges to the Interim Guidance in the United States Court of Appeals for the District of Columbia, consolidated in *National Association of Manufacturers, et al* v. *Browner* (Nos. 00–1111 and 00–1121). On May 19, 2000, EPA and petitioners jointly moved to vacate the schedule for briefing and oral argument and to hold all proceedings in abeyance until August 25, 2000, or until EPA issues revisions to the Interim Guidance, whichever comes first. Because of the pending revisions to the guidance the parties agreed that it would be wasteful and inefficient to brief the merits of the Interim Guidance. In addition, EPA suspended the Interim Guidance until the revisions are issued. This means that EPA will not rely on or cite the suspended Interim Guidance in any actions, including actions to enforce the reporting requirements under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or the Emergency Planning and Community Right-to-Know Act (EPCRA). EPA will continue to rely on the statute, regulations, and previous decisions when enforcing CERCLA and EPCRA.

EPA, in this Federal Register document, is providing notice to the regulated community and the interested public on the status of the Interim Guidance. Below is the text of the Joint Motion as filed and signed by the parties on May 19, 2000, and granted by the U.S. Court of Appeals on May 24, 2000 (attachment 1). The court also granted a similar joint motion to vacate scheduling and hold the case in abeyance in *Alabama Power Co.* v. *Browner* (Nos. 89–1408 and 89–1765), a prior, separate case which also raises issues regarding federally permitted releases.

On February 15, 2000, EPA issued an enforcement discretion memo to its regional offices regarding the enforcement of certain CERCLA section 103 and EPCRA section 304 violations. EPA is announcing that the period of enforcement discretion discussed in that memo is extended until August 25, 2000. Copies of the memo may be obtained by calling EPA's Enforcement and Compliance Docket and Information Center at 202–564–2614/2119, or by E-mail at docket.oeca@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice, please contact Virginia Phillips, Environmental Protection Agency (Mail Code 2245A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460: (202) 564–6139.

Dated: June 16, 2000.

Eric Schaeffer,

Director, Office of Regulatory Enforcement.

In the United States Court of Appeals for the District of Columbia Circuit

[Case No. 00–1111 and consolidated Case No. 00–1121]

National Association of Manufacturers, et al., Petitioners, v. United States Environmental Protection Agency, Respondent)

Joint Motion To Vacate Schedule for Briefing and Oral Argument and To Hold All Proceedings in Abeyance

The respondent, Environmental Protection Agency ("EPA"), and both sets of Petitioners in these consolidated cases jointly move to vacate the schedule for briefing and oral argument and request the Court to hold all proceedings in abeyance until August 25, 2000, or until EPA issues revisions to the guidance document challenged in this case, whichever comes first, at which time the parties will submit motions regarding future proceedings in the case. The parties seek this relief because EPA has suspended the interim guidance document challenged by the petitioners until it issues revisions to that document, which it is currently drafting and which it expects to issue in July 2000 as a replacement of the interim guidance document. In further support of this motion, the parties state as follows:

(1) On December 21, 1999, EPA issued its "Interim Guidance on the CERCLA Section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions," published at 64 FR 71614 (December 21, 1999) ("Interim Guidance"). Although there is disagreement among the parties regarding the Interim Guidance and its effects, in general the Interim Guidance includes statements by EPA on the subject of CERCLA's federally permitted release exemption in the context of certain air emissions. Federally permitted releases are exempt from the reporting requirements under CERCLA section 103, 42 U.S.C. 9603(a), and section 304 of the Emergency Preparedness and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. 11004(a). In addition, federally permitted releases are exempt from CERCLA liability under CERCLA section 107(j). 42 U.S.C. 9607(j). Federally permitted releases are defined at CERCLA section 101(10). That provision includes a definition of federally permitted releases for emissions into the air pursuant to the Clean Air Act. CERCLA section 101(10)(H); 42 U.S.C. 9601(10)(H).

(2) In the Interim Guidance, EPA requested comments on the document's contents, declared that it intended to conduct a public meeting on the Interim Guidance, and stated that "EPA will revise the guidance if, after reviewing the comments, the Agency believes that the guidance warrants modification." 64 FR 71614, col. 1.

(3) On March 17 and 20, 2000, the Petitioners filed their respective petitions challenging the Interim Guidance.

(4) On April 18, Petitioners in Case No. 00–1111 filed "Petitioners" Motion for Expedited Consideration of Petition for Review, Accelerated Briefing Schedule and Stay Pending Review." On April 26, in its opposition to Petitioners' motion, EPA cross-moved to dismiss both petitions. On May 2, 2000, the Court referred the motion to dismiss to the merits panel, denied the motion for stay, and set a briefing schedule, with Petitioners' opening brief due on June 1. The Court has scheduled oral argument for September 6, 2000.

(5) On February 24, 2000, EPA conducted a public meeting on the Interim Guidance. In addition to comments received at the public meeting, EPA has received numerous written comments on the Interim Guidance. Upon review of these comments, EPA has decided to revise the Interim Guidance.

(6) EPA expects to issue revisions to the Interim Guidance in July, 2000. These revisions will replace the Interim Guidance. Accordingly, it would be wasteful and inefficient to brief the merits of the Interim Guidance. EPA therefore agrees to suspend the Interim Guidance until the issuance of the revisions. EPA will not rely on or cite the suspended Interim Guidance in any actions, including actions to enforce the reporting requirements under CERCLA or EPCRA.

(7) Because EPA expects to issue revisions that will replace the Interim Guidance during the currently scheduled briefing period or shortly after briefing is completed, but before the scheduled date for oral argument in this case, the parties request that the Court hold in abeyance all proceedings in this case until August 25, 2000, or until EPA issues revisions to the Interim Guidance, whichever comes first. At that time, the parties would submit motions regarding the future proceedings in the case. If, as expected, EPA has issued revisions that replace the Interim Guidance, those motions would discuss the disposition of the

petitions filed in this case, which challenge the current Interim Guidance.

(8) Intervenor has represented that it agrees to the relief requested by this motion.

For the reasons set forth above, the parties request that this Court vacate the schedule for briefing and oral argument and request the Court to hold all proceedings in this case in abeyance until August 25, 2000 or until EPA issues revisions to the Interim Guidance, whichever comes first, at which time the parties would submit motions regarding future proceedings in the case.

Dated: May 19, 2000.

Respectfully submitted,

For Respondent EPA:

Lois J. Schiffer,

Assistant Attorney General, Environment and Natural Resources Division.

Thomas Lorenzen,

G. Scott Williams,

Environmental Defense Section, United States Department of Justice, P.O. Box 23986, Washington D.C. 20026–3986, (202) 514–1950.

Nina Rivera,

Office of General Counsel (2366A), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

For Petitioners National Association of Manufacturers, et al.:

Paul G. Wallach,
James L. Quarles III,
James G. Votaw,

Hale and Dorr LLP, 1455 Pennsylvania Avenue, NW., Washington, DC 20004, (202) 942–8429.

For Petitioners Appalachian Power Co., et al.:

Henry V. Nickel,
F. William Brownell,
Norman W. Fichthorn,

Hunton & Williams, 1900 K Street, NW., Washington, DC 20006, (202) 955–1673.

[FR Doc. 00–16181 Filed 6–26–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6725–8]

Notice of Proposed Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, ("CERCLA"), 42 U.S.C. 9601–9675, notice is hereby given that a proposed prospective purchaser agreement ("Purchaser Agreement") associated with the North Penn Area 7 Superfund Site, Lansdale Borough and Upper Gwynedd Township, Montgomery County, Pennsylvania was executed by the Environmental Protection Agency and the Department of Justice and is now subject to public comment, after which the United States may modify or withdraw its consent if comments received disclose facts or considerations which indicate that the Purchaser Agreement is inappropriate, improper, or inadequate. The Purchaser Agreement would resolve certain potential EPA claims under sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, against Progress Lansdale Development Associates, L.P., Progress Lansdale Development Holdings, L.P., Progress Development I, L.P., NSALC Acquisitions, L.L.C., 1180 Church Road, Inc., Pennsylvania Real Estate Holdings, Inc., and Commonwealth of Pennsylvania State Employees Retirement System. ("Purchasers"). The settlement would require the Purchasers to, among other things, reimburse the Environmental Protection Agency $ 225,000.00 for response costs incurred and to be incurred at the Site.

For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the Purchaser Agreement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before July 27, 2000.

AVAILABILITY: The Purchaser Agreement and additional background information relating to the Purchaser Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the Purchaser Agreement may be obtained from Thomas A. Cinti (3RC42), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. Comments should reference the "North Penn Area 7 Superfund Site, Prospective Purchaser Agreement" and "EPA Docket No. CERC–PPA–2000–0003," and should be forwarded to Thomas A. Cinti at the above address.

FOR FURTHER INFORMATION CONTACT: Thomas A. Cinti (3RC42), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814–2634.

Dated: June 19, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–16364 Filed 6–26–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

June 20, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 27, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0589.

Title: FCC Remittance Advice and Continuation Sheet.

Form No.: FCC Forms 159 and 159–C.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, businesses or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 635,738.

Estimated Time Per Response: 30 minutes or .50 hours.

Frequency of Response: On occasion and third party reporting requirement.

Total Annual Burden: 317,869 hours.

Total Annual Cost: N/A.

Needs and Uses: These forms are required for payment of regulatory fees, and for use when paying for multiple filings with a single payment instrument, or when paying by credit card. The form(s) require specific information to track payment history, and to facilitate the efficient and expeditious processing of collections by a lockbox bank. The forms have been revised to include the FCC Registration Number (FRN) which is used as an identifier for anyone who requests services/benefits from the Commission.

OMB Control No.: 3060–0728.

Title: Supplemental Information Requesting FCC Registration Number (FRN) for Debt Collection.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, businesses or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 1,532,064.

Estimated Time Per Response: 1 minute or .017 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 26,045 hours.

Total Annual Cost: N/A.

Needs and Uses: The FCC Registration Number (FRN) and Taxpayer Identification Number (TIN) will be used by the FCC for the purpose of collecting and reporting on any delinquent amounts arising out of such person's relationship with the government. The respondents are anyone doing business with the Commission.

OMB Control No.: 3060–0917.

Title: CORES Registration Form.

Form No.: FCC Form 160.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, businesses or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 500,000.

Estimated Time Per Response: 10 minutes or .166 hours.

Frequency of Response: One time reporting requirement.

Total Annual Burden: 83,000 hours.

Total Annual Cost: N/A.

Needs and Uses: The FRN will be used for a standard data repository for entity name, address, TIN, telephone number, e-mail, fax, contact representative, contact representative address, telephone, e-mail and fax. The Commission Registration System (CORES) will assign each entity doing business with the Commission a FCC Registration Number (FRN). The purpose of the FRN is for collecting and reporting on any delinquent amounts arising out of such person's relationship with the Commission. The respondents are anyone doing business with the FCC.

OMB Control No.: 3060–0918.

Title: CORES Update/Change Form.

Form No.: FCC Form 161.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, businesses or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 250,000.

Estimated Time Per Response: 10 minutes or .166 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 41,500 hours.

Total Annual Cost: N/A.

Needs and Uses: This form will be used to update/change the entity name, address, telephone number, e-mail, fax, contact representative, contact representative address, telephone, e-mail, and fax in CORES.

OMB Control No.: 3060–0919.

Title: CORES Certification Form.

Form No.: FCC Form 162.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, businesses or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 50,000.

Estimated Time Per Response: 5 minutes or .084 hours.

Frequency of Response: On occasion and one time reporting requirement.

Total Annual Burden: 4,200 hours.

Total Annual Cost: N/A.

Needs and Uses: This form will be used during the transition period to certify entities FCC Registration Number (FRN). The FRN will affect approximately 60 applications forms and will require the forms to change. During the transition period, the FCC Form 162 will be utilized until all forms have been updated. The cost involved in this change will be included on each individual form as they come up for revision or extension of a currently approved collection. The information will be used by the FCC for the purpose of collecting and reporting any delinquent amounts arising from such person's relationship with the Commission. The FCC Registration Number (FRN) is its Federal Communications Commission-issued FCC Registration Number. This number will be used by the Commission as a unique business account number for identification purposes only.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–16184 Filed 6–26–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

June 13, 2000.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents,

including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 27, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0059

Title: Statement Regarding the Importation of Radio Frequency Devices Capable of Harmful Interference

Form Number: FCC 740

Type of Review: Revision of a currently approved collection

Respondents: Business or other for-profit entities; Not-for-profit institutions; Individuals or households; and State, Local, or Tribal Governments

Number of Respondents: 5,077

Estimate Time Per Response: 1–5 minutes

Frequency of Response: On occasion reporting requirements; Third party disclosure

Total Annual Burden: 28,030 hours

Total Annual Costs: None

Needs and Uses: The FCC, working in conjunction with the U.S. Customs Service, is responsible for the regulation of both authorized radio services and devices that can cause interference. FCC Form 740 must be completed for each radio frequency device which is imported into the United States, and is used to keep non-compliant devices from being distributed to the general public, thereby reducing the potential for harmful interference being caused to authorized communications. FCC Form 740 may now be filed on paper or by electronic means.

OMB Control Number: 3060–0580

Title: Section 76.504, Limits on Carriage of Vertically Integrated Programming

Form Number: N/A

Type of Review: Extension of a currently approved collection

Respondents: Business or other for-profit entities

Number of Respondents: 1,500

Estimate Time Per Response: 15 hours

Frequency of Response: Recordkeeping

Total Annual Burden: 22,500 hours

Total Annual Costs: None

Needs and Uses: The records are to be made available to members of the public, local franchising authorities, and the FCC upon reasonable notice and during regular business hours. The records will be reviewed by local franchising authorities and the FCC to monitor compliance with channel occupancy limits in respective franchise areas.

Federal Communications Commission.

Magalie Roman Salas,

Secretary

[FR Doc. 00–16183 Filed 6–26–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–1383]

Limited Low Power Television/ Television Translator/Class A Television Auction Filing Window

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces a limited low power television/television translator/Class A television auction filing window.

DATES: The window filing opportunity begins July 31, 2000, and closes August 4, 2000.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Video Services Division, Mass Media Bureau at (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released June 23, 2000. It does not include attachments. The complete text of the Public Notice, including attachments, is available for public inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, NW., Washington, DC 20035, (202) 857–3800. It is also available on the Commission's web site at http://www.fcc.gov.

The Mass Media Bureau and the Wireless Telecommunications Bureau announce the scheduling of an auction filing window for certain low power television, television translator, and Class A television broadcast stations. Commencing July 31, 2000, and continuing to and including August 4, 2000, the Commission will permit the filing of applications for new construction permits and for major changes in existing facilities for low power television and television translator stations (LPTV). The Commission also will permit in this auction window the filing of applications for major changes in the facilities of authorized Class A television stations; that is, stations for which a Class A TV construction permit or license has been issued. Mutually exclusive proposals will be considered under the Commission's competitive bidding procedures. *See* 47 CFR 73.5000 *et seq.*

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 00–16186 Filed 6–26–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 11, 2000.

A. **Federal Reserve Bank of Richmond** (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Thomas Family; Candice Elaine Maddox, Pickerington, Ohio; Alan Paul Thomas, Bruceton Mills, West Virginia; Brandon Lowell Thomas, Bruceton Mills, West Virginia; Brian Fike Thomas, Morgantown, West Virginia; Chase Fike Thomas, Morgantown, West Virginia; Corissa Blair Thomas, Morgantown, West Virginia; David Martin Thomas, Morgantown, West Virginia; Gregory Clark Thomas, Bruceton Mills, West Virginia; Jeffrey Ward Thomas, Bruceton Mills, West Virginia; Laura Kay Thomas, Morgantown, West Virginia; Mary Feather Thomas, Bruceton Mills, West

Virginia; Melinda Jean Thomas, Bruceton Mills, West Virginia; Phyllis Jean Thomas, Bruceton Mills, West Virginia; Ward Fike Thomas, Bruceton Mills, West Virginia; to retain voting shares of State Bancorp, Inc., Bruceton Mills, West Virginia, and thereby indirectly retain voting shares of Bruceton Bank, Bruceton Mills, West Virginia, and Terra Alta Bank, Terra Alta, West Virginia.

B. **Federal Reserve Bank of Kansas City** (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. David R. and Norvelle Dickey, Oklahoma City, Oklahoma; to acquire voting shares of First Thomas Ban Corp, Thomas, Oklahoma, and thereby indirectly acquire voting shares of First National Bank of Thomas, Thomas, Oklahoma.

Board of Governors of the Federal Reserve System, June 21, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–16161 Filed 6–26–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 21, 2000.

A. **Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Heartland Bancshares, Inc., Lenox, Iowa; to acquire an additional 25 percent, for a total of 62.5 percent, of the voting shares of Union Bank of Arizona, Gilbert, Arizona.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. First Security, Inc., Owensboro, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of First Security Bank of Owensboro, Inc., Owensboro, Kentucky.

C. **Federal Reserve Bank of Kansas City** (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. *Sooner Southwest Bankshares, Inc., Tulsa,* Oklahoma; to acquire 100 percent of the voting shares of State National Bancshares, Inc., Heavener, Oklahoma, and thereby indirectly acquire State National Bank, Heavener, Oklahoma.

Board of Governors of the Federal Reserve System, June 21, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–16159 Filed 6–26–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 11, 2000.

A. **Federal Reserve Bank of Minneapolis** (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Community Bank Group, Inc., Eden Prairie, Minnesota; to acquire Midland Insurance Group, Inc., Winsted, Minnesota, and thereby engage in selling general insurance in a community of less than 5,000, pursuant to section 225.28(b)(11)(iii) of Regulation Y.

Board of Governors of the Federal Reserve System, June 21, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–16160 Filed 6–26–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Friday, June 30, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank

holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 22, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–16251 Filed 6–23–00; 3:16 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Women's Progress Commemoration Commission

AGENCY: General Services Administration.

ACTION: Meeting Notice.

SUMMARY: Notice is hereby given that the Women's Progress Commemoration Commission will hold an open meeting from 8 a.m. to 2:30 p.m. on Wednesday, July 12, 2000, at the Holiday Inn Waterloo/Seneca Falls, 2468 NY State Route 414, Waterloo, NY.

Purpose: The Commission will meet to hear testimony from interested parties and discuss methods to commemorate sites of historic significance relating to women in American history.

FOR FURTHER INFORMATION CONTACT: Martha Davis (202) 501–0705, Assistant to the Associate Administrator for Communications, General Services Administration. Also, inquiries may be sent to *martha.davis@gsa.gov.*

Dated: June 20, 2000.

Beth Newburger,

Associate Administrator for Communications.

[FR Doc. 00–16277 Filed 6–26–00; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Minority Health; Notice of a Cooperative Agreement With the National Association for Equal Opportunity in Higher Education

AGENCY: Office of the Secretary, Office of Minority Health.

ACTION: Notice of a Cooperative Agreement with the National Association for Equal Opportunity in Higher Education.

The Office of Minority Health (OMH), Office of Public Health and Science, announces its intent to continue support of the umbrella cooperative agreement with the National Association for Equal Opportunity in Higher Education (NAFEO). This cooperative agreement will continue the broad programmatic framework in which specific projects can be supported by various governmental agencies during the project period.

The purpose of this cooperative agreement is to assist NAFEO in expanding and enhancing its activities relevant to education, health promotion, disease prevention, and family and youth violence prevention, with the ultimate goal of improving the health status of minorities and disadvantaged people.

The OMH will provide technical assistance and oversight as necessary for the implementation, conduct, and assessment of the project activities. On an as-needed basis, OMH will assist in arranging consultation from other government agencies and non-government agencies.

Authority: This cooperative agreement is authorized under Section 1707(e)(1) of the Public Health Service Act, as amended.

Background

Assistance will continue to be provided to NAFEO. During the last 3 years, NAFEO has successfully demonstrated the ability to work with health agencies on activities relevant to education, health promotion, disease prevention, and family and youth violence prevention. The NAFEO is uniquely qualified to continue to accomplish the purposes of this cooperative agreement because it has the following combination of factors:

- It has a well developed infrastructure and communications network to coordinate and implement various health promotion and prevention educational programs within the Historically Black Colleges and Universities (HBCUs) and with local community organizations in close proximity to their campuses. It is the only organization of its kind that works exclusively with both public and private, two- and four-year, graduate, and professional Black colleges and universities. Since the presidents of the black colleges and universities represent their institutions in NAFEO, it has a direct linkage that would facilitate the coordination of activities that will benefit all of these institutions. NAFEO has extensive experience in convening general conferences and specific technical assistance workshops for black colleges and universities.

This experience provides a foundation upon which to develop and promote health education related programs aimed at preventing and reducing unnecessary morbidity and mortality among African American populations.

- It has established itself and its members as a national association with professionals who serve as leaders and experts in planning, developing, implementing, and promoting educational and policy campaigns (locally and nationally) aimed at reducing adverse health behaviors and improving the African American community's overall educational and social well being.
- It has experience in implementing workshops to assist specific Federal agencies in involving HBCUs in an appropriate and effective manner in their programs, which includes working with Department of Defense (DOD) to increase participation of HBCUs in DOD funded activities as prime contractors, subcontractors, collaborators, or partners with industry, major research universities, and small and disadvantaged businesses. This also includes conducting approximately 15 Defense Technical Assistance workshops to increase the participation of HBCUs and other minority institutions in the DOD procurement process.
- It has developed a base of critical knowledge, skills, and abilities related to HBCU issues including health and social problems. Through the collective efforts of its members, community-based organizations, and volunteers, NAFEO has demonstrated (1) the ability to work with academic institutions and health groups on mutual education, research, and health endeavors relating to the goal of health promotion and disease prevention in African American communities; (2) the leadership necessary to attract minority students into public service and health careers; and (3) the leadership needed to assist health care professionals to work more effectively with African American clients and communities.

This cooperative agreement will be continued for an additional five-year project period with 12-month budget periods. Depending upon the types of projects and availability of funds, it is anticipated that this cooperative agreement will receive approximately $100,000 per year. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this

cooperative agreement, contact Ms. Cynthia Amis, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852 or telephone (301) 594–0769.

OMB Catalog of Federal Domestic Assistance

(The Catalog of Federal Domestic Assistance Number for this cooperative agreement is 93.004.)

Dated: June 13, 2000.

Nathan Stinson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 00–16122 Filed 6–26–00; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Privacy Act of 1974: Revision to Existing System of Records

AGENCY: Child Care Subsidy Program, Office of the Assistant Secretary for Management and Budget, Office of the Secretary, HHS.

ACTION: Notice of revision to an existing system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Department of Health and Human Services (HHS) is publishing a notice of the revision and renumbering of an existing system of records, 90–30–0050, *Child Care Subsidy Program*. The revised system will collect family income data from employees in the Office of the Secretary (OS) and the Administration on Aging (AoA), as well as employees in the Substance Abuse and Mental Health Services Administration (SAMHSA) who are already covered by this system, for the purpose of determining their eligibility for child care subsidies, and the amounts of the subsidies. It also will collect information from the employees' child care provider(s) for verification purposes, *e.g.*, that the provider is licensed. Collection of data will be by subsidy application forms submitted by employees.

DATES: This revision does not revise the routine uses for this system. This amendment will be effective without further notice on the day of its publication unless comments are received which would result in a contrary determination.

FOR FURTHER INFORMATION CONTACT: Child Care Subsidy Program Coordinator, Work/Life Center, Room 1250, 330 C Street, SW., Washington, DC 20201. The telephone number is 202–690–1441 or 202–690–8229.

SUPPLEMENTARY INFORMATION: The original Notice of System of Records covered only employees of the SAMHSA. Subsequently OS and AoA have established child care subsidy programs for their employees. This amendment expands coverage of the Child Care Subsidy Program Records to include employees in OS and AoA who are eligible for this program. The notice is published below in its entirety, as amended.

Dated: June 21, 2000.

Evelyn White.

Deputy Assistant Secretary for Human Resources.

09–90–0200

SYSTEM NAME:

Child Care Subsidy Program Records (HHS).

SYSTEM CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are located throughout HHS in offices of agency child care program administrators and in offices of contract employees engaged to administer the subsidy programs. Since there are several sites around the country, contact the appropriate System Manager listed in Appendix A for more details about specific locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals in the system are employees of the Administration on Aging (AoA), Office of the Secretary (OS), and Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services (HHS), who voluntarily apply for child subsidies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application forms for a child care subsidy contain personal information, including employee's (parent) name, Social Security Number, grade, home phone number, home address, total income, number of dependent children, and number of children on whose behalf the parent is applying for a subsidy, information on any tuition assistance received from State/County/local child care subsidy, and information on child care providers used, including their name, address, provider license number, and State where license issued, tuition cost, provider tax identification number, and copies of Internal Revenue Form 1040 for verification purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 106–58 and Executive Order 9397.

PURPOSE(S):

To establish and verify HHS employees' eligibility for child care subsidies in order for HHS to provide monetary assistance to its employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USE:

1. Disclosure may be made to a Member of Congress or to a congressional staff member in response to a request for assistance from the Member by the individual of record.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. HHS intends to disclose information from this system to an expert, consultant, or contractor (including employees of the contractor) of HHS if necessary to further the implementation and operation of this program.

4. Disclosure may be made to a Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Department of Health and Human Services is made aware of a violation or potential violation of civil or criminal law or regulation.

5. Disclosure may be made to the Office of Personnel Management or the General Accounting Office when the information is required for evaluation of the subsidy program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information may be collected on paper or electronically and may be stored as paper forms or on computers.

RETRIEVABILITY:

The records are retrieved by name and may also be cross-referenced to Social Security Number.

SAFEGUARDS:

—Authorized Users: Only HHS personnel working on this project and personnel employed by HHS contractors to work on this project are authorized users as designated by the system manager.

—Physical Safeguards: Records are stored in lockable metal file cabinets or security rooms.

—Procedural safeguards: Contractors who maintain records in this system are instructed to make no further disclosure of the records, except as authorized by the system manager and permitted by the Privacy Act. Privacy Act requirements are specifically included in contracts.

—Technical Safeguards: Electronic records are protected by use of passwords.

—Implementation Guidelines: HHS Chapter 45–13 of the General Administration Manual, Safeguarding Records Contained in Systems of Records and the HHS Automated Information Systems Security Program Handbook, Information Resources Management Manual.

RETENTION AND DISPOSAL:

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines.

SYSTEM MANAGER(S) AND ADDRESS:

The records of individuals applying for and receiving child care subsidies are managed by System Managers at the various HHS sites listed in Appendix A.

NOTIFICATION PROCEDURE:

Individuals may submit a request with a notarized signature on whether the system contains records about them to the local System Manager.

RECORD ACCESS PROCEDURES:

Request from individuals for access to their records should be addressed to the local System Manager. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosures of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information is provided by HHS employees who apply for child care subsidies. Furnishing of the information is voluntary.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A

1. For employees of the Office of the Secretary and the Administration on Aging, nationwide, contact: Child Care Program coordinator, PSC Work/Life Center, Room 1250, 330 C Street, SW, Washington, DC 20201.

2. For employees of the Substance Abuse and Mental Health Services Administration, contact: Director, Division of Human Resources Management, Office of Program Services, Substance Abuse and Mental health Services Administration, 5600 Fishers Lane, Rockville, Maryland 20857.

[FR Doc. 00–16230 Filed 6–26–00; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anti-Infective Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 28, 2000, 8:30 a.m. to 5:30 p.m.

Location: Parklawn Bldg., conference rooms G and H, 5600 Fishers Lane, and CDER Advisory Committee conference room 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Thomas H. Perez, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6758, e-mail: PerezT@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12530. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss supplemental new drug applications (NDA's) 19–537/S038, 19–847/S024, 19–857/S027, 19–858/S021, 20–780/S008 for Cipro® (ciprofloxacin), Bayer Corp. Pharmaceutical Division, for post-exposure prophylaxis of clinical disease from inhaled *Bacillus anthracis*.

Registration: Persons interested in attending the meeting are required to register by July 14, 2000. You may register by submitting your name, affiliation, telephone and fax number, and e-mail address to Thomas Perez, FAX 301–827–6801, or e-mail: Perezt@cder.fda.gov. Registration confirmation will be sent by e-mail or facsimile on July 21, 2000.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 19, 2000. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 19, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 19, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–16123 Filed 6–26–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Antiviral Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Antiviral Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 25, 2000, 8:30 a.m. to 5 p.m. and on July 26, 2000, 8:30 a.m. to 5 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Nancy Chamberlin or Beverly O'Neil, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, or by e-mail: CHAMBERLINN@CDER.FDA.GOV, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12531. Please call the Information Line for up-to-date information on this meeting.

Agenda: On July 25, 2000, the committee will discuss scientific data characterizing relationships of pharmacokinetic parameters and virologic response to approved antiretroviral drugs used in the treatment of human immunodeficiency virus (HIV) infection. The primary objectives for the committee deliberations are to explore the use of pharmacokinetic data to improve the evaluation of new formulations, alternative dosing regimens, and choice of dosing in the setting of drug-drug interactions for approved antiretroviral drugs. Additionally, other issues to be discussed include: the relationship between pharmacokinetic parameters and drug toxicity, and safety requirements and pediatric considerations for alternative dosing regimens.

Procedure: On July 25, 2000, from 8:30 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 11, 2000. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. on July 25, 2000. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 11, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On July 26, 2000, from 8:30 a.m. to 5 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). Pending investigational new drug applications and drug development plans will be presented, and recent action on selected new drug applications will be discussed. This portion of the meeting will be closed to permit discussion of this information.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 19, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–16196 Filed 6–26–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 20, 2000, 9:30 a.m. to 5 p.m.

Location: Holiday Inn, Walker and Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Hany W. Demian, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12521. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on premarket approval application (PMA) for a shock wave lithotriptor used for the treatment of heel pain and a PMA for a ceramic on ceramic total hip arthroplasty.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 13, 2000. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10 a.m. on July 20, 2000. Near the end of the committee deliberations for both PMA's, a 30-minute open public session will be conducted for interested persons to address issues specific to the submission before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 13, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 20, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–16195 Filed 6–26–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4564–N–05]

Notice of Proposed Information Collection: National Survey of Lead Hazards in Child Care Facilities

AGENCY: Office of Lead Hazard Control, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement concerning a National Survey to Assess Lead Hazards in child care facilities across the country will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 28, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Gail N. Ward, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room P3206, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Joey Y. Zhou, (202) 755–1758 ext. 153 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995, (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title of Proposal: National Survey of Lead Hazards in Child Care Facilities.

OMB Control Number: To be assigned.

Need for the Information and Proposed Use: Lead is a highly toxic heavy metal that adversely affects virtually every organ system in the body. Young children are particularly susceptible to the effects of lead. Lead poisoning remains one of the top childhood environmental health problems today. The most current national survey (1991–1994) shows that nearly 900,000 children are lead poisoned. A large body of evidence shows that the most common source of lead exposure for children today is lead paint in older housing and the contaminated dust and soil it generates. The Department of Housing and Urban Development (HUD) conducted a National Survey of Lead Hazards in Housing in 1999. This proposed survey on child care facilities is required to supplement the National Survey in residential homes. Young children may spend a significant portion of their time in child care facilities. Although child care facilities have the same painting history as does housing across the Nation, the environmental conditions and exposure characteristics maybe different. There is no systematic national survey previously done for lead hazards in child care facilities, and the extent of lead hazards in child care facilities is unknown. Results from this survey will provide current information needed for regulatory and policy decisions and enables an assessment of progress in making the U.S. housing stock lead-safe.

Agency Form Numbers: None.

Members of Affected Public: Operators of licensed child care facilities.

Total Burden Estimate (first Year):

Task	Number of respondents	×	Frequency of responses	×	Hours per response	=	Burden hours
Respondents	220		1		3		660

Total Estimated Burden Hours: 660.

Status of the Proposed Information Collection: New request.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 20, 2000.

David E. Jacobs,

Director, Office of Lead Hazard Control.

[FR Doc. 00–16189 Filed 6–26–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–39]

Notice of Submission of Proposed Information Collection to OMB; Reporting Requirements Associated With 24 CFR 203.508b and 24 CFR 235.1001

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 27, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0235) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB or review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This notice also lists the following information.

Title of Proposal: Reporting Requirements Associated with 24 CFR

203.508b and 24 CFR 235.1001—Providing Information.

OMB Approval Number: 2502–0235.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Mortgagees must inform mortgagors of the system available for obtaining answers to loan inquiries and remind mortgagors, at least once annually, of the system by written statement. Mortgagees must provide homeowners with the amount of interest paid and taxes disbursed from the escrow account for income tax purposes. On Section 235 mortgages, lenders must provide the interest accounting in such a way as to allow the homeowner to easily deduct the amount of subsidy HUD paid on behalf of the homeowner.

Respondents: Individuals or Households, Not-For-Profit Institutions.

Frequency of Submission: Reporting third party disclosure annually.

Reporting Burden	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
	12,000		1		0.25		3,000

Total Estimated Burden Hours: 3,000.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 21, 2000.

Donna L. Eden,

Director, Office of Investment Strategies and Management.

[FR Doc. 00–16190 Filed 6–26–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Comprehensive Conservation Plan and Environmental Assessment for Ottawa, Cedar Point and West Sister Island National Wildlife Refuges, Oak Harbor, OH

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the Refuge Improvement Act of 1997, the U.S. Fish and Wildlife Service has published the Ottawa National Wildlife Refuge Complex Draft Comprehensive Conservation Plan and Environmental Assessment. The Plan describes how the Service intends to manage the Ottawa Refuge Complex for the next 10–15 years.

DATES: Submit written comments by July 28, 2000. All comments should be addressed to Gary Muehlenhardt (RE–AP), U S. Fish and Wildlife Service, 1 Federal Drive. Fort Snelling, MN 55111. Comments may also be submitted through the Service's regional Web site at http://midwest.fws.gov/planning.

ADDRESSES: A copy of the Plan or a summary may be obtained by writing to Gary Muehlenhardt at the address above or placing a request through the Web site.

FOR FURTHER INFORMATION CONTACT: For additional information contact Larry Martin, Ottawa National Wildlife Refuge, 14000 W. State Route 2, Oak Harbor, OH 43449, phone (419) 898–0014 or E-mail: larry_d_martin@fws.gov.

SUPPLEMENTARY INFORMATION: Located east of Toledo, Ohio, the Ottawa National Wildlife Refuge Complex is a unique slice of marshland on the southwestern shore of Lake Erie. As a major migration corridor, the area is vital to migratory birds including waterfowl, shorebirds, raptors and songbirds that need rest and food either after crossing Lake Erie on their way south or before they head back north over the winter. As much as 70 percent of the Mississippi flyway's population of black ducks use Lake Erie marshes during migration.

The Draft Comprehensive Conservation Plan emphasizes the habitat needs of fish and wildlife as well as opportunities for wildlife-dependent recreation.

Dated: June 20, 2000.

Marvin E. Moriarty,

Acting Regional Director.

[FR Doc. 00–16174 Filed 6–26–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Utah; UTU–76188; UT–050–1430–DB–24–1A]

Utah; Initial Classification of the Public Lands for State Indemnity Selection

Pursuant to title 43 Code of Federal Regulations, subpart 2400; and section 7 of the Act of June 28, 1934; and the provisions granted to the State under the provisions of Act of Congress of August 17, 1958 (72 Stat. 928) as amended, and the acts supplementary and amendatory thereto, the public lands described below are hereby classified by State Indemnity Selection. The State of Utah has filed application to acquire 1479.84 acres of public lands in lieu of certain school lands that were encumbered by other rights or reservations before the State's title could attach. This application was assigned serial number UTU–76188.

The notice of proposed classification of these lands was published July 10, 1998, in the **Federal Register** volume 63, number 132, page 37407, and was widely publicized. As a result of the publication, Southern Utah Wilderness Alliance (SUWA) protested the proposed classification of the lands because a portion of the lands were within an area proposed for wilderness by the Utah Wilderness Coalition. They also appealed the adequacy of the environmental assessment. As a result of this protest/appeal the following lands are excluded from this initial classification: Township 36 South, Range 11 East, Section 29, W½SW¼, SE¼W¼, and Township. 37 South, Range 11 East, Section 5, Lots 3 and 4, S½NW¼, SW¼. Salt Lake Meridian, Utah, Only the lands outside the area proposed for wilderness are now included in this Initial Classification Decision.

The lands included in this classification are located within Garfield County, Utah, and are described as follows: Township 36 South, Range 11 East, Section 15, All, and Section 29, W½SE¼, and Township 37 South, Range 11 East, Section 5, Lots 1 and 2, S½NE¼, and SE¼, Salt Lake meridian, Utah. Containing approximately 1039.98 acres.

This classification decision is based on the following disposal criteria set forth in title 43, Code of Federal Regulations, part 2400.

Transfer of the lands to the State will help fulfill the Federal government's common school land grant to the State, and constitute a public purpose use of the land. Lands found to be valuable for a public purpose use will be considered chiefly valuable for public purposes (43 CFR 2430.2b).

The subject lands are administered pursuant to section 3 of the Taylor Grazing Act. Permittees in the Rockies Allotment are as follows: Robert Williams, P.O. Box 34, Teasdale, Utah 84773, Dyle Williams, P.O. Box 96, Teasdale, Utah 84773, Ted R. Taylor, HCR 61 Box 350, Fremont, Utah 84747, and Security Ranches, Gary Hallows, P.O. Box 13, Loa, Utah 84747. There are no grazing improvements of record on the subject lands. In accordance with 43 CFR 4110.4–2, the permittees shall be given two years prior notification before their grazing preferences may be reduced. Prior notification occurred upon publication of the Proposed Classification Decision in the **Federal Register** on July 10, 1998.

If these lands are clearlisted before July 10, 2000, the grazing may continue until that date. If the lands are clearlisted after July 10, 2000, this grazing use will be terminated at the time title to the land is transferred to the State. However, State law and School and Institutional Trust Land Administration procedures provide for the offering to holders of Bureau of Land Management grazing permits, licenses, or leases the first right to lease lands that are transferred to the State.

Threatened and Endangered Species and Cultural Resources Evaluations have been performed and the land approved for subject classification. Any cultural resources will be managed by the State of Utah in accordance with the State Historical Preservation Officer (SHPO).

A Mineral Report has been prepared to evaluate the mineral potential for the subject lands and to determine whether these lands are mineral in character. The lands are not encumbered by any mining claim, mineral lease, or authorized for mineral material disposal. The lands are not part of a Known Geothermal Resource Area, Known Geologic Structure, or any other known Leasing area. Strategic and critical mineral are not known or inferred to occur within the boundaries of the subject lands.

Rights-of-way granted by the Bureau of Land Management on the above lands will transfer with the land or may be reserved to the United States (see section 508 of FLPMA). Oil and gas leases (geothermal, other leasing act minerals) will remain in effect under the terms and conditions of the lease. (Upon expiration or termination of the leases, or any authorized extensions thereof, such rights shall automatically vest in the State.) Public lands classified by this notice are shown on maps on file and available for inspection in the Richfield Field Office.

For a period of 30 days from the date of publication in the **Federal Register**, this classification shall be subject to exercise of administrative review and modification by the Secretary of the Interior as provided for in 43 CFR 2461.3 and 2462.3. Interested parties may submit comments to the Secretary of the Interior, LLM 320, Washington, DC 20240.

Dated: June 12, 2000.

Jerry W. Goodman,

Field Manager.

[FR Doc. 00–16217 Filed 6–26–00; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–00–1320–EL, WYW150726]

Coal Exploration License, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Invitation for Coal Exploration License.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.A. 201 (b), and to the regulations adopted as 43 CFR 3410, all interested parties are hereby invited to participate with Triton Coal Company, LLC on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell County, WY:

T. 52 N., R. 72 W., 6th P.M., Wyoming
Sec. 8: Lots 13–16;
Sec. 17: Lots 1–14;
Sec. 18: Lots 5, 12, 13, 20;
Sec. 19: Lots 5, 12, 13, 20;
Sec. 20: Lots 4, 5, 11–14.

Containing 1,282.470 acres, more or less.

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Recoverable Coal Resource Area. The purpose of the exploration program is to obtain data on the Anderson and Canyon coal seam.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW150726): Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003; and, Bureau of Land Management, Casper Field Office, 2987 Prospector Drive, Casper, WY 82604.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in "The News-Record" of Gillette, WY, once each week for two consecutive weeks beginning the week of June 26, 2000, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Triton Coal Company, LLC no later than thirty days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Triton Coal Company, LLC, Attn: Steve Salonek, P.O. Box 3027, Gillette, WY 82717–3027, and the Bureau of Land Management, Wyoming State Office, Minerals and Lands Authorization Group, Attn: Julie Weaver, P.O. Box 1828, Cheyenne, WY 82003.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(c)(1).

Dated: June 12, 2000.

Mavis Love,

Acting Chief, Leasable Minerals Section.

[FR Doc. 00–15371 Filed 6–26–00; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–220 1020 XQ 2527]

Front Range Resource Advisory Council (Colorado); Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. appendix, notice is hereby given that the next meeting of the Front Range Resource Advisory Council (Colorado) will be held on July 13, 2000 in Buena Vista, Colorado.

The meeting is scheduled to begin at 9:30 a.m. at the Buena Vista Community Center, 715 E. Main Street, Buena Vista, Colorado. The focus of the meeting will be a field trip to the Fourmile area where the Fourmile Travel Management planning is in progress.

The Resource Advisory Council meeting is open to the public, however they will need to provide their own transportation for the field trip. A Four-wheel drive vehicle is recommended. Interested persons may make oral

statements to the Council at 9:45 a.m. or written statements may be submitted for the Council's consideration. The Center Manager may limit the length of oral presentations depending on the number of people wishing to speak.

DATES: The meeting is scheduled for Thursday, July 13, 2000 from 9:30 a.m. to 4 p.m.

ADDRESSES: Bureau of Land Management (BLM), Front Range Center, 3170 East Main Street, Canon City, Colorado 81212

CONTACT: For further information contact Ken Smith at (719)269-8500

SUPPLEMENTARY INFORMATION: Summary minutes for the Council meeting will be maintained in the Canon City Center and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: June 20, 2000.

Kenneth L. Smith,

Acting Front Range Center Manager.

[FR Doc. 00–16144 Filed 6–26–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–00–0777–30]

Northeastern Great Basin Resource Advisory Council Meeting Location and Time

June 13, 2000.

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council's Meeting Location and Time.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), Council meetings will be held as indicated below. The agenda for the July, 2000 meeting includes: approval of minutes of the previous meeting, wild horses, sage grouse, Great Basin Restoration Initiative, Land Health Standards, Off-Highway Vehicles, Field Manager reports, identification of additional issues to be resolved and determination of the subject matter for future meetings.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. The public comment period for the Council meeting is listed below.

Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

DATES, TIMES, PLACE: The time and location of the meeting is as follows: Northeastern Great Basin Resource Advisory Council, Elko Field Office, 3900 East Idaho Street, Elko, Nevada 89801; July 14 starting at 9:00 a.m.; public comments will be at 11:00 a.m. and 3:00 p.m.; tentative adjournment at 5:00 p.m.

SPECIAL MEETING: On July 13, 2000, at 6:00 p.m. in the Stockmen's Motor Hotel, the Resource Advisory Council will host a public meeting to discuss public ideas and concerns for off-highway vehicle use.

FOR FURTHER INFORMATION CONTACT: Susan Howle, Environmental Coordinator, Ely Field Office, 702 North Industrial Way, HC 33 Box 33500, Ely, NV 89301–9408, telephone 775–289–1873.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues, associated with the management of the public lands.

Helen Hankins,

Field Office Manager, Elko Field Office.

[FR Doc. 00–16146 Filed 6–26–00; 8:45 am]

BILLING CODE 4310–HC–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before August 11, 2000. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its

major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Forest Service (N1–95–99–1, 15 items, 5 temporary items). Older records of various Forest Service components accumulated prior to the 1980s. Included are correspondence files documenting such matters as the development and distribution of cartographic products and the location of boundary lines between Federal property and private lands, regional quarterly reports concerning timber cutting, and reference copies of reports issued by other agencies concerning land utilization and resettlement. Proposed for permanent retention are the program records of such agency components as the Division of Recreation and Lands, the Division of Fire Control, and the Division of Timber Management as well as correspondence, reports, and other records concerning buildings, water, sanitation, the Naval Stores Conservation Program, the development of the Timber Management Reporting System, multiple uses of Forest Service land, and Native American claims.

2. Department of the Air Force, Agency-wide (N1–AFU–00–3, 2 items, 2 temporary items). Electronic copies of documents created using electronic mail and word processing that relate to personal interviews to determine enlistment eligibility. This schedule also increases the retention period for recordkeeping copies of these files, which were previously approved for disposal.

3. Department of the Air Force, Agency-wide (N1–AFU–00–4, 2 items, 2 temporary items). Electronic copies of documents created using electronic mail and word processing that relate to leave orders authorizing emergency or special leave for overseas personnel. This schedule also increases the retention period for recordkeeping copies of these files, which were previously approved for disposal.

4. Department of the Army, Office of the Chief of Transportation (N1–336–98–1, 3 items, 3 temporary items). Older records accumulated between 1941 and 1960. Included are records relating to fiscal matters, personnel actions, procurement of supplies, freight ratings and classifications, bills of lading, and the shipment of goods and equipment. Also included are reference copies of the Department of the Army's annual reports to Congress and files relating to proposed revisions of regulations.

5. Department of Defense, Defense Finance and Accounting Service (N1–507–00–1, 7 items, 7 temporary items). Records relating to manpower authorization data and commercial activity programs, including electronic copies of documents created using electronic mail and word processing. Manpower records include documentation of workforce spaces and instructions that authorize, limit, increase, or decrease personnel allocations. Commercial activity program records include feasibility studies, reviews of functions, cost analyses, justifications, approvals, proposals, and annual inventories.

6. Department of Health and Human Services, Assistant Secretary for Management and Budget (N1–468–99–5, 5 items, 5 temporary items). Electronic records created by the Employee Assistance Program. Records include interviews, information on interventions with employees who use the program, planning files, and administrative files. Also included are electronic copies of records created using electronic mail and word processing.

7. Department of Health and Human Services, Assistant Secretary for Management and Budget (N1–468–99–6, 5 items, 5 temporary items). Paper and electronic records pertaining to incidents involving violence in the workplace. Files include data concerning specific incidents, such as demographic information and descriptions of events, as well as information on the overall policies, procedures, and activities of the agency team responsible for the program. Also included are electronic copies of records created using electronic mail and word processing.

8. Department of Health and Human Services, Public Health Service (N1–90–00–2, 2 items, 2 temporary items). Older records accumulated during the period 1948 to 1967. Records pertain to grants given to hospitals and the monitoring of construction projects financed by the grants and to the administration of Public Health Service hospitals, clinics, and research facilities, including such matters as equipment purchases, budget and finance, and personnel management.

9. Department of Housing and Urban Development, Office of Federal Housing Enterprise Oversight (N1–543–00–1, 24 items, 23 temporary items). Records accumulated by the Office of Information Technology. Included are such records as electronic records systems used to maintain information concerning agency files in all media, information security program files, chronological files of correspondence with the Federal National Mortgage Association, financial submissions in paper and electronic formats from government-sponsored enterprises, files relating to the operation of agency local area networks, and an electronic system containing data on assets and liabilities of government-sponsored enterprises. Also included are electronic copies of records created using electronic mail and word processing. Directives, operating manuals, and other procedural issuances relating to agency program functions are proposed for permanent retention. Notice of this schedule was previously published in the **Federal Register** on March 22, 2000. It is being re-published due to minor changes occasioned by an agency reorganization.

10. Department of Housing and Urban Development, Office of Federal Housing Enterprise Oversight (N1–543–00–5, 24 items, 17 temporary items). Records accumulated by the Office of Risk Analysis and Model Development, including paper and electronic records and electronic copies of documents created using electronic mail and word processing. Included are such records as tracking systems used to document

actual and proposed changes to financial simulation models, chronological files, selected research files and subject files, and records relating to the design and development of financial simulation models. Records proposed for permanent retention include recordkeeping copies of the Financial Simulation Model System used to simulate the financial performance of government-sponsored enterprises under varying economic assumptions, Capital Classification Letters issued quarterly concerning the capital levels of government-sponsored enterprises, and selected research files and subject files.

11. Department of Housing and Urban Development, Office of Federal Housing Enterprise Oversight (N1–543–00–6, 35 items, 26 temporary items). Records accumulated by the Office of External Relations, Congressional and Public Affairs, including paper and electronic records and electronic copies of documents created using electronic mail and word processing. Included are such records as copies of bills introduced in Congress that are of interest to the agency, files relating to hearings that do not relate to the agency, subject files, a mailing list system used for electronic distribution of news releases, press packets, and files relating to the agency's web site. Series proposed for permanent retention include recordkeeping copies of congressional correspondence, files on congressional hearings that relate to the agency, annual reports to Congress, publications, news releases, photograph albums, videotapes, and speeches and biographies of high-level agency officials.

12. Department of Housing and Urban Development, Office of Federal Housing Enterprise Oversight (N1–543–00–7, 3 items, 3 temporary items). Records accumulated by the Office of Finance and Administration/Procurement and Facilities, including paper and electronic records and electronic copies of documents created using electronic mail and word processing. Records consist of publications acquisition lists and related records used to track renewals of subscriptions to periodicals for agency offices.

13. Department of Housing and Urban Development, Office of Federal Housing Enterprise Oversight (N1–543–00–9, 9 items, 8 temporary items). Records accumulated by the Office of Finance and Administration/Associate Director and Deputy Associate Director, including paper and electronic records and electronic copies of documents created using electronic mail and word processing. Included are such records as a quarterly performance tracking system, selected subject files, and chronological files. Proposed for permanent retention are recordkeeping copies of subject files containing annual Federal Managers Financial Integrity Act reports, strategic plans, performance plans, and quarterly performance reports.

14. Department of Housing and Urban Development, Office of Federal Housing Enterprise Oversight (N1–543–00–10, 2 items, 2 temporary items). Records accumulated by the Office of Finance and Administration/Human Resources, consisting of a database, with related documentation, pertaining to job announcements issued by the agency and applicants for positions.

15. Department of Housing and Urban Development, Office of Federal Housing Enterprise Oversight (N1–543–00–11, 13 items, 13 temporary items). Records accumulated by the Office of Examination and Oversight, including paper and electronic records and electronic copies of documents created using electronic mail and word processing. Included are such records as data and spreadsheets concerning the financial performance of government-sponsored enterprises under agency oversight, files relating to agency reviews of the soundness of enterprises, publications concerning earnings and other aspects of the business activities of enterprises, and subject and chronological files.

16. Department of Transportation, Office of Inspector General (N1–398–00–1, 5 items, 5 temporary items). Files relating to investigations of known or alleged fraud, abuse, irregularities, and violations of laws and to internal and external audits of agency operations, including audit working papers. Also included are electronic copies of documents created using word processing and electronic mail. Recordkeeping copies of significant cases will be evaluated by NARA on a case-by-case basis.

17. Department of Veterans Affairs, Veterans Health Administration (N1–15–00–3, 5 items, 5 temporary items). Paper and electronic records pertaining to individuals who apply to become volunteers at agency health care facilities. Included are application forms, electronic data maintained at health care facilities and at the agency's automation center, summary reports and outputs, and electronic copies of documents created using electronic mail and word processing.

18. Bonneville Power Administration, Information Services, (N1–305–99–1, 8 items, 8 temporary items). Paper and electronic records relating to the agency's Y2K program. Included are system verification forms, correspondence, reports, presentations, and electronic copies of documents created using electronic mail and word processing.

19. Farm Credit Administration, Agency-wide (N1–103–99–2, 19 items, 13 temporary items). Audit case files, audits of agency administrative activities, investigative case files, minutes of meetings that are administrative or informational in nature, and computer user account records. Also included are electronic copies of records created using electronic mail and word processing that are associated with investigations, audits, meetings, and votes of the Farm Credit Administration (FCA) Board. Proposed for permanent retention are recordkeeping copies of significant investigative case files, audit reports pertaining to agency program activities, and minutes of meetings that pertain to substantive matters. This schedule also modifies transfer instructions for certain records which were previously approved for permanent retention, including FCA Board meeting briefing books, notational votes of the FCA Board, and an electronic system containing data concerning Farm Credit System institutions.

20. Railroad Retirement Board, Bureau of Fiscal Operations (N1–184–00–1, 4 items, 4 temporary items). Railroad Employer Compliance Audit Case Files that pertain to employer compliance with the Railroad Retirement Act and the Railroad Unemployment Insurance Act. Included are reports, correspondence, working papers, and electronic copies of documents created using electronic mail and word processing.

21. Railroad Retirement Board, Office of the Inspector General (N1–184–00–2, 7 items, 7 temporary items). Records relating to investigations and audits. Included are case files, an automated case tracking system, and electronic copies of documents created using electronic mail and word processing.

Dated: June 21, 2000.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 00–16192 Filed 6–26–00; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts 140th Meeting

Pursuant to section 10 (a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on July 20, 2000 from 2:00 p.m.—5:00 p.m. in Room 527 and on July 21, 2000 from 9:00 a.m. to 4:00 p.m. in Room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

The Council will meet in closed session on July 20, from 2:00 to 5:00 p.m. for discussion of National Medal of Arts nominations. In accordance with the determination of the Chairman of May 12, 2000, this session will be closed to the public pursuant to subsection (c)(4),(6) and (9)(B) of section 552b of Title 5, United States Code. The remainder of the meeting, from 9:00 a.m. to 4:00 p.m. on July 21, will be open to the public on a space available basis. Following opening remarks and announcements, there will be a Congressional update and an update on the FY 2001 budget. Other discussions tentatively include: a progress report on Millennium projects, including a report and performance on "Continental Harmony;" presentations on The Arts & Technology, including a keynote address by Morton Subotnick, presentations by author Douglas Rushkoff, architect Hani Rashid, and curator Sara Rogers, and grantee presentations from Open Studio/Seattle Art Museum and *Lost and Found Sound*. Other topics will include Application Review; *Challenge America, ArtsREACH, Creative Links,* and *New Public Works/Design Initiative* guidelines; and general discussion.

If, in the course of discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY–TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

Dated: June 21, 2000.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 00–16199 Filed 6–26–00; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel—Notice of Change

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that the open session for the meeting of the Combined Arts Advisory Panel, Visual Arts section (Creativity & Organizational Capacity categories), to the National Council on the Arts, previously announced for 2 p.m.–3:30 p.m. on July 12th, 2000, will be held on July 13th, from 11 a.m. to 12:30 p.m. The meeting will be held in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

Dated: June 21, 2000.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 00–16197 Filed 6–26–00; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that four meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows:

Museums section (Creativity & Organizational Capacity categories)—July 24–27, 2000, Room 716. A portion of this meeting, from 1:00 p.m. to 2:30 p.m. on July 27th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:00 a.m. to 7:00 p.m. on July 24th, from 9:00 a.m. to 6:30 p.m. on July 25th and 26th, and from 9:00 a.m. to 1:00 p.m. and 3:30 p.m. to 5:00 p.m. on July 27th, will be closed.

Dance section (Creativity & Organizational Capacity categories)—August 14–18, 2000, in Room 716. A portion of this meeting, from 1:00 p.m. to 2:00 p.m. on August 17th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:00 a.m. to 6:00 p.m. on August 14th–16th, from 9:00 a.m. to 1:00 p.m. and 2:00 p.m. to 6:00 p.m. on August 17th, and from 9:00 a.m. to 2:30 p.m. on August 18th, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 2000, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5486, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: June 21, 2000.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 00–16198 Filed 6–26–00; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission

DATE: Weeks of June 26, July 3, 10, 17, 24, and 31, 2000

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland

STATUS: Public and Closed

MATTERS TO BE CONSIDERED:

Week of June 26

There are no meetings scheduled for the Week of June 26.

Week of July 3—Tentative

There are no meetings scheduled for the Week of July 3.

Week of July 10—Tentative

Monday, July 10

1:25 p.m. Affirmation Session (Public Meeting)

a: Rulemaking to Modify the Event Reporting Requirements for Power Reactors in 10 CFR 50.72 and 50.73 and for Independent Spent Fuel Storage Installations (ISFI) in 10 CFR 72.216

1:30 p.m. Briefing on Proposed Export of High Enriched Uranium to Canada (Public Meeting)

Week of July 17—Tentative

There are no meetings scheduled for the Week of July 17.

Week of July 24—Tentative

Tuesday, July 25

1:25 p.m. Affirmation Session (Public Meeting) (If necessary)

Week of July 31—Tentative

There are no meetings scheduled for the Week of July 31.

Note: The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292. Contact Person for more information: Bill Hill (301) 415–1661.

ADDITIONAL INFORMATION: By a vote of 5–0 on June 19, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Intragovernmental Issues" (Closed—Ex. 4 and 9) be held on June 19, and on less than one week's notice to the public.

By a vote of 5–0 on June 20, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Carolina Power & Light Company (Shearon Harris Nuclear Power Plant), Docket No. 50–400–LA, LBP–00–12 (Memorandum and Order Ruling on Designation of Issues for an Evidentiary Hearing) (May 5, 2000)" (Public Meeting) be held on June 20, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: June 23, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–16342 Filed 6–23–00; 2:08 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Form 2–E, Rule 609; SEC File No. 270–222; OMB Control No. 3235–0233]

Proposed Collection; Comment Request: Upon Written Request, Copies Available Form: Securities and Exchange Commission, Office of Filings and Information Services; Washington, DC 20549

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 2–E Under the Securities Act of 1933, Report of Sales Pursuant to Rule 609 of Regulation E; and Rule 609 Under the Securities Act of 1933, Report of Sales

Form 2–E [17 CFR 239.201] is used by small business investment companies or business development companies engaged in limited offerings of securities to report semi-annually the progress of an offering, including the number of shares sold. The form solicits information such as the dates an offering has commenced and has been completed, the number of shares sold and still being offered, amounts received in the offering, and expenses and underwriting discounts incurred in the offering. This information assists the staff in determining whether the issuer has stayed within the limits of an offering exemption.

Form 2–E must be filed semi-annually during an offering and as final report at the completion of the offering. Less frequent filing would not allow the Commission to monitor the progress of the limited offering in order to ensure that the issuer was not attempting to avoid the normal registration provisions of the securities laws.

There has been on average one filing on Form 2–E under Rule 609 of regulation E [17 CFR 230.609] during each of the last three years. On average, approximately one respondent spends four hours collecting information, preparing, and filing a Form 2–E for a total annual burden of four hours.

The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: June 20, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–16205 Filed 6–20–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rule 489 and Form F–N, SEC File No. 270–361, OMB Control No. 3235–0411; Form 24F–2, SEC File No. 270–399, OMB Control No. 3235–0456]

Submission for OMB Review; Comment Request: Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 ("Act") [44 U.S.C. 3501 *et seq.*], the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collections of information discussed below.

Rule 489 under the Securities Act of 1933 [17 CFR 230.489] requires foreign banks and foreign insurance companies and holding companies and finance subsidiaries of foreign banks and foreign insurance companies that are excepted from the definition of "investment company" by virtue of Rules 3a–1, 3a–5, and 3a–6 under the Investment Company Act of 1940 to file Form F–N to appoint an agent for service of process in the United States when making a public offering of securities. Approximately seven entities are required by Rule 489 to file Form F–N, which is estimated to require an average of one hour to complete. The estimated annual burden of complying with the rule's filing requirement is approximately eight hours, as one of the entities has submitted multiple filings.

Under 17 CFR 270.24f–2, any open-end management companies ("mutual funds"), unit investment trusts ("UITs") or face-amount certificate companies (collectively, "funds") that are deemed to have registered an indefinite amount of securities must, not later than 90 days after the end of any fiscal year in which it has publicly offered such securities, file Form 24F–2 with the Commission. Form 24F–2 is the annual notice of securities sold by funds that accompanies the payment of registration fees with respect to the securities sold during the fiscal year.

The Commission estimates that 8,203 funds file Form 24F–2 on the required annual basis. The average annual burden per respondent for Form 24F–2 is estimated to be one hour. The total annual burden for all respondents to Form 24F–2 is estimated to be 8,203 hours.

Compliance with the collection of information required by Form 24F–2 is mandatory. The Form 24F–2 filing that must be made to the Commission is available to the public.

The estimates of average burden hours are made solely for the purposes of the Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. 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 control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 16, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–16204 Filed 6–26–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24505/File No. 812–12012]

Massachusetts Mutual Life Insurance Company, et al.

June 20, 2000.

AGENCY: Securities and Exchange Commission (the "Commission" or "SEC").

ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940, as amended (the "1940 Act"), approving substitutions of underlying fund shares (the "Substitutions").

SUMMARY OF APPLICATION: Applicants request an order approving the proposed substitutions of the Oppenheimer Multiple Strategies Fund/VA of the Oppenheimer Variable Account Funds (the "Multiple Strategies Fund"), the Oppenheimer Main Street Growth & Income Fund/VA of the Oppenheimer Variable Account Funds (the "Main Street Fund"), and the MML Blend Fund of the MML Series Investment Fund (the "MML Blend Fund," and together with the Multiple Strategies Fund and the Main Street Fund, the "Replacement Portfolios") for shares of the Panorama LifeSpan Balanced Portfolio (the "Balanced Portfolio"), Panorama LifeSpan Capital Appreciation Portfolio (the "Capital Appreciation Portfolio"), and Panorama LifeSpan Diversified Income Portfolio (the "Diversified Income Portfolio,") and together with the Balanced Portfolio and the Capital Appreciation Portfolio, the "Eliminated Portfolios"), respectively. With respect to one of the contracts funded by MassMutual Variable Life Separate Account I, the Multiple Strategies Fund, instead of the MML Blend Fund, will be substituted for the Diversified Income Portfolio. Each of the Eliminated Portfolios is a portfolio of the Panorama Series Fund, Inc.

Applicants: Massachusetts Mutual Life Insurance Company ("MassMutual"), C.M. Life Insurance Company ("CM Life," and together with MassMutual, the "Insurance Companies"), MML Distributors, LLC ("MML Distributors"), MML Investors Services, Inc. ("MML Services"), Massachusetts Mutual Variable Annuity Separate Account 4 ("MassMutual Account 4"), Massachusetts Mutual Variable Life Separate Account I ("MassMutual Account I"), C.M. Multi-Account A ("CM Account A"), and C.M. Life Variable Life Separate Account I ("CM Account I," and together with MassMutual Account 4, MassMutual Account I and CM Account A, the "Accounts," the Accounts, together with the Insurance Companies, MML Distributors and MML Services, the "Applicants").

FILING DATES: The application was filed on March 3, 2000, and amended and restated on May 15, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 17, 2000, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609.

Applicants: c/o Massachusetts Mutual Life Insurance Company, 1295 State Street, Springfield, MA 01111–0001, Attn: James M. Rodolakis, Esq.

FOR FURTHER INFORMATION CONTACT: Lisa Deitch, Senior Counsel, or Keith E. Carpenter, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. MassMutual is a mutual life insurance company established under the laws of Massachusetts on May 14, 1851. MassMutual's home office is located in Springfield Massachusetts. MassMutual is currently licensed to transact life, accident, and health insurance in all states, the District of Columbia, Puerto Rico, and certain provinces of Canada.

2. CM Life is a stock life insurance company organized in Connecticut on April 25, 1980. CM Life's home office is located in Hartford, Connecticut. CM Life is primarily engaged in the sale of life insurance and annuities and is licensed in all states except New York. CM Life is a wholly-owned subsidiary of MassMutual.

3. MassMutual Account 4 was established as a separate account under Massachusetts law on July 9, 1997, pursuant to a resolution of the Board of Directors of MassMutual. MassMutual Account 4 is registered with the Commission as a unit investment trust ("UIT") under the 1940 Act. MassMutual Account 4 funds certain variable annuity contracts that are issued by MassMutual (the "MassMutual VA Contracts"). MassMutual Account 4 is divided into 41 "Subaccounts," each of which invests in a different investment portfolio ("Portfolio") of one of fourteen underlying mutual funds: Calvert Variable Series, Inc., INVESCO Variable Investment Funds, Inc., Panorama Series Fund, Inc. ("Panorama Fund"), Oppenheimer Variable Account Funds ("Oppenheimer Funds"), Fidelity Variable Insurance Products Fund ("Fidelity VIP"), Fidelity Variable Insurance Products Fund II ("Fidelity VIP II"), Fidelity Variable Insurance Products Fund III ("Fidelity VIP III"), American Century Variable Portfolios, Inc., T. Rowe Price Equity Series, Inc. ("T. Rowe Price Fund"), MML Series Investment Fund ("MML Series Fund"), Janus Aspen Series, Franklin Templeton Variable Insurance Products,[1] Deutsche Asset Manager Management VIT Funds,[2] and MFS Variable Insurance Trust ("MFS Trust").

4. MassMutual Account I was established as a separate account under Massachusetts law on July 13, 1988, pursuant to a resolution of the Board of Directors of MassMutual. MassMutual Account I is registered with the Commission as a UIT under the 1940 Act. MassMutual has established designated segments of MassMutual Account I to fund certain variable life insurance policies (the "Variable Life Contracts") and variable riders to certain fixed life insurance policies (the "Variable Rider Contracts") that are issued by MassMutual. The designated segment of MassMutual Account I funding the Variable Life Contracts is divided into 28 "Divisions," each of which invests in a different investment Portfolio of one of six underlying mutual funds: MML Series Fund, Panorama Fund, MFS Trust, T. Rowe Price Fund, Oppenheimer Funds, and Goldman Sachs Variable Insurance Trust. The designated segment of MassMutual Account I funding the Variable Rider Contracts is divided into 26 Divisions, each of which invests in a different investment Portfolio of one of six underlying mutual funds: MML Series Fund, Panorama Fund, MFS Trust, Fidelity VIP II, Oppenheimer Funds, and T. Rowe Price Fund.

5. CM Account A was established as a separate account under Connecticut law on August 3, 1994, pursuant to a resolution of the Board of Directors of CM Life. CM Account A is registered with the Commission as a UIT under the 1940 Act. CM Account A funds certain variable annuity contracts that are issued by CM Life (the "CMVA Contracts"). CM Account A is divided into 41 Subaccounts, each of which invests in a different investment Portfolio of one of fourteen underlying mutual funds. The fourteen underlying funds and their corresponding Portfolios are identical to those available under MassMutual Account 4.

6. CM Account I was established as a separate account under Connecticut law on February 2, 1995, by the Board of Directors of CM Life. CM Account I is registered with the Commission as a UIT under the 1940 Act. CM Account I funds certain variable life insurance policies that are issued by CM Life (the "CMVUL Contracts," together with the MassMutual VA Contracts, Variable Life Contracts, Variable Rider Contracts, and CMVA Contracts, the "Contracts"). CM Account I is divided into 10 Subaccounts, each of which invests in a different investment Portfolio of one of four underlying mutual funds: Panorama Fund, Oppenheimer Funds, Fidelity VIP, and Fidelity VIP II.

7. The Accounts fund the respective variable benefits under the Contracts issued by the Insurance Companies. Units of interest in the Accounts under the Contracts are registered under the Securities Act of 1933, as amended (the "1933 Act"). The assets of each Account are held separately from other assets of the respective Insurance Companies and are not chargeable with the Insurance Companies' liabilities incurred in any other business operations. Accordingly, the income, capital gains, and capital losses incurred on the assets of each Account are credited to or charged against the assets of that Account, without regard to the income, capital gains or capital losses arising out of any other business the respective Insurance Company may conduct.

8. MML Distributors, a Connecticut limited liability company, serves as the principal underwriter for the Contracts. MML Services, a Massachusetts corporation, also serves as co-underwriter for the Contracts. Both MML Distributors and MML Services are wholly-owned subsidiaries of MassMutual, are registered with the Commission as broker-dealers, and are members of the National Association of Securities Dealers, Inc.

9. The MassMutual VA Contracts are group, flexible premium, combination fixed and variable annuity contracts. The MassMutual VA Contracts are sold without an initial sales load, but have a contingent deferred sales charge of up to 7% for any withdrawals made during the first seven contract years that exceed the free withdrawal amount. The MassMutual VA Contracts' variable investment options consist of 41 Portfolios.

10. The Variable Life Contracts are individual, flexible premium, combination fixed and variable whole life insurance contracts that are offered by MassMutual. The Variable Life Contracts have a front-end sales load of up to 18% of specified premiums paid through policy year five and up to 6% of specified premiums paid through policy year 6 or more, depending on when the policies are installed on the administration system. The Variable Life Contracts' variable investment options consist of 28 Portfolios.

[1] Prior to May 1, 2000, this fund was called the Templeton Variable Products Series Fund.

[2] Prior to May 1, 2000, this fund was called the BT Insurance Funds Trust.

11. The Variable Rider Contracts are issued in connection with group, flexible premium, adjustable life insurance policies that are offered by MassMutual. The Variable Rider Contracts' variable investment options consist of 26 Portfolios.

12. The CMVA Contracts are individual, flexible premium, combination fixed and variable annuity contracts. The sales load and variable investment options of the CMVA Contracts are identical to those of the MassMutual VA Contracts discussed earlier.

13. The CMVUL Contracts are individual, flexible premium, combination fixed and variable universal life insurance policies. The CMVUL Contracts have a premium charge that is applied to premium payments received during the first seven policy years after issue or the effective date of an increase in the specified amount (the amount of insurance coverage applied for). The maximum premium charge applied in a policy year will be 6% of premiums received during that policy year, up to the annual target premium (that varies by insured's age, underwriting class, and tobacco status) for the policy. The CMVUL Contracts' variable investment options consist of 10 Portfolios.

14. The Balanced Portfolio, the Capital Appreciation Portfolio, and the Diversified Income Portfolio (collectively, the "Eliminated Portfolio") of the Panorama Fund are currently investment options under each of the Contracts. The Panorama Fund is an open-end management investment company. Shares of the Panorama Fund are sold only as underlying investments for variable life insurance policies and variable annuity contracts issued by MassMutual or CM Life. OppenheimerFunds, Inc. ("OFI") is the investment adviser to the Panorama Fund.

15. Applicants state that the Eliminated Portfolios are asset allocation Portfolios that seek their objectives by allocating their assets between two asset classes—stocks and bonds. The stock class includes all types of equity securities, such as common stocks, preferred stocks, warrants and other securities convertible into common stocks. The bond class includes a variety of debt securities, such as long-term and short-term corporate and government debt securities, mortgage-related obligations, and notes.

16. Applicants represent that the investment objective of the Balanced Portfolio is to seek a blend of capital appreciation and income. It allocates its investments among stocks (predominantly in common stocks and other equity securities) and bonds (corporate and government bonds, including high-yield bonds), with a slightly stronger emphasis on stocks. Applicants also represent that the expense ratio of the Balanced Portfolio for the last three years was as follows: 1999: 0.91% (management fee of 0.85% and other expenses of 0.06%); 1998: 0.93% (management fee of 0.85% and other expenses of 0.08%); and 1997: 0.97% (management fee of 0.085% and other expenses of 0.12%). As of December 31, 1999, the Balanced Portfolio had approximately $97 million in assets, of which approximately $41.1 million represented Contract owner money, with the balance being seed money MassMutual provided.

17. Applicants represent that the investment objective of the Capital Appreciation Portfolio is to seek long-term capital appreciation; current income is not a primary consideration. It emphasizes investments in domestic and foreign common stocks, as well as some preferred stocks and other equity securities, but also holds some corporate bonds and notes, U.S. Government securities, and lower-grade high-yield securities. Applicants also represent that the expense ratio of the Capital Appreciation Portfolio for the last three years was as follows: 1999: 0.93% (management fee of 0.85% and other expenses of 0.08%); 1998: 0.93% (management fee of 0.85% and other expenses of 0.08%); and 1997: 0.99% (management fee of 0.85% and other expenses of 0.14%). As of December 31, 1999, the Capital Appreciation Portfolio had approximately $81 million in assets, of which approximately $35 million represented Contract owner money, with the balance being seed money MassMutual provided.

18. Applicants represent that the investment objective of the Diversified Income Portfolio is to seek high current income, with opportunities for capital appreciation. It emphasizes investments in bonds, such as U.S. Government securities, mortgage-related and asset-backed securities, and corporate bonds, including high-yield bonds, but holds some common stocks. Applicants further represent that the expense ratio of the Diversified Income Portfolio for the last three years was as follows: 1999: 0.83% (management fee of 0.75% and other expenses of 0.08%); 1998: 0.84% (management fee of 0.75% and other expenses of 0.09%); and 1997: 0.84% (management fee of 0.75% and other expenses of 0.09%). As of December 31, 1999, the Diversified Income Portfolio had approximately $46 million in assets, of which $20 million represented Contract owner money, with the balance being seed money MassMutual provided.

19. The MML Blend Fund, a separate series of the MML Series Fund, is currently an investment option under the Mass Mutual VA Contracts, Variable Life Contracts, and the CMVA Contracts, and is the proposed substitute portfolio for the Diversified Income Portfolio. The MML Series Fund is a no-load, open-end investment management company. Applicants state that shares of the MML Series Fund are sold only as underlying investments for variable life insurance policies and variable annuity contracts issued by Mass Mutual, CM Life, or another MassMutual wholly-owned subsidiary, MML Bay State Life Insurance Company. MassMutual serves as the investment adviser to the MML Series Fund. Applicants also state that the investment objective of the MML Blend Fund is to seek a high total rate of return over an extended period of time, consistent with prudent investment risk and capital preservation, by investing in equity, fixed income, and money market securities. The expense ratio of the MML Blend Fund for the last three years was as follows: 1999: 0.38% (management fee of 0.37% and other expenses of 0.01%); 1998: 0.37% (management fee of 0.37% and other expenses of 0.00%); and 1997: 0.38% (management fee of 0.38% and other expenses of 0.00%). As of December 31, 1999, the MML Blend Fund had approximately $2.73 billion in assets.

20. The Main Street Fund and the Multiple Strategies Fund (together with the Main Street Fund and the MML Blend Fund, the "Replacement Portfolios") are separate series of the Oppenheimer Funds, an open-end diversified management in investment company. The Main Street Fund is an investment option under the MassMutual VA Contracts, Variable Life Contracts, Variable Rider Contracts, and CMVA Contracts. The Multiple Strategies Fund is an investment option under the Variable Life Contracts and the Variable Rider Contracts, and as of May 1, 2000, is an investment option under the MassMutual VA Contracts and the CMVA Contracts. OFI is the investment adviser to the Oppenheimer Funds.

21. Applicants represent that the investment objective of the Main Street Fund is to seek a high total return, which includes growth in the value of its shares as well as current income, from investments in mostly common stocks and other equity securities and some debt securities. Applicants also

represent that the expense ratio of the Main Street Fund for the last three years was as follows: 1999: 0.78% (management fee of 0.73% and other expenses of 0.05%); 1998: 0.79% (management fee of 0.74% and other expenses of 0.05%); and 1997: 0.83% (management fee of 0.75% and other expenses of 0.08%). As of December 31, 1999, the Main Street Fund had approximately $555 million in assets.

22. Applicants state that the investment objective of the Multiple Strategies Fund is to seek total return, which includes current income and capital appreciation in the value of its shares. It emphasizes allocation of its investments among common stocks and other equity securities, bonds and other debt securities, and money market securities. Applicants further state that the expense ratio of the Multiple Strategies Fund for the last three years was as follows: 1999: 0.73% (management fee of 0.72% and other expenses of 0.01%); 1998: 0.76% (management fee of 0.72% and other expenses of 0.04%); and 1997: 0.75% (management fee of 0.72% and other expenses of 0.03%). As of December 31, 1999, the Multiple Strategies Fund had approximately $580 million in assets.

23. Applicants propose to exercise their rights to substitute the Replacement Portfolios for the Eliminated Portfolios as follows: (i) the substitution of units of the Divisions of Subaccounts investing in the MML Blend Fund for units of the Divisions or Subaccounts investing in the Diversified Income Portfolio (except that, with respect to MassMutual's Variable Rider Contracts funded by MassMutual Account I, the Diversified Income Portfolio will be substituted with the Multiple Strategies Fund instead of the MML Blend Fund in order to maintain an even mix of MassMutual funds and outside funds); (ii) the substitution of units of the Divisions or Subaccounts investing in the Multiple Strategies Fund for units of the Divisions or Subaccounts investing in the Balanced Portfolio; and (iii) the substitution of units of the Divisions or Subaccounts investing in the Main Street Fund for units of the Divisions or Subaccounts investing in the Capital Appreciation Portfolio. To the extent required by applicable law, substitutions of shares attributable to a Subaccount will not be made unless affected contract owners have been notified of the change and until the Commission has approved the change.

24. Applicants represent that the Eliminated Portfolios were established in 1995 to satisfy a perceived need for asset allocation funds. Applicants also represent that these Portfolios have not attracted a large amount of interest from the Insurance Companies' variable Contract owners, and that the Insurance Companies have no reason to believe Contract owner interest will adequately increase. Much of the assets that reside within these Portfolios consist of seed money.

Fund name	Assets at December 31, 1999	Percentage seed money
Balanced Portfolio	$96,660,173.27	57.5
Capital Appreciation Portfolio	80,792,123.80	56.2
Diversified Income Portfolio	46,046,958.44	57.4

Applicants further represent that, as a result, there are not enough assets in the Eliminated Portfolios to provide the portfolio management flexibility and diversification, which benefit Contract owners. Applicants also represent that the performance returns for these Portfolios have been fair at best, and the Portfolio fees have been relatively high. While there is still a demand for asset allocation, Applicants believe that this need can be satisfied best with guidance on how to properly allocate assets among the existing investment options offered by each Contract rather than by offering stand-alone asset allocation Portfolios.

25. Applicants believe the Substitutions will benefit Contract owners by replacing the Eliminated Portfolios with Replacement Portfolios having comparable investment objectives and policies and generally better historical performance returns, and which the Applicants believe are more likely to provide Contract owners with favorable investment performance in the future.[3] Applicants state that, in addition, the Substitutions will benefit Contract owners because the Replacement Portfolios have lower expense ratios than the Eliminated Portfolios.

26. Applicants represent that each Substitution will take place at the relative accumulation unit values determined on the date of the Substitution in accordance with Section 22 of the Act and Rule 22c–1 thereunder, Accordingly, there will be no immediate financial impact on any Contract owner as a result of the Substitutions. Applicants also represent that each Substitution will be effected by having each Division or Subaccount that invests in the Eliminated Portfolio redeem its shares of the Eliminated Portfolio at the net asset value calculated on the date of the Substitutions. The Insurance Companies would then cancel the accumulation units of that Division of Subaccount credited to the Contracts and credit (in an equal dollar amount) units of the Divisions or Subaccounts that invest in the Replacement Portfolio. The Insurance Companies would use the proceeds of its redemption of shares of the Eliminated Portfolio to purchase shares of the Replacement Portfolio.

27. Applicants represent that the Insurance Companies will schedule the Substitutions to occur as soon as practicable following the issuance of an order by the Commission granting the relief requested in the application. Applicants further represent that, by way of sticker, the prospectuses will disclose the proposed Substitutions for several months prior to that date. Applicants also represent that the stickers will inform existing Contract owners that no additional amounts may be allocated to the Subaccounts that invest in the Eliminated Portfolios on or after the date of the Substitutions. The stickers also will inform affected Contract owners that they will have an opportunity to reallocate accumulation value prior to the Substitutions, from the Subaccounts investing in the Eliminated Portfolios, or for 30 days after the Substitutions, from the Subaccounts investing in the Replacement Portfolios, to Subaccounts investing in other Portfolios under the Contracts, without the imposition of any transfer charge. Applicants also represent that such a transfer will not count against the number of free transfers permitted under the Contract. Applicants also represents that, after the

[3] Applicants state that, although the Balanced Portfolio in the past year (but not since inception) has had better historical performance returns than the Multiple Strategies Fund, they believe the Multiple Strategies Fund is more attractive fund because of its lower expense ratio and larger asset base.

order is issued, a second notification will be provided to all affected Contract owners again advising them of the pending Substitutions and of their ability to transfer free of charge to the remaining investment Divisions or Subaccounts of their choice, or remain in the Eliminated Portfolios until the automatic Substitutions on that date. Applicants also state that within five days after the Substitutions, the Insurance Companies will send affected Contract owners written confirmation that the Substitutions have occurred.

28. Applicants represent that the Insurance Companies will pay all expenses and transactions costs of the Substitutions; none will be borne by Contract owners. Applicants also represent that affected Contract owners will not incur any fees or charges as a result of the Substitutions, nor will their rights or the obligations of the Insurance Companies under the Contracts be altered in any way. Applicants further represent that the Substitutions will not cause the fees and charges under the Contracts currently being paid by Contract owners to be greater after the Substitutions than before the Substitutions. Applicants also represent that the Substitutions, will have no adverse tax consequences to Contract owners and will in no way alter the tax benefits to Contract owners.

29. Applicants believe that their request satisfies the standards for relief of Section 26(b), as set forth below, because: (i) each Substitution involves Portfolios with similar investment objectives; (ii) after each Substitution, affected Contract owners will be invested in a Replacement Portfolio whose actual performance has been better on a historical basis than that of the Eliminated Portfolio; and (iii) after each Substitution, affected Contract owners will be invested in a Replacement Portfolio whose expenses have been less, and are expected to continue to be less on an estimated basis, than those of the Eliminated Portfolio.

Applicant's Analysis of Law

1. Section 26(b) of the 1940 Act makes it unlawful for any depositor or trustee of a registered UIT holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission will approve such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Section 26(b) of the 1940 Act was enacted as part of the Investment Company Act Amendments of 1970 ("1970 Amendments"). Prior to the enactment of the 1970 Amendments, Section 26(a)(4)(b) of the Act only required that the trust instrument of a UIT provide that the sponsor or trustee notify the trust's shareholders within five (5) days after a substitution of the underlying securities. The legislative history of Section 26(b) describes the underlying purpose of the amendment to the section: "The proposed amendment recognizes that in the case of a unit investment trust holding the securities of a single issuer notification to shareholders does not provide adequate protection since the only relief available to the shareholders, if dissatisfied, would be to redeem their shares. A shareholder who redeems and reinvests the proceeds in another unit investment trust or in an open-end company would under most circumstances be subject to a new sales load. The proposed amendment would close this gap in shareholder protection by providing for Commission approval of the substitution. The Commission would be required to issue an order approving the substitution if it finds the substitution consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act."

3. The legislative history makes clear that the purpose of Section 26(b) is to protect the expectation of investors in a UIT that the UIT will accumulate shares of a particular issuer by preventing scrutinized unsubstituitons which might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial premium payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Moreover, in the issuance product context, a Contract owner forced to redeem may suffer adverse tax consequences. Section 26(b) affords protection to investors by preventing a depositor or trustee of a UIT holding the shares of one issuer from substituting for those shares of another issuer, unless the Commission approves that substitution.

4. Applicants submit that the purposes, terms and conditions of the Substitutions are consistent with the principles and purposes of Section 26(b) and do not entail any of the abuses that Section 26(b) is designed to prevent. Applicants assert that substitution is an appropriate solution to the unfavorable performance, on a relative basis, and higher relative expenses of the Portfolios to be eliminated. Applicants believe that the Replacement Portfolios will better serve Contract owner interests because the Portfolios' performance returns have been better than the performance of, and their expenses have been lower than the expenses of, the corresponding Eliminated Portfolios. Applicants also submit that the Commission has routinely approved substitutions of this type.

5. Applicants maintain that the Substitutions will not result in the type of costly forced redemption that Section 26(b) was intended to guard against and, for the following reasons, are consistent with the protection of investors and the purposes fairly intended by the Act: (i) Each Substitute Portfolio has investment objectives that are similar to those of the corresponding Eliminated Portfolio, and permits Contract owners continuity of their investment objectives and expectations; (ii) the costs of the Substitutions, including any brokerage costs, will be borne by the Insurance Companies and will not be borne by Contract owners and no charges will be assessed to effect the Substitutions; (iii) the Substitutions will, in all cases, be at net asset values of the respective units, without the imposition of any transfer or similar charge and with no change in the amount of any Contract owner's accumulation value; (iv) the Substitutions will not cause the fees and charges under the Contracts currently being paid by Contract owners to be greater after the Substitutions than before the Substitutions; (v) the Contract owners will be given notice prior to the Substitutions and will have an opportunity to reallocate accumulation values among other available Divisions or Subaccounts without the imposition of any transfer charge or limitation, or the transfer counting against any limit on the number of permitted or charge-free transfers during a year; (vi) within five days after the Substitutions, the Insurance Companies will send to affected Contract owners written confirmation that the Substitutions have occurred; (vii) the Substitutions will in no way alter the insurance benefits to Contract owners or the contractual obligations of the Insurance Companies; and (viii) the Substitutions will have no adverse tax consequences to Contract owners and will in no way alter the tax benefits to Contract owners.

Conclusion

Applicants request an order of the Commission pursuant to Section 26(b) of the 1940 Act approving the proposed Substitutions. Section 26(b), in pertinent part, provides that the Commission shall issue an order approving a substitution of securities if

the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. For the reasons and upon the facts set forth above, applicants state that the requested order meets the standards set forth in Section 26(b) and should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–16147 Filed 6–26–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42966; File No. SR–Amex–00–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to the Reporting of Options Transactions

June 20, 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 February 22, 2000, the American Stock Exchange LLC ("Amex" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change relating to the reporting of options transactions. The Amex filed Amendment 1 to this proposal on June 12, 2000.[3] The proposed rule change, as amended, is described in Items I, II and III below, which Items have been prepared by the Exchange. 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 has filed with the Commission a proposed rule change adopting a new rule, Amex Rule 992, to require the reporting of options transactions within 90 seconds. The text of the proposed rule change, as amended, is set forth below. Additions are in italics.

Trade Reporting Rules

Section 9. Miscellaneous Provisions Applicable to Options

Rule 992.

(a) *A member or member organization initiating an options transaction, whether acting as principal or agent, must report or ensure the transaction is reported within 90 seconds of the execution to the Amex Options Market Data System for dissemination to the Options Price Reporting Authority.*

(b) *Transactions not reported within 90 seconds after execution shall be designated as late. A pattern or practice of late reporting without exception circumstances may be considered conduct inconsistent with just and equitable principles of trade.*

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 Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex 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 proposes to adopt a new rule, Amex Rule 992, to require options transactions reporting within 90 seconds. The Amex represents that it is Exchange policy that any member initiating an options transaction on the floor of the Exchange, whether acting as principal or agent, must ensure that the trade is properly reported or "printed on the tape."[4]

The reporting of options transactions is currently handled by the Amex Options Display Book ("AODB").[5] The AODB handles the execution processing of orders routed to it both electronically and manually. Orders routed electronically are either executed automatically by the Exchange's Auto-Ex system or executed by the specialist through the AODB. These options transactions are immediately reported to the Amex Option Market Data System, which processes all Amex trades, and the Options Price Reporting Authority, which disseminates trade information to the Amex's members and the investing public through vendors. Orders manually routed to the Exchange through a floor broker and executed in the trading crowd are reported to the specialist or his clerk for entry into the AODB and processed in the same manner as electronically routed and executed trades.[6]

Although Amex estimates that 60–70% of options transactions are electronically routed and executed orders that are immediately reported and printed on the tape, the Exchange believes that the adoption of a specific options trade reporting rule is appropriate, particularly for those orders routed and executed manually. Under the proposed rule, transactions not reported within 90 seconds after execution will be designated as late. Patterns or practices of late reporting without exceptional circumstances may be considered conduct inconsistent with just and equitable principles of trade.[7]

2. Statutory Purpose

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general and furthers the objectives of Section 6(b)(5),[9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Claire P. McGrath, Vice President and Special Counsel, Derivative Securities, Amex to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 9, 2000. ("Amendment No. 1"). In Amendment No. 1, the Exchange clarified the proposed rule text and confirmed that a member's failure to report an options transaction within 90 seconds would be considered a violation of proposed Amex Rule 992.

[4] The Exchange represents that this is currently an informal policy of the Exchange, which Amex is seeking to codify by adopting Amex Rule 992, as proposed in this filing. Voice Mail Message from Scott G. Van Hatten, Legal Counsel, Derivative Securities, Amex, to Melinda R. Diller, Attorney, Division, Commisison, on March 28, 2000.

[5] According to the Exchange, the AODB is an electronic order book and execution-processing system that was adopted to replace and improve upon what was once a paper-based specialist's book.

[6] An example of such a trade is one that does not include either the specialist or a customer limit order as a party to the trade.

[7] In Amendment No. 1, the Amex clarified that a failure to report a single options transaction within 90 seconds would be considered a violation of the proposed options rule. *See* Amendment No. 1, *supra* note 3.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may adequate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Amex consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–00–03 and should be submitted by July 18, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–16206 Filed 6–26–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42967; File No. SR–MSRB–99–11]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change To Amend Rule G–36

June 21, 2000.

I. Introduction

On December 10, 1999, the Municipal Securities Rulemaking Board ("MSRB" or the "Board") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule G–36, on delivery of official statements, advance refunding documents and Forms G–36(OS) and G–36(ARD) to the Board or its designee. The proposed rule change was published for comment in the **Federal Register** on February 9, 2000.[3] The Commission received no comments on the proposal. This order approves the proposal.

II. Description of the Proposal

The Board has filed with the Commission a proposed rule change to amend Rule G–36, on delivery of official statements, advance refunding documents and Forms G–36(OS) and G–36(ARD) to the Board or its designee. Rule G–36 requires, among other things, that a broker, dealer or municipal securities dealer (a "dealer") acting as underwriter in a primary offering of municipal securities (with certain limited exceptions) send to the Board copies of the official statement and completed Form G–36(OS).

Originally, Rule G–36 applied to all primary offerings of municipal securities regardless of principal amount, other than primary offerings that qualified for exemption under paragraph (d)(1) of Rule 15c2–12 under the Act.[4] The Board subsequently amended Rule G–36 to include certain categories of primary offerings that are exempt under Rule 15c2–12(d)(1).[5] For any primary offering subject to Rule G–36(c)(i), the underwriter currently is required to send two copies of the official statement, if one is prepared, in final form with two copies of Form G–36(OS), to the Board by the business day after the issuer delivers the municipal securities to the underwriter (the "bond closing").

As amended, the rule would require an underwriter in a primary offering subject to Rule G–36(c)(i) for which an official statement in final form is prepared by the issuer to send two copies of the official statement in final form, together with two copies of Form G–36(OS), to the Board by the later of (i) one business day after the bond closing or (ii) one business day after receipt of the official statement from the issuer.[6]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act[7] and the rules and regulations thereunder applicable to the MSRB.[8] In particular, the Commission finds the amendments to MSRB Rule G–36 consistent with the requirements of Section 15B(b)(2)(C)[9] of the Act, which provides, in part, that the Board's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42374 (February 2, 2000), 65 FR 6427 (February 9, 2000).

[4] Originally, Rule G–36 applied to all primary offerings subject to Rule 15c2–12, as well as to Small Issue Securities for which an official statement in final form was prepared, bud did not apply to Limited Offering Securities, Short-Term Securities and Puttable Securities.

[5] *See* Securities Exchange Act Release No. 32086 (March 31, 1993), 58 FR 18290 (April 8, 1993); "Delivery of Official Statements to the Board: Rule G–36," *MSRB Reports*, Vol. 12, No. 3 (September 1992) at 11. Thus, only primary offerings exempt from Rule 15c2–12 for which no official statement in final form is prepared and Limited Offering Securities remain exempt from Rule G–36. Currently, Small Issue Securities, Short-Term Securities, and Puttable Securities, are subject to Rule G–36(c)(1) where an official statement in final form has been prepared by or on behalf of the issuer.

[6] In contrast, Rule G–36(c)(i) currently requires that the underwriter send the official statement to the Board by the business day after the bond closing, regardless of whether the underwriter has in fact received the official statement by such day.

[7] 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).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78o–4(b)(2)(C).

to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB represents that the proposed rule change is intended to provide relief to underwriters that face violation of Rule G–36(c)(i) caused by a delay in delivery by issuers for whom no concomitant obligations exists to delivery an official statement by any particular date. The Commission believes that because underwriters and other dealers are still required to adhere to their continuing obligation under Rule G–32 to deliver official statements for new issue municipal securities to customers by settlement, the MSRB proposal will foster cooperation among persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, without adversely affecting the protection of investors and the public interest.

In general, underwriters may be exposed to a potential violation of Rule G–36 when an issuer fails to provide the official statement. The Commission notes that pursuant to Rule 15c2–12(b)(3), underwriters are required to contract to obtain official statements and thus have an enforceable mechanism to obtain the official statements. The Commission also appreciates the situation of underwriters who, because an issuer does not provide a final official statement and is not required to do so under a 15c2–12 contract, finds themselves in violation of Rule G–36(c)(i). However, the Commission expects that an underwriter that receives an official statement will provide the official statement to the Board without delay.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–MSRB–99–11) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42965; File No. SR–NASD–99–74]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change as Amended by the National Association of Securities Dealers, Inc. Relating To an Exemption From NASD Conduct Rule 2710 for Closed-End Management Companies That Make Periodic Repurchases of Their Securities Under Rule 23c–3(b) of the Investment Company Act of 1940

June 20, 2000.

I. Introduction

On December 20, 1999, the National Association of Securities Dealers, Inc. ("NAD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change regarding an exemption from NASD Conduct Rule 2710 ("Corporate Financing Rule") for closed-end management companies that make periodic repurchases of their securities under Rule 23c–3(b)[1] of the Investment Company Act of 1940 ("1940 Act")[2] NASD Regulation filed an amendment to the proposed rule change on February 29, 2000, which amendment entirely replaced and superseded the initial proposal.[3] On March 20, 2000, NASD Regulation again amended the proposal.[4] The Proposed rule change, as amended, was published for comment in the **Federal Register** on April 7, 2000.[5] The Commission received one comment letter on the proposal.[6] This order grants approval to the proposed rule change, as amended.

[1] 17 CFR 270.23c–3(b).

[2] 15 U.S.C. 80a–1, *et seq.*

[3] *See* February 28, 2000 letter and attachments from Joan C. Conley, Secretary, NASD Regulation to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC ("Amendment No. 1"). In Amendment No. 1, NASD Regulation made changes to the language of the proposed new rule. Exhibits 2 through 4 that were attached to the original filing are incorporated by reference in Amendment No. 1.

[4] *See* March 17, 2000 letter from Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation to Katherine A. England, Assistant Director, Division, SEC ("Amendment No. 2"). In Amendment No. 2, NASD Regulation made minor, technical changes to the proposed new rule.

[5] *See* Securities Exchange Act Release No. 42601 (March 30, 2000), 65 FR 18405 (SR–NASD–99–74).

[6] *See* April 27, 2000 letter from Kathy D. Ireland, Associate Counsel, Investment Company Institute ("ICI"), to Jonathan G. Katz, Secretary, SEC ("ICI Letter").

II. Description of the Proposal

NASD Regulation proposes to amend the Corporate Financing Rule and NASD Conduct Rule 2830 to exempt public offerings by closed-end investment management companies that make periodic tender offers for their securities in compliance with Rule 23c–3(b)[7] of the 1940 Act[8] from the filing requirements and limitations on underwriting compensation of the Corporate Financing Rule and, instead, subject such offerings to the sales charge limitations of NASD Conduct Rule 2830.

The Corporate Financing Rule regulates the underwriting terms and other arrangements of public offerings of securities. Subparagraph (b)(8)(C) of the Corporate Financing Rule provides that securities of investment companies registered under the 1940 Act[9] are exempt from filing and compliance with the Corporate Financing Rule, unless the offerings is of securities of a management company defined as a "closed-end" company in Section 5(a)(2) of the 1940 Act[10] ("closed-end funds").[11] Thus, closed-end funds are subject to the filing requirements, filing fees, and regulations of the Corporate Financing Rule. Open-end investment companies ("open-end funds") are exempt from filing with NASD Regulation under the Corporate Financing Rule. Instead, open-end funds' sales charges are regulated under NASD Conduct Rule 2830.

Closed-end funds are subject to the core provisions of the 1940 Act[12] that also apply to open-end funds, including prohibitions on affiliated transactions, obligations requiring shareholder approval of advisory contracts, anti-pyramiding restrictions, and board composition requirements. However, such funds are not subject to other 1940 Act[13] restrictions applicable to open-end funds, including certain limitations on leverage and certain obligations pertaining to the liquidity of investments.

The NASD has applied the Corporate Financing Rule and its predecessor rule to members' sales of the securities of closed-end funds on the basis that

[7] 17 CFR 270.23c–3(b).

[8] 15 U.S.C. 80a–1, *et seq.*

[9] *Id.*

[10] 15 U.S.C. 80a–5(a)(2).

[11] Section 5(a)(1) of the 1940 Act defines "open-end company" as "a management company which is offering for sale or has outstanding any redeemable security for which it is the issuer." Section 5(a)(2) of the 1940 Act defines "closed-end company" as "any management company other than an open-end company."15 U.S.C. 80a–5(a)(1) and (2).

[12] 15 U.S.C. 80a–1, *et seq.*

[13] *Id.*

closed-end fund offerings are structured and marketed in a manner that is more similar to and competitive with corporate securities offerings than to open-end funds. At the time the Corporate Financing Rule was adopted, closed-end funds conducted offerings of a fixed number of common shares at specified times; priced their shares periodically; limited sales compensation of broker/dealers to a discount from a fixed offering price; generally did not repurchase their securities directly from shareholders; and generally listed their securities on a securities market.

Certain closed-end funds, commonly known as "interval funds," however, engage in continuous offerings of their securities under Rule 415(a)(1)(xi) [14] under the Securities Act of 1933; [15] price their shares daily; pay broker/dealers initial and continuing compensation that meets the sales charge limitations of NASD Conduct Rule 2830; do not list their securities on a securities market; and conduct periodic repurchases in compliance with Rule 23c–3(b) [16] of the 1940 Act.[17] Rule 23c–3(b)(2)(i) [18] requires that the interval fund establish as a fundamental policy, changeable only by a majority vote of the outstanding voting securities of the company, that it will make periodic repurchase offers. Because the shares of interval funds are not redeemable on a daily basis, they are classified as "closed-end" under the 1940 Act.[19]

In *Notice to Members 98–81* (October, 1998), NASD Regulation requested public comment on whether any of the NASD's rules are obsolete. One commenter, the ICI, proposed exempting interval funds from regulation by the Corporate Financing Rule. In addition, the Corporate Financing Department has received a rulemaking petition requesting an exemption from the Corporate Financing Rule for interval funds. NASD Regulation believes that the distribution of interval fund shares is conducted and financed in a manner more similar to that used by open-end funds than the method used by traditional closed-end funds. Therefore, the calculation of members' compensation for the distribution of interval fund shares is more properly regulated by provision (d) of NASD Conduct Rule 2830 (provision (d) hereinafter, the "Sales Charge Rule"), rather than by the limitations on underwriting compensation in the Corporate Financing Rule.

Consequently, NASD Regulation proposes to amend the Corporate Financing Rule and NASD Conduct Rule 2830 to exempt interval funds from the filing requirements, filing fees, and regulations of the Corporate Financing Rule and, instead, to subject them to NASD Conduct Rule 2830, which regulates the distribution and sales charges of open-end funds.[20] The proposed amendment to the Corporate Financing Rule would amend subparagraph (b)(8)(C) to provide that closed-end fund offerings are exempt if the fund makes periodic repurchase offers pursuant to Rule 23c–3(b) [21] and it offers its shares on a continuous basis pursuant to Rule 415(a)(1)(xi) [22] under the Securities Act of 1993. [23] Closed-end funds that do not meet these requirements will continue to be subject to the Corporate Financing Rule. The proposed amendment to NASD Conduct Rule 2830 would amend paragraph (d) and (j) to provide that interval funds are subject to the provisions regulating sales charges and the repurchases of fund securities.[24]

III. Summary of Comments

The Commission received one comment letter on the proposal from the ICI.[25] While the ICI is generally supportive of the proposal, the ICI believes that the proposal does not go far enough in two respects. First, the ICI recommends that the exemption from Corporate Financing Rule be expanded to include funds that make periodic self-tenders in compliance with Rule 13e–4 [26] and Schedule 13E–4 [27] under the Exchange Act.[28] The ICI believes that tender offer funds are substantially similar to the interval funds that fall within the scope of the proposal, in that funds making repurchases of shares outside of Rule 23c–3 [29] also need to replenish their assets through sales of additional shares to offset the effects of repurchases, and therefore may wish to compensate broker-dealers in the same manner as interval funds relying on Rule 23c–3.[30] The ICI believes, therefore, it is irrelevant whether funds are required to have a fundamental policy to conduct self-tender offers, and that the proposal should be expanded to include tender offer funds.[31]

Second, the ICI notes that the proposal, as written, applies only to interval funds that offer their shares on a continuous basis pursuant to SEC Rule 415(a)(1)(xi).[32] The ICI states, however, that SEC Rule 415(a)(1)(xi) [33] permits interval funds to offer shares under the "shelf registration" provisions of the Act on either a continuous or delayed basis. To ensure consistency with SEC Rule 415(a)(1)(xi),[34] the ICI believes the proposal should be modified to include interval funds that offer their shares on a delayed basis. The ICI maintains that interval funds that make offerings on a delayed basis are also more similar to open-end funds than closed-end funds, and therefore should be treated as open-end funds.[35]

In responding to the ICI's comments, NASD Regulation stated that its proposed requirement that the exemption be made available only for those closed-end funds that issue securities on a continuous basis specifically excluding those interval funds that offer their shares on a delayed or periodic basis, was intended to ensure that the fund's manner of financing the distribution of shares

[14] 17 CFR 230.415(a)(1)(xi).

[15] 15 U.S.C. 77a, *et seq.*

[16] 17 CFR 270.23c–3(b).

[17] 15 U.S.C. 80a–1, *et seq.*

[18] 17 CFR 270.23c–3(b)(2)(i).

[19] 15 U.S.C. 80a–1, *et seq.*

[20] Interval funds are distinguished from other hybrid closed-end funds that make periodic self-tenders in compliance with Rule 13e–4 and Schedule 13E–4 under the Securities Exchange Act of 1934 ("tender offer funds") ("Exchange Act"). *See* 17 CFR 240.13e–4 and 17 CFR 240.13e–101, *et seq.*, 15 U.S.C. 78a, *et seq.* Such tender offer funds are not required to establish as a fundamental policy that they will make periodic repurchases, as required by Rule 23c–3(b)(2)(i) under the 1940 Act. 17 CFR 270.23c–3(b)(2)(i), 15 U.S.C. 80a–1, *et seq.* The rule change proposed herein would not exempt tender offer funds from the Corporate Financing Rule. However, NASD Regulation will consider individual requests for exemption under the NASD Rule 9600 series from the requirements of the Corporate Financing Rule for such tender offer funds. *See* Exemption granted October 29, 1999 under "Corporate Financing Rule—Rule 2710" at www.nasd.com.

[21] 17 CFR 270.23c–3(b).

[22] 17 CFR 270.415(a)(1)(xi).

[23] 15 U.S.C. 77a, *et seq.*

[24] An interval fund that has received a "no objections" opinion from the Corporate Financing Department based upon representations that underwriting compensation will not exceed a certain amount will become subject to the Sales Charge Rule upon effectiveness of the proposed amendments, provided that the compensation limit has not already been met or exceeded. Any interval fund that has reached the applicable compensation limit under the Corporate Financing Rule shall remain subject to the requirements of the Rule until the fund files a post-effective amendment with the Commission registering additional securities.

[25] *See* footnote, 4, *supra.*

[26] 17 CFR 240.13e–4.

[27] 17 CFR 240.13e–101. Although the ICI refers to Schedule 13E–4 in its comment letter, the Commission notes that Schedule 13E–4 was removed and reserved, effective January 24, 2000. *See* Securities Act Release No. 7760 (October 22, 1999), 64 FR 61408 (November 10, 1999). The information is now contained in new Schedule TO, 17 CFR 240.14d–100.

[28] 15 U.S.C. 78a, et seq.

[29] 17 CFR 270.23c–3

[30] *Id.*

[31] *See* ICI Letter at page 2.

[32] 17 CFR 230.415(a)(1)(xi).

[33] *Id.*

[34] *Id.*

[35] *See* ICI Letter on page 2.

would be more similar to the manner of financing the distribution of shares of mutual funds that offer shares on a continuous basis.[36] Additionally, NASD Regulation noted that closed-end funds that offer their shares on a periodic basis may decide to finance the distribution in a manner more similar to corporate offerings than the broker/dealer compensation methods used by mutual funds.[37] For these reasons, NASD Regulation does not believe that the ICI's suggested expansion of the scope of the proposal is warranted.

Additionally, NASD Regulation noted that, although some tender offer funds offer their shares continuously and periodically self-tender, these funds do not, as a matter of fundamental policy, establish that they will make periodic repurchases.[38] NASD Regulation explained that the discretion whether to make periodic repurchases allows a tender offer fund the flexibility to determine if it needs to continuously offer shares to replenish fund assets. Were a tender offer fund to decide to offer shares periodically, however, NASD Regulation notes that such a fund could compensate broker/dealers in the same manner as corporate issuers.[39] For these reasons, NASD Regulation doe not propose to amend the proposal to extend the exemption to tender offer funds.

IV. Discussion

The Commission has reviewed carefully the NASD's proposed rule change and finds, for the reasons set forth below, the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a registered securities association, and in particular, with the requirements of Section 15A(b)(6) of the Exchange Act.[40]

Section 15A(b)(6) of the Exchange Act[41] requires that rules of a registered securities association be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest. The proposal would require that certain closed-end funds known as "interval funds" be regulated by NASD Conduct Rule 2830(d), rather than by the limitations on underwriting compensation in the Corporate Financing Rule. The Commission agrees that interval funds, because their manner of financing the distribution of shares are more similar to that of open-end funds, are more properly regulated by NASD Conduct Rule 2830, which regulates the distribution and sales charges of open-end funds. The proposal is narrowly construed, in that the amendment to subparagraph (b)(8)(C) of the Corporate Financing Rule would restricted to closed-end funds that make periodic repurchase offers pursuant to Rule 23c–3(b)[42] and offer shares on a continuous basis pursuant to Rule 415(a)(1)(xi)[43] under the Securities Act of 1933.[44] Closed-end funds that do not meet these requirements will continue to be subject to the Corporate Financing Rule. The Commission finds that allowing the requested exemption for funds that meet these limited criteria is consistent with the public interest and beneficial to investors because the distribution of interval fund shares is conducted and financed in a manner more similar to that used by open-end management investment companies, which are regulated by NASD Conduct Rule 2830(d).

The Commission has considered carefully the comments raised by the ICI, and is not persuaded that the scope of the proposal should be expanded to include interval funds that offer their shares on a periodic basis, nor that the proposed exemption should be made available to closed-end funds that operate as tender offer funds. The Commission finds that the proposal is reasonably designed to ensure that the exemption applies only to funds whose manner of financing the distribution of shares is more similar to that of mutual funds that offer shares on a continuous basis. The Commission is concerned that tender offer funds and interval funds that offer their shares periodically are marketed, and their distribution financed, in a manner more akin to corporate issuers that are subject to the Corporate Financing Rule. The Commission therefore believes that the exemption should not be expanded at this time to exempt these funds from the requirements of this rule. The Commission notes, however, that NASD Regulation stated that it prefers to gain experience regarding the financing structures of tender offer funds through the exemptive process under the Rule 9600 series, and therefore it will consider individual requests for exemption from the requirements of the Corporate Financing Rule for these types of funds.[45]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[46] that the proposed rule change (SR–NASD–99–74), as amended, is hereby approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[47]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–16208 Filed 6–26–00; 8:45 am]

BILLING CODE 8010–01–M

[36] *See* May 15, 2000 letter from Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation to Katherine A. England, Assistant Director, Division, SEC ("NASD Regulation Letter").

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] 15 U.S.C. 78o–3(b)(6).

[41] *Id.*

[42] 17 CFR 270.23c–3(b).

[43] 17 CFR 230.415(a)(1)(xi).

[44] 15 U.S.C. 77a *et seq.*

[45] *See* NASD Regulation Letter at page 2.

[46] 15 U.S.C. 78s(b)(2).

[47] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42970; File No. SR–NASD–00–31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. to Apply Nasdaq's Recently Amended Independent Director and Audit Committee Listing Requirements to Limited Partnerships

June 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 May 26, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. 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

Nasdaq has filed with the Commission a proposed rule change to apply its recently amended independent director and audit committee listing requirements to limited partnerships. Below is the text of the proposed rule change. Proposed new language is *italicized* and proposed deletions are in [brackets].

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Rule 4470. Non-Quantitative Designation Criteria for Issuers That Are Limited Partnerships

(a) No change.

(b) No change.

(c) Corporate General Partner/ Independent Directors.

Each [NNM] issuer that is a limited partnership shall maintain a corporate general partner or co-general partner, which shall have the authority to manage the day-to-day affairs of the partnership. Such corporate general or co-partner shall maintain [two independent directors on its board of directors] *a sufficient number of independent director son its board of directors to satisfy the audit committee requirements set forth in Rule 4460(d)(2).* [An issuer that is a limited partnership may be designated for inclusion in the Nasdaq National market upon demonstrating that it has one independent director and undertaking to elect a second such director within 12 month of designation. For purposes of this section, "independent director" shall mean a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.]

(d) Audit Committee.

The corporate general partner or co-general partner of each [NNM] issuer that is a limited partnership [shall establish and maintain an Audit Committee, a majority of the members of which shall be independent directors.] *must satisfy the audit committee requirements set forth in Rule 4460(d).*

(e)–(i) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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

In 1993, Nasdaq established corporate governance standards, including independent director and audit committee requirements, for limited partnerships that were similar to those for other issuers. Last year, the Commission approved amendments to the independent director and audit committee listing requirements for corporations quoted on Nasdaq.[3] Nasdaq believes that although there are few limited partnerships currently quoted on Nasdaq, the new independent director and audit committee requirements should also be applied to limited partnerships to provide investors with the same protections enjoyed by the shareholders of other issuers. Therefore, Nasdaq is proposing this rule change to extend the recent amendments to its independent director and audit committee listing standards for corporations to limited partnerships.

Implementation. In order to minimize disruption to existing limited partnership audit committees, to permit current audit committee members to serve out their terms, and to allow adequate time for the recruitment of the requisite members, Nasdaq proposes to provide limited partnerships eighteen months after the proposed rule change is approved by the Commission to meet the audit committee structure and membership requirements.

Additionally, Nasdaq proposes that limited partnerships listed on the effective date of the rule be provided within six months following the date the proposed rule change is approved by the Commission to adopt a formal written audit committee charter.

Further, for limited partnerships that applied for listing prior to the effective date of the rule, Nasdaq proposes that they be able to qualify for listing under the listing standards in force at the time of their application, and receive the same grace periods provided to current limited partnerships. Also, in order to avoid prejudicing limited partnerships that transfer to Nasdaq from the American Stock Exchange LLC and the New York Stock Exchange, it is proposed that these limited partnerships be afforded the same grace periods they would have received under their previous market's implementation schedule.

[3] *See* Securities Exchange Act Release No. 42231 (December 14, 1999), 64 FR 71523 (December 21, 1999).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[4] because the proposal is designed to prevent fraudulent and manipulative acts and practices, to protect investors and the public interest. As noted above, Nasdaq's proposed rule change is aimed at improving the effectiveness of audit committees of limited partnerships quoted on Nasdaq, which, Nasdaq believes, is consistent with these goals.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

[4] 15 U.S.C. 78o(b)(6).

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 NASD. All submissions should refer to File No. SR–NASD–00–31 and should be submitted by July 18, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–16209 Filed 6–26–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42971; File No. SR–NYSE–00–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Revisions to the Exchange's FORM AP–1 Application

June 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 May 25, 2000, the New York Stock Exchange, Inc. ("NYSE" 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 Exchange. 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 proposed to revise its FORM AP–1 (Approved Person Application Form). The text of the proposed rule change is available upon request from the Office of the Secretary, the Commission or the NYSE.

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 any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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

NYSE Rule 304(h) requires that "[a]ny person who controls a member or member organization, or who engages in a securities or kindred business and is controlled by or under common control with a member or member organization but is not a member or allied member or an employee of a member organization shall apply for approval by the Exchange as an approved person. * * *" The approval process requires that certain pertinent information about the approved person Applicant be provided to the Exchange for review. FORM AP–1 is used by Applicants who are entities and FORM U–4 is completed by natural person Applicants.

The Exchange is proposing several revisions to FORM AP–1, which will require additional information and otherwise enhance its effectiveness for reviewing, approving, and monitoring Approved Persons.

The proposed substantive revisions to FORM AP–1:

- Require greater detail regarding both the nature of an Applicant's business and the Applicant's relationship with the member organization (items 7A and 9A–C of the Form);
- Require the Applicant, promptly upon request, to provide the Exchange with updated financial and other information (Instruction Sheet, No. 12);
- Require the Applicant, if a registered broker/dealer, to submit a copy of its most recent FOCUS Report (Instruction Sheet, No. 10);
- Continue the effectiveness of the Applicant's FORM AP–1 agreements with the Exchange notwithstanding that the named member or member organization has changed its name or legal form (p. 4 of the Form, 5th paragraph); and
- Require that a copy of a complete organization chart of Applicant and its affiliates be provided Instruction Sheet, No. 9).

The proposed revisions (Form items 7A and 9A–C) will provide Exchange staff with more detailed information regarding the relationship between the member organization and approved person, enabling a more thorough evaluation of the Applicant (*e.g.*, the Form asks for a general description of the Applicant's business and requires Applicant to indicate specifically how it controls, is controlled by or under common control with the member or member organization).

The proposed revisions clarify circumstances under which an Applicant must file financial statements Instruction Sheet, No. 8). Item 12 of the Form asks the Applicant to submit to the Exchange its most recent balance sheet and income or profit and loss statement if the Applicant: (a) Controls the member organization; (b) is a subsidiary of the member organization for purposes of NYSE Rule 321 or its obligations or liabilities are guaranteed, endorsed or assumed by the member organization (under NYSE Rule 322); or (c) is a "Material Associated Person" as the term is used in Rule 17h–1T under the Act. The Exchange believes that in most cases there is no regulatory purpose served by requiring submission of financial statements of persons under common control unless, as previously indicated, the person is a "Material Associated Person." The Exchange, however, reserves the right to request current financial statements from applicants under common control. The Form also provides clarification that when financial statements are required to be submitted, they must be current, and clarification of the Exchange's right to request updated financial and other information. Approved person Applicants that are registered broker-dealers must submit copies of their most recent FOCUS report (Instruction Sheet, No. 10).

The revised Form contains a new provision which states that the Applicant agrees that the statements, warranties, representations and undertakings [in the Form] will continue to apply notwithstanding a change to the member organization's name, form of organization, or legal status (but retains same SEC B/D number). This will eliminate the need for more frequent refilings of FORM AP–1 (*see* page 4 of the Form, 5th paragraph).

To clarify the relationship between the Applicant and the member organization, a complete organization chart of the Applicant and its affiliates must be submitted with the Form (Instruction Sheet, No. 9). An organization chart may also identify other entities which should be approved persons.

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Certain additional changes are proposed in response to suggestions made by Securities and Exchange Commission staff. They include the addition of a question (item 7B of the Form) to elicit the identify of any "foreign financial regulatory authority" to which the Applicant may be subject. They also include highlighting (on the Instruction Sheet) the responsibility of the Applicant to disclose whether it, or any person associated therewith, is subject to a statutory disqualification, and noting on the Instruction Sheet (No. 8) that any required financial statements must be submitted in English.

Several formatting revisions have also been made, such as italicizing defined terms and providing space for evidencing Exchange staff processing, which make the Form clearer and easier to use.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) [3] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, in that it will enhance the process by which the Exchange reviews, approves, and monitors Approved Persons.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received any written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at 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–NYSE–00–24 and should be submitted by July 18, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–16207 Filed 6–26–00; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78f(b)(5).

[4] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–4535.

Key to "Reasons for Delay"

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of exemption applications.

Meaning of Application Number Suffixes

N—New application.

M—Modification request.

PM—Party to application with modification request.

Issued in Washington, DC, on June 21, 2000.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
11862–N	The BOC Group, Murray Hill, NJ	4	07/31/2000
11927–N	Alaska Marine Lines, Inc., Seattle, WA	4	07/31/2000
12125–N	Mayo Foundation, Rochester, MN	4	07/31/2000
12142–N	Aristech Chemical Corp., Pittsburgh, PA	4	07/31/2000
12148–N	Eastman Kodak Company, Rochester, NY	4	07/31/2000

NEW EXEMPTION APPLICATIONS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
12158–N	Hickson Corporation, Conley, GA	4	07/31/2000
12181–N	Aristech, Pittsburgh, PA	4	07/31/2000
12205–N	Independent Chemical Corp., Glendale, NY	4	07/31/2000
12248–N	Ciba Specialty Chemicals Corp., High Point, NC	4	07/31/2000
12277–N	The Indian Sugar & General Engineering Corp. ISGE, Haryana, IX	1	07/31/2000
12281–N	ABS Group, Inc., Houston, TX	4	07/31/2000
12290–N	Savage Industries, Inc., Pottstown, PA	4	07/31/2000
12292–N	Westway Trading Corporation, New Orleans, LA	4	07/31/2000
12307–N	Kern County Dept. of Weights & Measures, Bakersfield, CA	4	07/31/2000
12325–N	Lifeline Technologies, Inc., Sharon Hill, PA	4	07/31/2000
12332–N	Automotive Occupant Restraints Council, Lexington, KY	4	07/31/2000
12339–N	BOC Gases, Murray Hill, NJ	4	07/31/2000
12341–N	Space Systems/Loral, Palo Alto, CA	4	07/31/2000
12343–N	City Machine & Welding, Inc. of Amarillo, Amarillo, TX	1	08/31/2000
12350–N	BAC Technologies, Ltd., West Liberty, OH	4	08/31/2000
12351–N	Nalco/Exxon Energy Chemicals, L.P., Freeport, TX	4	08/31/2000
12353–N	Monson Companies, South Portland, ME	4	08/31/2000
12355–N	Union Tank Car Company, East Chicago, IN	4	08/31/2000
12368–N	Occidental Chemical Corp., Dallas, TX	4	08/31/2000
12379–N	Western Farm Services, Inc., Walnut Grove, CA	4	08/31/2000
12381–N	Ideal Chemical & Supply Co., Memphis, TN	4	08/31/2000
12383–N	Sealift Inc., Oyster Bay, NY	4	08/31/2000
12386–N	Maine Yankee Atomic Power Co., Wiscasset, ME	4	08/31/2000
12388–N	Mountain Safety Research, Seattle, WA	4	08/31/2000
12391–N	Airgas Mgmt., Inc., Cheyenne, WY	4	08/31/2000
12392–N	Consani Engineering, Elsies River, SA	1	07/31/2000
12396–N	United States Alliance, Houston, TX	4	08/31/2000
12397–N	FMC Corporation, Philadelphia, PA	4	08/31/2000
12398–N	Praxair, Danbury, CT	4	08/31/2000
12399–N	BOC Gases, Murray Hill, NJ	4	08/31/2000
12401–N	DG Supplies, Inc., Hamilton, NJ	4	08/31/2000
12402–N	Taylor-Wharton, Hunstville, AL	4	07/31/2000
12403–N	Strainrite, Lewiston, ME	4	09/29/2000
12405–N	Air Products and Chemicals, Inc., Allentown, PA	4	08/31/2000
12406–N	Occidental Chemical Corporation, Dallas, TX	4	09/29/2000

MODIFICATIONS TO EXEMPTIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
8308–M	Tradewind Enterprises, Inc., Hillsboro, OR	4	08/31/2000
8556–M	Gardner Cryogencis, Lehigh Valley, PA	4	08/31/2000
9266–M	ERMEWA, Inc., Houston, TX	4	08/31/2000
9847–M	FIBA Technologies, Inc., Westboro, MA	4	09/29/2000
10656–M	Conf. of Radiation Control Program Directors, Inc., Frankfort, KY	4	08/31/2000
10672–M	Burlington Packaging, Inc., Brooklyn, NY	4	08/31/2000
10921–M	The Procter & Gamble Company, Cincinnati, OH	1	08/31/2000
10977–M	Federal Industries Corporation, Plymouth, MN	4	08/31/2000
11406–M	Conf. of Radiation Control Program Directors, Inc., Frankfort, KY	4	07/31/2000
11537–M	JCI Jones Chemicals, Inc., Milford, VA	4	07/31/2000
11722–M	CITERGAS, S.A., Civray, FR	4	09/29/2000
11769–M	Great Western Chemical Company, Portland, OR	4	07/31/2000
11769–M	Great Western Chemical Company, Portland, OR	4	07/31/2000
11769–M	Hydrite Chemical Company, Brookfield, WI	4	07/31/2000
11777–M	Autoliv ASP, Inc., Ogden, UT	4	08/31/2000
11798–M	Air Products and Chemicals, Inc., Allentown, PA	1, 4	07/31/2000
12056–M	Defense of Defense (MTMC), Falls Church, VA	4	08/31/2000
12074–M	Van Hool NV, B–2500 Lier Koningshooikt, BG	1	07/31/2000
12178–M	STC Technologies, Inc., Bethlehem, PA	1	07/31/2000

[FR Doc. 00–16249 Filed 6–26–00; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW–NSV]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Planning and Analysis, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Planning and Analysis, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection of information, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information that will be collected by a telephone survey concerning programs and services for veterans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 28, 2000.

ADDRESSES: Submit written comments on the collection of information to Susan Krumhaus, Office of Assistant Secretary for Planning and Analysis (008A), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420. Please refer to "OMB Control No. 2900–NEW–NSV" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Susan Krumhaus at (202) 273–5108 or FAX (202) 273–5993.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, the Office of Planning and Analysis invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VA's functions, including whether the information will have practical utility; (2) the accuracy of VA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: National Survey of Veterans (NSV).

OMB Control Number: None assigned.

Type of Review: New collection.

Abstract: The NSV will be conducted in order to obtain current information relevant to the planning and budgeting of VA programs and services for veterans. The information collected from the telephone survey will also enable VA to study its role in the total use of benefits and services by veterans and provide current information about the characteristics of the veteran population. The survey will also provide information needed for research and policy analyses.

Affected Public: Individuals or households.

Estimated Annual Burden: 11,667 hours.

Estimated Annual Burden Per Respondent: 35 minutes.

Frequency of Response: Voluntary.

Estimated Number of Respondents: 20,000.

Dated: May 18, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–16162 Filed 6–26–00; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
June 27, 2000

Part II

Environmental Protection Agency

Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Recipient Guidance) and Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Draft Revised Investigation Guidance); Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6720–7]

Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Recipient Guidance) and Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Draft Revised Investigation Guidance)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Draft Agency Guidance.

SUMMARY: EPA today released two draft guidance documents to clarify for agencies and citizens the compliance requirements of Title VI of the Civil Rights Act. The guidance strikes a fair and reasonable balance between EPA's strong commitment to civil rights enforcement and the practical aspects of operating permitting programs. Title VI prohibits discrimination based on race, color, or national origin, and applies to entities that receive federal funding from EPA. When state and local agencies that receive federal funding have questions about avoiding discrimination in their permitting programs, the first guidance, *Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs*, explains how to effectively deal with the types of concerns that often lead to complaints of discrimination.

If formal complaints are filed, the second guidance, *Draft Revised Guidance for Investigating Title VI Administrative Complaints*, explains how EPA will investigate and resolve them. It also explains to communities and recipients the types of concerns that Title VI addresses and their roles in the investigation process. Once the *Draft Revised Guidance for Investigating Title VI Administrative Complaints* is final, it will replace the *Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Interim Guidance)* issued in February 1998.

DATES: Comments on the two draft guidance documents must be received in writing by August 28, 2000. Comments should be mailed to the address listed below.

ADDRESSES: Written comments on the two draft guidance documents should be mailed to: Title VI Guidance Comments, US Environmental Protection Agency, Office of Civil Rights (1201A), 1200 Pennsylvania Avenue NW., Washington, DC, 20460, or submitted to the following e-mail address: civilrights@epa.gov. Please include your name and address, and, optionally, your affiliation.

FOR FURTHER INFORMATION CONTACT: Yasmin Yorker, US Environmental Protection Agency, Office of Civil Rights (1201A), 1200 Pennsylvania Avenue NW., Washington, DC, 20460, telephone (202) 564–7272.

SUPPLEMENTARY INFORMATION:

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A. Preamble

Today's **Federal Register** document contains two draft guidance documents on which the U.S. Environmental Protection Agency (EPA) is seeking public comment. The first is the *Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs* (*Draft Recipient Guidance*). The second is the *Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits* (*Draft Revised Investigation Guidance*). After the *Draft Revised Investigation Guidance* is finalized, it will replace the *Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits* (*Interim Guidance*) issued in February 1998. EPA is soliciting public comment on both of these documents for 60 days.

During the public comment period, EPA will hold six public listening sessions around the country to receive additional input. EPA also expects to meet with various stakeholder organizations during the comment period to listen to their comments. (A current list of scheduled outreach meetings is posted on EPA's Office of Civil Rights' (OCR) Web site at *http://www.epa.gov/civilrights*). See the Public Comment Period section of this document for details about the public comment period and the listening sessions.

EPA will consider both the written public comments submitted and the information collected during the listening sessions and stakeholder meetings as it drafts the final versions of both the *Draft Recipient Guidance* and the *Draft Revised Investigation Guidance* documents. EPA will also continue its interagency coordination through its work with the U.S. Department of Justice and the Council on Environmental Quality.

Today's document also contains a *Summary of Key Stakeholder Issues Concerning EPA Title VI Guidance*. EPA is not soliciting comments on the *Summary of Key Stakeholder Issues Concerning EPA Title VI Guidance*. It is provided for informational purposes only.

Background

Entities applying for EPA financial assistance submit an assurance with their application stating that they will comply with the requirements of EPA's regulations implementing Title VI of the Civil Rights Act of 1964 (Title VI) with respect to their programs or activities. When the recipient receives the EPA assistance, they accept the obligation to comply with EPA's Title VI implementing regulations. Persons who believe Federal financial assistance recipients are not administering their programs in a nondiscriminatory manner may file administrative complaints with the EPA or other relevant Federal agencies. These complaints must be filed subsequent to a particular action taken by a recipient (such as the issuance of an environmental permit) that the complainants allege has a discriminatory purpose or effect.

In February 1998, EPA issued its *Interim Guidance*, which is internal guidance that provides a framework for OCR's processing of complaints filed under Title VI that allege discrimination in the environmental permitting context on the basis of race, color, or national origin.

The *Draft Revised Investigation Guidance* was developed to address the application of Title VI to alleged adverse disparate impacts caused by environmental permitting. It does not address other applications of Title VI in the environmental context, such as allegations concerning the unequal enforcement of environmental permit conditions, regulations, or statutes, or allegations relating to discrimination in public participation processes associated with permitting decisions. This guidance is directed at the processing of discriminatory effects allegations, Title VI complaints may also allege discriminatory intent in the context of environmental permitting. Such complaints generally will be investigated by OCR under Title VI, EPA's Title VI regulations, and

applicable intentional discrimination case law. Such topics will be addressed in future guidance documents as appropriate.

The filing or acceptance for investigation of a Title VI complaint does not suspend an issued permit. Title VI complaints concern the programs being implemented by Federal financial assistance recipients and any EPA investigation of such a complaint primarily concerns the actions of recipients rather than permittees. While a particular permitting decision may act as a trigger for a complaint, allegations may involve a wider range of issues or alleged adverse disparate impacts within the legal authority of recipients.

At the time EPA issued the *Interim Guidance*, EPA also solicited public comment for a 90-day period. EPA received over 120 written comments. In addition, EPA received stakeholder input through:

- Meetings with a number of stakeholder representatives including those from environmental justice groups, communities, industry, state and local governments, and the civil rights community to discuss their concerns and views on issues associated with the *Interim Guidance*;
- An advisory committee that provided a broad range of views on a number of issues under consideration in the *Interim Guidance* revision process;
- A facilitated meeting with stakeholder group representatives to receive more feedback on draft options under consideration for inclusion in the *Draft Revised Investigation Guidance*; and
- Internal EPA and U.S. Department of Justice review processes.

Based upon that input and the experience gained from processing and investigating complaints during the intervening months, EPA is now issuing the *Draft Revised Investigation Guidance*. The *Draft Revised Investigation Guidance*, when final, will replace the *Interim Guidance*. OCR has included substantially more detail throughout the *Draft Revised Investigation Guidance* than was provided in the *Interim Guidance* to better enable the reader to understand the approach that OCR expects to take with Title VI administrative complaints challenging permits. The *Draft Revised Investigation Guidance* is not intended to address every situation that may arise in the interaction between Title VI and environmental permitting. Instead, it explains how OCR generally intends to process and investigate allegations of discriminatory effects from environmental permitting.

In addition, OCR developed the *Draft Recipient Guidance*, which is voluntary in nature, to offer suggestions to recipients about approaches they could use to address potential Title VI issues before complaints arise. The *Draft Recipient Guidance* complements the *Draft Revised Investigation Guidance* by providing information and flexible tools that may help recipients achieve compliance with Title VI. For example, the document describes geographic area-wide approaches which use active public participation processes to identify and prevent pollution. The *Draft Recipient Guidance* also notes that the process used by recipients to assess conditions, set goals, and track reductions can provide important information for EPA to consider when conducting a Title VI investigation. This type of data may be examined by EPA and accorded due weight. In addition, EPA's intended approach regarding permits that decrease pollution, which is described in the *Draft Revised Investigation Guidance*, reduces the uncertainty concerning permitting actions taken pursuant to such community-based reduction efforts.

The *Draft Recipient Guidance* relies heavily on the work of the Title VI Implementation Advisory Committee of EPA's National Advisory Council for Environmental Policy and Technology (Title VI Advisory Committee); the October 9, 1998, draft *Proposed Elements of State Environmental Justice Programs* developed by the Environmental Council of States; and available descriptions of state environmental justice programs. The discussions of mitigation draw heavily from the Title VI Implementation Advisory Committee report. Further, both the *Draft Revised Investigation Guidance* and the *Draft Recipient Guidance* adopt many of the principles agreed to by the Title VI Advisory Committee.

In fact, the *Draft Recipient Guidance* was written at the request of the states and is intended to offer suggestions to assist state and local recipients in developing approaches and activities that address Title VI concerns. In addition to the steps described above, EPA engaged in an extensive consultation process with elected state and local officials, and other representatives of state and local governments in the process of developing both the *Draft Revised Investigation Guidance* and the *Draft Recipient Guidance*. Specifically, EPA met with the National League of Cities in September 1998, the National Association of Attorneys General in June 1999, and members of the Local Government Advisory Committee and Small Communities Advisory Subcommittee in September 1999.

The *Draft Revised Investigation Guidance* and the *Draft Recipient Guidance* are non-binding policy statements that do not directly affect the rights and responsibilities of state and local recipients. Instead, they merely explain EPA's policy regarding existing obligations that recipients accept when they receive EPA assistance. Those obligations were established by Title VI, which as been in place since 1964, and by EPA's implementing regulations, which were first promulgated in 1973 and require recipients to submit assurances of compliance with EPA's regulations.

The *Draft Revised Investigation Guidance* is an internal EPA document that concerns the manner in which OCR will conduct its Title VI investigations. It is not a guidance that directs states to take any action. The *Draft Recipient Guidance* does not require recipients to develop Title VI-related approaches and activities. Moreover, recipients that choose to develop Title VI-related approaches and activities are in no way bound by the suggestions made in the *Draft Recipient Guidance*. If a recipient develops Title VI-related approaches or activities, then EPA intends to carefully consider the results of that work and give it any appropriate weight it is due.

Responding to Concerns Raised About the Interim Guidance

A number of issues were raised during our outreach and comment process. Stakeholders raised concerns that the *Interim Guidance* was vague, lacked clarity and definitions, and failed to provide direction on critical issues. The draft guidance documents respond to these concerns.

First, the draft documents provide more detail and clarity than was provided in the *Interim Guidance*. Plain language is used and more detail provided in areas where comments suggested it was needed, such as informal resolution and the disparity analysis. In addition, the *Draft Revised Investigation Guidance* provides a clearer structure and additional information about the basis for OCR's positions. Also, the *Draft Revised Investigation Guidance* includes cross references to the *Draft Recipient Guidance* and vice versa.

Second, the *Draft Revised Investigation Guidance* more clearly explains the various steps of the adverse disparate impact analysis and the actions that can be taken at each stage (*e.g.*, how a finding of adverse impact is expected to be reached, or when an

allegation will likely be dismissed). Also, EPA has attached a flowchart as an appendix to more fully explain the Title VI complaint processing regulations at 40 CFR part 7, subpart E and how those govern OCR's receipt and handling of complaints filed with EPA.

Third, more terms are defined by providing examples within the text and including a glossary of terms as an attachment to each draft guidance document.

Fourth, the draft documents contain guidance on issues that were not included in the *Interim Guidance* or required further clarification. They discuss tools to conduct an adverse impact analysis, and describe EPA's intent to accord due weight to approaches by recipients that reduce or eliminate adverse disparate impacts. The *Draft Revised Investigation Guidance* also outlines EPA's intended approach regarding permit actions that result in an actual and significant decrease in emissions, and provides that such permit actions will likely not serve as bases for findings of violation of Title VI.

Flexibility is also a key concept embodied in the draft documents. For example, EPA recognizes that recipients have different Title VI concerns, different amounts of resources, and different organizational structures, so a "one-size-fits-all" Title VI program will not adequately address all recipients needs. As a result, the *Draft Recipient Guidance* offers a range of possible approaches to Title VI issues and encourages recipients to develop other techniques.

In addition to the general matters described above, the key elements of the *Draft Recipient Guidance* and some of the other specific additions or changes to the *Interim Guidance* contained in the *Draft Revised Investigation Guidance* are described below.

Draft Recipient Guidance

Entities applying for EPA financial assistance submit an assurance with their application stating that they will comply with the requirements of EPA's Title VI implementing regulations with respect to their programs or activities. When the recipients receive the EPA assistance, they accept the obligation to comply with EPA's Title VI implementing regulations. The *Draft Recipient Guidance* is written for the recipients of EPA financial assistance that implement environmental permitting programs. It provides a framework to help recipients address situations that might otherwise result in the filing of complaints alleging violations of Title VI and EPA's Title VI implementing regulations. In particular, it provides a framework designed to improve a recipients' existing programs or activities and reduce the likelihood or necessity for persons to file Title VI administrative complaints with EPA alleging either: (1) Discriminatory human health or environmental effects resulting from the issuance of permits; or (2) discrimination during the permitting public participation process.

To ensure stakeholder involvement in the development of the *Draft Recipient Guidance*, EPA Administrator Carol M. Browner established a Title VI Implementation Advisory Committee in March 1998. The Title VI Advisory Committee was comprised of representatives of communities, environmental justice groups, state and local governments, industry, and other interested stakeholders. The committee reviewed and evaluated existing techniques that EPA funding recipients, such as state and local environmental permitting agencies, may use to administer environmental permitting programs in compliance with Title VI. It was also asked to make recommendations to help EPA financial assistance recipients design programs or approaches that will address Title VI concerns early in the permit process. The core components of the *Draft Recipient Guidance* are based, in part, on the March 1, 1999, *Report of the Title VI Implementation Advisory Committee: Next Steps for EPA, State, and Local Environmental Justice Programs.*

The *Draft Recipient Guidance* is divided into two main sections. The first section describes several general approaches recipients may want to adopt to help identify and resolve issues that could lead to the filing of Title VI complaints. The second section provides guidance on individual activities that EPA encourages recipients to consider integrating into their permitting programs.

Title VI Approaches and Activities

The *Draft Recipient Guidance* suggests a number of approaches and individual activities recipients can consider adopting and implementing to address Title VI-related concerns. The suggested Title VI approaches include: (1) A *Comprehensive Approach* that integrates all or most of the Title VI activities described in the *Draft Recipient Guidance*; (2) an *Area-Specific Approach* to identify geographic areas where adverse disparate impacts may exist; and (3) a *Case-by-Case Approach* or permit-specific approach through which a recipient develops criteria to evaluate permit actions that are likely to raise Title VI concerns. The individual Title VI activities described in the *Draft Recipient Guidance* include effective public participation, intergovernmental involvement, and alternative dispute resolution.

The approaches described are not intended to represent all those recipients may adopt, nor are they intended to be mutually exclusive. Recipients should determine the proper mix and extent of appropriate Title VI activities and approaches. Recipients are not required to implement any of the Title VI activities or approaches described in the *Draft Recipient Guidance*; they should develop and implement any approaches for addressing Title VI issues that they believe are appropriate. In any case, recipients will be held accountable for operating their programs in compliance with the non-discrimination requirements of Title VI and EPA's implementing regulations as determined by OCR.

Draft Revised Investigation Guidance

Acceptance/Rejection

EPA determines whether to accept a complaint for investigation or to reject it based on a set of jurisdictional criteria listed in its Title VI implementing regulations. The acceptance of a complaint for investigation does not mean that there has been a finding of violation of Title VI. Because the *Interim Guidance* did not list all of the steps of complaint processing or all of the time frames outlined in EPA's Title VI implementing regulations, some commenters thought that EPA was deviating from the administrative structure the regulations created or had eliminated some of the time frames. To address that misunderstanding, the *Draft Revised Investigation Guidance* incorporates all of the major steps and time frames mentioned in the Title VI regulations.

The *Draft Revised Investigation Guidance* eliminates the term "complete or properly pleaded complaint" as a criterion for acceptance because it led to unnecessary confusion. In addition, the discussion of "timeliness" includes substantially more detail to assist complainants in filing within the time allowed. This section also explains that premature complaints and complaints involving certain concurrent litigation will likely be rejected. Furthermore, the *Draft Revised Investigation Guidance* explains that OCR expects to dismiss a complaint if the permit that triggered the complaint is withdrawn or revoked, or if a final decision is made by the permittee not to operate under that

permit before OCR completes its investigation or before any activities allowed by the permit have begun.

Investigative Procedures

The *Draft Revised Investigation Guidance* adds a brief section on investigative procedures. This section covers a number of important topics such as the submission of additional information relevant to the investigation by recipients and complainants. This information will be reviewed by EPA and may be accorded due weight in its investigation, based on a series of listed factors. It also describes when allegations submitted by the complainant after the initial complaint will be treated as amendments to the existing complaint or will be considered a new and separate complaint. Furthermore, it explains that neither the filing of a Title VI complaint nor the acceptance of one for investigation by OCR stays the permit at issue.

Informal Resolution

EPA's Title VI regulations call for OCR to pursue informal resolution of administrative complaints wherever practicable. EPA believes cooperative efforts between permitting agencies and communities frequently offer the best means of addressing potential problems. However, as several commenters pointed out, the *Interim Guidance* contained little explanation of how OCR intended to approach informal resolution. Therefore, the *Draft Revised Investigation Guidance* describes the various types of informal resolution that are possible. The *Draft Recipient Guidance* includes a description of alternative dispute resolution (ADR) techniques that EPA will use, as appropriate, and encourages recipients to explore these techniques to assist in resolving concerns that might otherwise result in Title VI complaints.

Resolving Complaints

EPA believes flexibility is critical when considering measures that eliminate or reduce adverse disparate impacts to the extent required by Title VI. Often, Title VI concerns are raised communities believe they are suffering from adverse effects caused by multiple sources. For those communities, filing a Title VI complaint about a permit for a new facility or the most recent modification to an existing one, is a way to focus attention on the cumulative impacts of a number of the recipient's permitting decisions. As the *Draft Revised Investigation Guidance* states, EPA believes it will be a rare situation where the permit that triggered the complaint is the sole reason a discriminatory effect exists; therefore, denial of the permit at issue will not necessarily be an appropriate solution. Efforts that focus on all contributions to the disparate impact, not just the permit at issue, will likely yield the most effective long-term solutions.

The *Draft Revised Investigation Guidance* contains a more detailed discussion on resolving complaints than the *Interim Guidance*. In particular, it focuses primarily on measures that recipients could offer to perform during the course of informal resolution attempts with complainants or OCR. It also eliminates the reference to "supplemental mitigation projects" to avoid confusion with EPA's environmental programs. The *Draft Revised Investigation Guidance* suggests a variety of possible measures to eliminate or reduce to the extent required by Title VI any adverse disparate impacts, including additional pollution control on the source, use of pollution prevention techniques, or emission offsets from other pollution sources.

The *Draft Revised Investigation Guidance* and the *Draft Recipient Guidance* also encourage recipients to identify geographic areas where adverse disparate impacts may exist and to enter into agreements (area-specific agreements) with the affected communities and stakeholders to reduce pollution impacts in those geographic areas over time. The *Draft Revised Investigation Guidance* also describes several elements that would be considered in decisions regarding voluntary compliance efforts sought by EPA after a formal finding of noncompliance, including the cost and technical feasibility of such efforts.

Due Weight

Many commenters, particularly those representing state agencies and industry, asked EPA to provide incentives for recipients to develop pro-active Title VI-related programs. In particular, some asked EPA to recognize, and to the maximum extent possible rely on, the results of the recipient's Title VI approaches or activities in assessing complaints filed with EPA. The Investigative Procedures section of the *Draft Revised Investigation Guidance* and the *Draft Recipient Guidance* discuss the issues of deference to recipients' activities and "due weight" that EPA may provide in the context of adverse disparate impact investigations. Moreover, the *Draft Recipient Guidance* contains a discussion of the circumstances under which OCR might accord a public participation process due weight.

Under the Civil Rights Act of 1964, EPA is charged with assuring compliance with Title VI and cannot delegate its responsibility to enforce Title VI to its recipients. Therefore, OCR cannot defer in the entirety to a recipient's own assessment that it has not violated Title VI or EPA's regulations, or to a recipient's assertion that a Title VI program has been followed. Nevertheless, under certain circumstances, EPA can consider the results of recipients' analyses and give them appropriate due weight.

For example, during the course of an investigation, recipients may submit analyses to support their position that an adverse disparate impact does not exist and, under certain circumstances, OCR may give due weight to those analyses. OCR would expect that a relevant adverse impact analysis or a disparity analysis would, at a minimum, generally conform to accepted scientific approaches. It may focus on a spectrum of potential adverse impacts, such as that described in the analytical framework set forth in the *Draft Revised Investigation Guidance*, or may be more focused, such as the impact of a specific pollutant on nearby populations (*e.g.*, a study regarding the impact of lead emissions on blood lead levels in the surrounding area).

In the *Draft Recipient Guidance*, EPA encourages recipients to identify geographic areas where adverse disparate impacts may exist and to enter into agreements with affected residents and stakeholders to eliminate or reduce, to the extent required by Title VI, adverse disparate impacts in those specific areas. Collaboration with communities and other appropriate stakeholders to develop the criteria used to identify the geographic areas and in designing potential solutions to address any adverse disparate impacts will be an important element of the approach.

The *Draft Revised Investigation Guidance* describes the factors OCR will use to evaluate the appropriateness and validity of the analysis or the area-specific agreements and to assess the overall reasonableness of their conclusions or projected results. The *Draft Revised Investigation Guidance* also explains that more weight will be given to analyses and area-specific agreements that are relevant to the Title VI concerns in the complaint and have sufficient depth, breadth, completeness, and accuracy. Where a recipient or complainant submits a relevant analysis or area-specific agreement that meets the factors described in the *Draft Revised Investigation Guidance*, OCR expects to give the results due weight and rely on it in finding the recipient in

compliance or not in compliance with EPA's Title VI regulations.

Disparate Impact Analysis

In order to find a recipient in violation of EPA's Title VI implementing regulations, OCR would assess whether the impact is both adverse and borne disproportionately by a group of persons based on race, color, or national origin, and, if so, whether that impact is justified. The adverse disparate impact analytical framework in the *Interim Guidance* did not describe how EPA would determine what constituted an adverse impact for Title VI purposes. Rather, the *Interim Guidance* focused attention on the disparity analysis. The *Draft Revised Investigation Guidance* not only addresses this gap, but also expands the description of the disparity analysis.

EPA has remained mindful that no single analysis or definition of adverse disparate impact is possible due to the differing nature of impacts (*e.g.,* cancer risk, acute health effects, odors) and the various environmental media (*e.g.,* air, water) that may be involved. EPA did not set an across-the-board definition of what is an adverse impact, but instead the *Draft Revised Investigation Guidance* provides more clarity about how OCR will determine whether it exists. The *Draft Revised Investigation Guidance* describes how EPA will use environmental laws, regulations, policy, and science as touchstones for determining thresholds for what is adverse.

The *Draft Revised Investigation Guidance* indicates that in considering adverse disparate impact claims, OCR generally expects to consider only those types of impacts affected by factors within the recipient's authority under applicable law. The *Draft Revised Investigation Guidance* also indicates that EPA would generally not initiate an investigation of allegations of discriminatory effects from emissions, including cumulative emissions, where the permit action that triggered the complaint significantly decreases overall emissions at the facility or where the permit action that triggered the complaint significantly decreases pollutants of concern named in the complaint or all the pollutants EPA reasonably infers are the potential source of the alleged impact.

The *Draft Revised Investigation Guidance* provides significantly more information about the process proposed to identify and determine the characteristics of the affected population. It also describes the process of conducting an analysis to determine whether a disparity exists between the affected population and an appropriate comparison population, and discusses comparison methods and criteria to be used in assessing the significance of any disparities identified.

The "initial finding of disparate impact" suggested by the *Interim Guidance* has been deleted. It was intended to provide an opportunity for recipients to submit input during OCR's assessment of the alleged disparate impacts. The *Draft Revised Investigation Guidance* omits the initial finding of disparate impact and, instead, focuses more upon the recipient's opportunity to provide comments following acceptance of a complaint.

Justification

EPA has also elaborated on the Interim Guidance's explanation of what may constitute a substantial legitimate justification. While the *Interim Guidance,* uses the term "articulable value," EPA has eliminated this term from the *Draft Revised Investigation Guidance's* Justification section. Instead, the *Draft Revised Investigation Guidance* focuses on determining whether specific factors, such as public health or environmental benefits, and when economic benefits might constitute a substantial legitimate justification.

A recipient will have the opportunity to "justify" the decision to issue the permit notwithstanding the adverse disparate impact. To justify the action, the recipient would show that it is reasonably necessary to meet a goal that is legitimate, important, and integral to the recipient's institutional mission. Because investigations conducted under the *Draft Revised Investigation Guidance* are about permitting decisions by environmental agencies, OCR expects to consider the provision of public health or environmental benefits (*e.g.,* waste water treatment plant) to the affected population to be an acceptable justification because such benefits are generally legitimate, important, and integral to the recipient's mission.

The *Draft Revised Investigation Guidance* indicates that OCR will likely consider broader interests, such as economic development, from the permitting action to be an acceptable justification, if the benefits are delivered directly to the affected population and if the broader interest is legitimate, important, and integral to the recipient's mission. Also, in its evaluation of the offered justification, OCR will generally consider not only the recipient's perspective, but the views of the affected community in its assessment of whether the permitted facility, in fact, will provide direct, economic benefits to the community. However, a justification may be rebutted if EPA determines that a less discriminatory alternative exists.

Public Comment Period

EPA will accept written comments on the *Draft Revised Investigation Guidance* and the *Draft Recipient Guidance* for a 60-day period. All comments must be received in writing by OCR before August 28, 2000. Comments received by the Agency will be carefully considered in the revision of the draft guidance documents. Public comments should be mailed to Title VI Guidance Comments, Office of Civil Rights (1201A), 1200 Pennsylvania Ave NW., Washington DC, 20460, or submitted to the following e-mail address: civilrights@epa.gov. Please include your name and address, and, optionally, your affiliation.

Additionally, EPA's Office of Civil Rights will coordinate six national public listening sessions to receive additional feedback on the *Draft Recipient Guidance* and the *Draft Revised Investigation Guidance.* Each of these listening sessions will be attended by the Director of the Office of Civil Rights and key regional personnel. Members of the public wishing to make oral comments during the public listening session will be limited to no more than five (5) minutes, and must register at the meeting site the day of the conference. Seating will be limited and available on a first-come, first-served basis. The dates, times, and locations of the public listening sessions are as follows: June 26 in Washington, DC from 9:00 a.m. until 12:00 p.m. and from 6:00 p.m. until 9:00 p.m. at the Ronald Reagan Building/International Trade Center, 1300 Pennsylvania Avenue NW., Polaris Suite (Concourse Level); July 17 in Dallas, Texas from 4:00 p.m. until 7:00 p.m. at U.S. EPA—Region 6, 1445 Ross Avenue, 12th Floor; July 18 in Chicago, Illinois from 5:00 p.m. until 8:00 p.m. at U.S. EPA—Region 5, 77 West Jackson Boulevard, Room 331; August 1 in New York, New York from 4:00 p.m. until 7:00 p.m. at U.S. EPA—Region 2, 290 Broadway, Room 27A; August 2 in Los Angeles, California from 6:00 p.m. until 9:00 p.m. at the Carson Community Center, 801 East Carson Street; and August 3 in Oakland, California from 6:00 p.m. until 9:00 p.m. at the Henry J. Kaiser Convention Center, 10th Street (near the Lake Merritt BART station).

If anyone attending the listening sessions needs special accommodations (*i.e.,* sign language interpreter, alternative text format for materials), please contact Mavis Sanders of the Office of Civil Rights at (202) 564–7272,

or send an e-mail message to *civilrights@epa.gov* at least three business days before the scheduled listening session. Information regarding these listening sessions can also be found on the OCR Web site at *http://www.epa.gov/civilrights/reviguid2.htm.*

B. Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Recipient Guidance)

I. Introduction

A. Purpose of the Recipient Guidance

This draft guidance is written for the *recipients* [1] of U.S. Environmental Protection Agency (EPA) *financial assistance* that implement environmental permitting programs ("you"). It provides a framework to help you address situations that might otherwise result in the filing of complaints alleging violations of Title VI of the Civil Rights Act of 1964, as amended (Title VI) and EPA's Title VI implementing regulations.[2] In particular, it provides a framework designed to improve your existing programs or activities and reduce the likelihood or necessity for persons to file Title VI administrative complaints with EPA alleging either: (1) discriminatory human health or environmental effects resulting from the issuance of *permits;* or (2) discrimination during the permitting public participation process. Cooperative efforts between permitting agencies and communities, whether or not in the context of Title VI-related approaches, frequently offer the best means of addressing potential problems.

B. Title VI of the Civil Rights Act of 1964, as Amended

Title VI prohibits discrimination based on race, color, or national origin under any program or activity of a Federal financial assistance recipient. Title VI itself prohibits intentional discrimination. In addition, Congress intended that its policy against discrimination by recipients of Federal assistance be implemented, in part, through administrative rulemaking.[3] Title VI "delegated to the agencies in the first instance the complex determination of what sorts of *disparate impacts* upon minorities constituted significant social problems, and were readily enough remediable, to warrant altering the practices of the Federal grantees that had produced those impacts." [4]

EPA issued Title VI implementing regulations (*see* 40 CFR part 7) in 1973 and revised them in 1984.[5] Under EPA's Title VI implementing regulations, you are prohibited from using "criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, [or] national origin." [6] As a result, you may not issue permits that are intentionally discriminatory or have a discriminatory effect based on race, color, or national origin.

When you applied for EPA financial assistance, EPA's Title VI implementing regulations required that you submit an assurance with your application that you will comply with the requirements of EPA's Title VI implementing regulations with respect to your programs or activities. When EPA approves an application for EPA assistance and you receive the EPA funds, you accept the obligation of your assurance to comply with EPA's Title VI implementing regulations. The primary means of enforcing compliance with Title VI is through *voluntary compliance* agreements. Fund suspension or termination is a means of last resort.

Executive Order 12250 requires agencies to issue appropriate implementing directives, either in the form of policy guidance or regulations that are consistent with requirements proscribed by the Attorney General.[7] Also, the number of administrative complaints filed with EPA alleging discrimination prohibited under Title VI and EPA's Title VI implementing regulations has increased over the past several years. The growing number of complaints and the requests of state and local agencies for guidance, provided the impetus to develop this draft guidance. The guidance provides you with recommendations on individual activities and more comprehensive approaches designed to identify and resolve circumstances that may lead to complaints being filed with EPA under Title VI.

C. Coordination With Draft Revised Investigation Guidance

Along with the *Draft Recipient Guidance,* EPA is concurrently issuing the *Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits* (*Draft Revised Investigation Guidance*). The *Draft Revised Investigation Guidance* describes the framework for how EPA's Office of Civil Rights (OCR) plans to process Title VI administrative complaints filed with EPA. Once finalized, the *Draft Revised Investigation Guidance* will replace the *Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits* (*Interim Guidance*) issued in February 1998. The *Draft Revised Investigation Guidance* and the *Draft Recipient Guidance* were developed concurrently to ensure consistency. Furthermore, each draft Title VI guidance document references appropriate sections of the other.

The attached *Summary of Key Stakeholder Issues Concerning EPA Title VI Guidance* document provides an additional discussion that addresses

[1] The underlined terms are defined or explained in the attached Glossary.

[2] Civil Rights Act of 1964, Public Law 88–352, 78 Stat. 241 (codified as amended in scattered sections of 42 U.S.C.).

[3] 42 U.S.C. 2000d–1.

[4] *Alexander* v. *Choate,* 469 U.S. 287, 292–94 (1985).

[5] 38 FR 17968 (1973), as amended by 49 FR 1656 (1984) (codified at 40 CFR part 7).

[6] 40 CFR 7.35(b).

[7] Exec. Order No. 12250, 45 FR 72995 (1980) (Section 1–402). The head of each Federal agency is required to ensure compliance with Executive Orders, to the extent permitted by existing law. Executive Orders are signed by the President of the United States.

questions and concerns expressed in comments the Agency has received on the issue of Title VI guidance.

D. Stakeholder Involvement

To ensure stakeholder involvement in the development of the *Draft Recipient Guidance,* EPA Administrator Carol M. Browner established a Title VI Implementation Advisory Committee (Title VI Advisory Committee) under the National Advisory Council for Environmental Policy and Technology (NACEPT) in March 1998. The Title VI Advisory Committee was comprised of representatives of communities, environmental justice groups, state and local governments, industry, and other interested stakeholders. The EPA asked the committee to review and evaluate existing techniques that EPA funding recipients, such as state and local environmental permitting agencies, may use to administer environmental permitting programs in compliance with Title VI. The EPA also asked the committee to make recommendations to help recipients of EPA financial assistance design activities or approaches that will address Title VI concerns early in the permit process.

The core components of the Draft Recipient Guidance are based, in part, on the April 1999, Report of the *Title VI Implementation Advisory Committee: Next Steps for EPA, State, and Local Environmental Justice Programs.* The report is available via the OCR Web site at *http://www.epa.gov/civilrights/t6faca.htm.* EPA also considered information from several other sources including:

- Public comments on the Interim Guidance received by OCR;
- Recommendations and feedback provided to EPA staff during meetings, over the past 18 months, with representatives of communities (including environmental justice organizations), representatives of state and local governments, representatives of industry, and other interested stakeholders;
- Available descriptions of state environmental justice programs; and
- The Environmental Council of States (ECOS) October 9, 1998, draft document entitled *Proposed Elements of State Environmental Justice Programs.*

E. EPA's Guiding Principles for Title VI Recipient Guidance

In implementing Title VI and developing this draft guidance, EPA adheres to the following principles: [8]

- All persons regardless of race, color, or national origin are entitled to a safe and healthful environment.
- Strong civil rights enforcement is essential.
- Enforcement of civil rights laws and environmental laws are complementary, and can be achieved in a manner consistent with sustainable economic development.
- Potential adverse *cumulative impacts* from *stressors* should be assessed, and reduced or eliminated wherever possible.
- Research efforts by EPA and state and local environmental agencies into the nature and magnitude of *exposures,* stressor *hazards,* and *risks* are important and should be continued.
- Decreases in environmental *impacts* through applied *pollution prevention* and technological innovation should be encouraged to prevent, reduce, or eliminate adverse disparate impacts.
- Meaningful public participation early and throughout the decision-making process is critical to identify and resolve issues, and to assure proper consideration of public concerns.
- Early, preventive steps, whether under the auspices of state and local governments, in the context of voluntary initiatives by industry, or at the initiative of community advocates, are strongly encouraged to prevent potential Title VI violations and complaints.
- Use of *informal resolution* techniques in disputes involving civil rights or environmental issues yield the most desirable results for all involved.
- Intergovernmental and innovative problem-solving provide the most comprehensive response to many concerns raised in Title VI complaints.

F. Scope and Flexibility

The statements in this document are intended solely as guidance. This document is not intended, nor can it be relied upon, to create any rights or obligations enforceable by any party in litigation with the United States. This guidance may be revised to reflect changes in EPA's approach to implementing Title VI. In addition, this guidance does not alter in any way, a regulated entity's obligation to comply with applicable environmental laws.

This guidance suggests a flexible framework for a Title VI approach and individual Title VI activities. EPA recognizes that a "one-size-fits-all" Title VI approach will not adequately address all your needs. Recipients may have different Title VI concerns in communities within their jurisdiction, different amounts of resources, and different organizational structures. You may choose the activities or approaches that are most relevant to address your needs. EPA also recognizes that some of you have already begun to address Title VI concerns through your existing programs. Therefore, this guidance:

- Presents you with a menu of possible options from which you may choose to address Title VI concerns;
- Provides suggestions to those of you who choose to develop formal Title VI approaches or to amend your permit process to include or revise Title VI considerations without developing formal Title VI approaches; and
- Provides flexibility for you, if you choose to broaden the scope of your Title VI approaches or activities to improve other areas, such as enforcement or hazardous waste clean-up.

While this draft guidance is intended to focus on issues related to permitting, you may also consider developing proactive approaches to promote equality in monitoring and enforcement of environmental laws within your jurisdiction.

G. Title VI and Tribes

The applicability of Title VI and EPA's implementing regulations to Federally-recognized tribes will be addressed in a separate document because the subject involves unique issues of Federal Indian law.

II. Title VI Approaches and Activities

The following discussion provides guidance to you on the types of activities and approaches that EPA believes you may wish to consider adopting and implementing as part of a strategy to address Title VI-related claims and issues that arise in the environmental permitting context. Identifying and resolving these concerns early in the permitting process will likely reduce the number of Title VI complaints filed with EPA and may also lead to improvements in public participation processes, as well as public health and environmental benefits. You are not required to adopt such activities or approaches, but outcomes that result from the activities or approaches may be considered in the analysis of Title VI complaints that relate to your programs, activities, or methods of administration. You may choose to select one or more of the activities described in section II.B. below, implement some of the more comprehensive approaches described in section II.A., or develop and implement approaches or activities not listed in

[8] The guiding principles were adapted, in part, from the consensus principles identified by the Title VI Implementation Advisory Committee under EPA's National Advisory Council for Environmental Policy and Technology.

this guidance that would likely address potential Title VI issues.

A. Title VI Approaches

As a recipient, you must decide which activities or techniques are most relevant to address your needs. You may already have begun to address Title VI concerns through your existing programs and may have different amounts of resources or different types of organizational structures from other recipients. There are several possible approaches described below; however, they are not intended to represent all possible approaches you may want to adopt. It is also important to note that the approaches described below are not mutually exclusive. You can combine activities and approaches described below to address a range of potential issues that might result in Title VI complaints. In other words, if you implement an area-specific approach, you may also want to develop a method to identify and address Title VI concerns related to a specific permit that is not covered by an area-specific agreement.

1. Comprehensive Approach

You may want to adopt a broad approach that will improve your existing permitting process, rather than addressing Title VI concerns on a case-specific or area-specific basis, through an alternative process. You may elect to adopt a comprehensive approach that integrates all of the Title VI activities described below into your existing permitting process. EPA expects that such comprehensive approaches will offer recipients the greatest likelihood of adequately addressing Title VI concerns, thereby minimizing the likelihood of complaints.

2. Area-Specific Approaches

You may choose to develop an approach to identify geographic areas where adverse disparate health impacts or other potential Title VI concerns (*e.g.*, where translation of documents may be necessary) may exist. Collaboration with communities and other appropriate stakeholders to develop the criteria used to identify the geographic areas will be an important element of the approach. Once the areas are identified, you would work with the affected communities and stakeholders to develop an agreement to reduce and eliminate adverse disparate impacts or other Title VI concerns in those specific areas.

For example, if a recipient, in collaboration with communities and other appropriate stakeholders, identifies a section of a city as an area where permitted emissions are contributing to discriminatory health effects on African Americans. The recipient then might convene a group of stakeholders with the ability to help solve the identified lead problem, including owners of facilities with lead emissions, other state and local government agencies, affected community members, and non-governmental organizations. The group may develop an agreement where each party agrees to particular actions that will eliminate or reduce the adverse lead impacts in that specific area.

Another example might be an area-specific agreement that establishes a ceiling on pollutant *releases* with a steady reduction in those pollutants over time. The period of time over which those reductions should occur will likely vary with a number of factors, including the magnitude of the adverse disparate impact, the number and types of *sources* involved, the scale of the geographic area, the *pathways* of exposure, and the number of people in the *affected population*. It is worth noting, however, that pre-existing obligations to reduce impacts imposed by environmental laws (*e.g.*, "reasonable further progress" as defined in Clean Air Act section 171(1)) might not be sufficient to constitute an agreement meriting *due weight*.[9] Also, area-specific agreements need not be limited to one environmental *media* (*e.g.*, air emissions), they may also cover adverse disparate impacts in several environmental media (*e.g.*, air and water).

3. Case-by-Case Approach

For some recipients, permit-specific approaches may also be advisable. You could develop general criteria to evaluate permits that could highlight those permit actions that are likely to raise Title VI concerns. Or, you may focus your efforts on specific permitting actions where Title VI concerns are actually raised and then employ alternative dispute resolution (ADR) techniques for those situations to reduce or eliminate them.[10] You might also be made aware of Title VI concerns in particular permitting actions through any number of means, including, but not limited to, comments received on the permit application, prior work with residents of the area, and other outreach efforts performed by the recipient.

As a recipient, you determine the proper mix and extent of appropriate Title VI activities and approaches. While you are not required to implement the Title VI activities or approaches described in this guidance, you are required to operate your programs in compliance with the non-discrimination requirements of Title VI and EPA's implementing regulations.

For claims and analyses related to disparate impacts, EPA expects that the analysis would generally conform to the analytical framework set forth in the Draft Revised Investigation Guidance in order for EPA to accord it due weight.

B. Title VI Activities

As a recipient, you may should consider integrating the following activities into permitting programs to help identify and resolve issues that could lead to the filing of Title VI complaints:

1. *Staff training*—to help you meet your Title VI responsibilities;

2. *Encourage effective public participation and outreach*—to provide permitting and public participation processes that occur early, and are inclusive and meaningful;

3. *Conduct adverse impact and demographic analyses*—to analyze new and existing sources, stressors, and adverse impacts with relevant demographic information, especially potential cumulative adverse impacts, to provide confidence that Title VI concerns are identified and appropriately addressed;

4. *Encourage intergovernmental involvement*—to bring together all agencies and parties that may contribute to identifying and addressing stakeholder concerns to reach innovative and comprehensive resolutions;

5. *Participate in alternative dispute resolution*—to involve both the community and recipient in an informal process to resolve Title VI concerns;

6. *Reduce or eliminate the alleged adverse disparate impact(s)*—to reduce or eliminate identified or potential adverse human health or environmental impacts; and

7. *Evaluate Title VI activities*—to identify progress and areas in need of improvement.

1. Train Staff

The success of Title VI activities will depend on your agency staff's knowledge, credibility, and actions. Given the nature of Title VI concerns, a team approach that includes, at a minimum, permitting and community liaison functions may likely be the most effective. Other team members may include staff with specialized knowledge or experience such as risk

[9] See sections V.B.2. of the *Draft Revised Investigation Guidance* (discussing due weight and any subsequent reliance OCR may give in the course of its investigation to area-specific agreements).

[10] See section II.B.5. (discussing ADR).

assessors. You may not necessarily have to hire new staff in order to address Title VI concerns. You may consider using existing staff and training them about Title VI. OCR believes that an effective staff training program may address the following issues:

1. Your Title VI responsibilities, Title VI approaches or activities you have adopted to assist in meeting those responsibilities, and environmental permitting programs;

2. Cultural and community relations sensitization to establish and maintain the trust and mutual respect between you and communities;

3. Skills and techniques to enable your staff to communicate effectively with communities and then relay community concerns to your agency;

4. Exposure, risk, and demographic analysis techniques, cumulative impact assessments, and ongoing technical advances relevant to conducting disparate impact analyses; and

5. Alternative dispute resolution techniques to enable your staff to design and carry out a collaborative and informal process that can help resolve Title VI concerns.

2. Encourage Meaningful Public Participation and Outreach

Early, inclusive, and meaningful public involvement in the permitting process will likely help to reduce the filing of Title VI complaints alleging that the public participation process for a permit was discriminatory. It is possible to have a violation of Title VI or EPA's Title VI regulations based solely on discrimination in the procedural aspects of the permitting process without a finding of discrimination in the substantive outcome of that process, such as discriminatory human health or environmental effects. Likewise, it is possible to have a violation due to discriminatory human health or environmental effects without the presence of discrimination in the public participation process.

An effective public participation process:

- Seeks out and facilitates the involvement of individuals who will be potentially affected by permitting decisions;
- Ensures that the public is involved early in the process;
- Provides participants in the process with the information they need to participate in a meaningful way;
- Ensures that public concerns are appropriately considered; and
- Communicates to participants in the process how their input was, or was not, used.

More specifically, an effective public participation process is one that:

- *Is early and inclusive:*
- Engages the public during the pre-permitting process, as well as during the permitting process, whenever possible;
- Includes community participants that represent the spectrum of views;
- Uses communication methods likely to reach the affected community (*e.g.,* insert information with utility bills; place public service announcements on local radio shows; and place notices on bulletin boards in grocery stores, houses of worship, community newspapers, and community centers);
- Schedules meeting times and places that are convenient for residents who work and those who use public transportation;
- Schedules meeting places that are accessible to persons with disabilities; and
- Avoids creating schedule conflicts with other community or cultural events, whenever possible.
- *Is meaningful:*
- Uses an open and transparent process;
- Provides understandable information necessary for effective community participation (Writing User-Friendly Documents and other guidance on how to write in plain language are available from the *Plain Language Action Network (PLAN)* on the Internet at *http://www.plainlanguage.govE);*
- Provides supplemental technical information (*e.g.,* trend and comparison data, background on types of health effects, concepts of exposure assessment) and technical assistance to make data more meaningful;
- Takes reasonable steps to communicate,[11] in written documents as well as orally, in languages other than English, when appropriate for the community; [12] and
- Provides clear explanations and reasons for the decisions made with respect to the issues raised by the community.

There are a number of publications describing effective public participation techniques. The publications listed below may provide useful information as you assess your Title VI activities:

- *The Model Plan for Public Participation* developed by the EPA National Environmental Justice Advisory Council, a Federal Advisory Committee to the U.S. EPA. (For more information on the EPA National Environmental Justice Advisory Council, contact the EPA Office of Environmental Justice (OEJ) at 202–564–2515, or visit the OEJ Web site at *http://es.epa.gov/oeca/main/ej/index.html*);
- American Society for Testing and Materials (ASTM) Standard Guide to the Process of Sustainable *Brownfields* Redevelopment (ASTM Standard E–1984–98). (For more information on this standard, contact ASTM at 610–832–9585. The ASTM Web site location is *http://www.astm.org*);
- *Report of the Title VI Implementation Advisory Committee: Next Steps for EPA, State, and Local Environmental Justice Programs* (Available on line as an Acrobat format pdf file at (*http://es.epa.gov/oeca/oej/t6report.pdf*);
- EPA's 1998 *Final Supplemental Environmental Projects Policy* contains information on the public's opportunity to participate in the consideration of Supplemental Environmental Projects (*http://www.epa.gov/oeca/sep/*);
- EPA's 1998 *Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses* contains a discussion regarding public participation in Section 4 (pages 39–43) (*http://es.epa.gov/oeca/ofa/ejepa.html*); and
- EPA's 1996 *Resource Conservation and Recovery Act (RCRA) Public Participation Manual* explains how public participation works in the permitting process and also contains useful information for public participation in non-RCRA environmental activities (*http://www.epa.gov/epaoswer/hazwaste/permit/pubpart*).

3. Conduct Impact and Demographic Analyses

The ability to analyze new and existing potentially adverse impacts, together with relevant demographic information concerning *receptor* populations (*i.e.,* populations that may be exposed to stressors), will often help identify potential Title VI concerns and assist in appropriately addressing them. Potential and existing impacts may

[11] A recipient's failure to take reasonable steps to provide a "meaningful opportunity" for limited English speaking individuals to effectively participate in its programs and activities can constitute discrimination prohibited by Title VI. See *Lau* v. *Nichols,* 414 U.S. 563 (1974). Further, EPA's Title VI regulations state that "[a] recipient shall not use criteria or methods of administering its program which * * * have the effect of defeating or substantially impairing accomplishment of the objective of the program with respect to individuals of a particular race, color, [or] national origin." 40 CFR 7.35(b).

[12] See DOJ's regulation entitled "Coordination of Enforcement of Non-discrimination in Federally-Assisted Programs," 28 CFR subpart F, specifically section 42.405(d)(1) for a discussion of factors recipients should consider when determining whether translation for limited English speaking populations is necessary.

involve a broad spectrum of concerns. Although there is no single place to obtain access to data sources and tools needed to address these concerns, and some are incomplete or still being developed, major assessment tools and data are available. EPA has developed several Web sites that may help identify existing and emerging resources, including the:

- EnviroFacts data warehouse (*http://www.epa.gov/enviro/*);
- Environmental Quality (*http://www.epa.gov/ceis/*);
- Community-Based Environmental Protection (*http://www.epa.gov/ecocommunity/*);
- National Center for Environmental Assessment (*http://www.epa.gov/ncea/*); and
- Superfund *risk assessment* home page (http://www.epa.gov/superfund/programs/risk/index.htm).

a. Availability of Demographic Data and Exposure Data: The availability of information needed to assess the presence or likelihood of adverse impact(s) may vary widely from one geographic location to another. In addition to nationally available data, many states and localities collect and maintain important information concerning sources, stressors and *ambient* levels. Geographically detailed demographic information (*e.g.*, sub-county level data) is available through the United States Bureau of the Census and commercial sources, but is often limited to decennial census (*e.g.*, 1990) data at the appropriate levels of geographic resolution. Information on sources and stressors is also available for some industries' releases of chemicals in air, land, and soil. However, the databases may only address certain categories of facilities and pollutants, are not of consistent completeness or quality, and may change significantly over time.[13] To assess *accuracy*, completeness, and relevance, you may choose to review and evaluate key data. You may also examine other available sources (*e.g.*, those developed by states and localities) for additional important data, and consider collecting additional locally-relevant data.

Some of the information on sources and stressors, which are available in EPA's regulatory program databases, include the following:[14]

- The Toxic Release Inventory System (TRIS) contains information about more than 650 toxic chemicals that are being used, manufactured, treated, or released into the environment. Manufacturing and other selected facilities (which meet reporting criteria for size and quantities of chemicals) are required to report annually on waste generation, releases and transfers of chemicals to EPA and states (*http://www.epa.gov/enviro/html/tris*);
- The Resource Conservation and Recovery Information System (RCRIS) and Biennial Reporting System (BRS) are national program management and inventory systems of Resource Conservation and Recovery Act (RCRA) hazardous waste handlers (*http://www.epa.gov/epaoswer/hazwaste/data/*);
- RCRIS handlers (including large and small quantity generators; treatment, storage and disposal facilities; and transporters) (*http://www.epa.gov/enviro/html/rcris/rcris—overview.html*); and
- BRS (data on waste streams from large quantity generators of hazardous waste) (*http://www.epa.gov/enviro/html/brs/index.html*);
- The Comprehensive Environmental Response Compensation and Liability Information System (CERCLIS) is a database that contains information on the location of over 30,000 Superfund hazardous waste sites. In addition, for sites included in the National Priority List (NPL), the database contains information on pre-remedial actions such as the discovery data and preliminary assessment, site inspection and the date of final hazardous ranking determinations (*http://www.epa.gov/enviro/html/hazard.html#Superfund*);
- The Aerometric Information Retrieval System (AIRS) is a computer-based repository for information about air pollution in the United States. AIRS contains information on air releases by various stationary sources of air pollution, such as power plants and factories, and provides information about the criteria air pollutants that they produce. In AIRS, these sources are known as facilities, and the part of AIRS containing data about sources is called the AIRS Facility Subsystem, or AFS (*http://www.epa.gov/enviro/html/air.html*);
- The Permit Compliance System (PCS) provides information on companies which have been issued permits to discharge waste water into water bodies (*http://www.epa.gov/enviro/html/water.html*);
- Risk management plans (describing potential accidental releases) are available for approximately 1500 facilities (*http://www.epa.gov:9966/srmpdcd/owa/overview$.startup*).

Efforts to collect comprehensive information about sources of contaminants in particular geographic areas include:

- The total maximum daily load (TMDL) program develops inventories of water emissions of contaminants from a variety of sources, both *point* and *non-point*, to develop and allocate watershed-based emission limits (*http://www.epa.gov/OWOW/tmdl/index.html*), and has developed software for building, maintaining and displaying source inventories called BASINS (*http://www.epa.gov/ost/BASINS/*);
- The EPA Office of Groundwater and Drinking Water source water protection program (*http://www.epa.gov/safewater/protect.html*) provides a drinking water contaminant source index (*http://www.epa.gov/OGWDW/swp/intro4.html*), including a list of potential contaminant source inventory tools (*http://www.epa.gov/safewater/protect/feddata/inventory.html*); and
- The National Air Toxics Assessment program of EPA's Office of Air Quality Planning and Standards is developing updated 1996 comprehensive air toxics emissions information from a variety of sources for release in 2000 (*http://www.epa.gov/ttnuatw1/urban/nata/natapg.html*).

The following information may be helpful to locate additional data about ambient environmental monitoring levels, and facilities which provide drinking water:

- The Safe Drinking Water Information System/Federal version (SDWIS/FED) is a database storing information about the nation's drinking water. SDWIS/FED stores identification, violation and follow up actions for approximately 175,000 public water systems (*http://www.epa.gov/enviro/html/sdwis/sdwis—ov.html*);
- The National Contaminant Occurrence Database (NCOD) provides raw data on occurrences of physical, chemical, microbial and radiological contaminants from both Public Water Systems and other sources (*http://www.epa.gov/ncod/*);
- The Storage and Retrieval of Water-Related Data System (STORET), which contains information about the chemical, physical, and biological

[13] For example, the Toxics Release Inventory (TRI) data base has had a number of chemicals added for reporting (and a few deleted) since its inception. Recently, a number of additional facility types have begun reporting, with the first year's data for 1998 expected to be released in Spring 2000. Significantly expanded reporting for small releases of highly toxic and/or persistent chemcials has also recently become effective for reporting year 2000, with the first data release expected in Spring 2002.

[14] Note that OCR does not expect to limit its disparate adverse impact analyses to information in these databases. Data availability will be taken into consideration as OCR decides, on a case-by-case basis, which databases to include in an assessment.

characteristics of ambient water monitoring data as well as select ground water and surface water data. States, Regions, local governments, Tribal groups, commissions, other Federal Agencies, and volunteer groups provide the information to EPA, which can be retrieved by written request. (*www.epa.gov/reisite1/flshcard/storet.htm#); and*

• The AIRS Air Quality Subsystem (AQS), which contains data on levels of *criteria pollutants* from air quality monitoring stations throughout the U.S. AQS reports show summaries of the prevailing levels of air pollution from specific monitoring sites, and maps can display the locations of monitoring stations and *non-attainment areas* (*http://www.epa.gov/airsdata/monitors.htm*).

Many other sets of data, guidelines, and assessment tools exist both within and outside EPA. Therefore, the list above is in no way intended to be comprehensive. Instead it provides some introductory information as an initial starting point in developing information about these resources.

b. Potential Steps for Conducting Adverse Disparate Impact Analyses: You may consider including the following steps when conducting an adverse disparate impact analysis and refer to section VI of the Draft Revised Investigation Guidance for more detailed guidance on how to conduct the steps below:

1. *Define Scope:* Review community concerns and available data, determine which other relevant *sources of stressors,* if any, should be included in the analysis, and develop a project plan.

2. *Impact assessment:* Determine whether the activities of the permitted entity at issue, either alone or in combination with other relevant sources, cause one or more impacts and develop measure(s) of the magnitude and likelihood of occurrence.

3. *Adverse impact decision:* Determine whether the impact(s) are sufficiently adverse to be considered *significant.*

4. *Characterize populations and conduct comparisons:* Determine the characteristics of the affected population, and conduct an analysis to determine whether a *disparity* exists between the affected population and an appropriate *comparison population* in terms of race, color, or national origin, and adverse impact.

5. *Adverse disparate impact decision:* Determine whether the disparity is significant.

c. Availability of Tools and Methodologies for Conducting Adverse Impact Analyses: Analytical tools are available for conducting impact analyses for a particular permit application or for a particular area of concern. These analytical tools have limitations given the state of the science in assessing risks from multiple stressors and *exposure pathways.* You should use the best available tools for conducting analyses to identify potential adverse impacts. Peer reviewed tools and methodologies are the most credible.

Geographically detailed estimates of risks or other measures of impact are the most useful in assessing adverse disparate impacts because they often provide a clearer connection between sources, stressor, and impacts. However, producing these estimates or measures can require significant resources. Moreover, in some contexts, less detailed methods or measures can be as useful. For example, ambient risks may often be directly proportional to release amounts and *toxicity* of the stressors.[15] As a result, by examining the amount and toxicity of stressors coming from the relevant source(s), it is often possible to identify sources or combinations of sources that have a higher likelihood of being associated with adverse disparate impacts.

When designing, selecting, and using adverse impact methodologies, you should consider the following:

• Availability of tools, resources, and training to evaluate risks (both from single and multiple stressors);

• Best available data concerning sources, stressors, and ambient conditions;

• Availability of a *threshold* of potential concern for assessing the adversity of the impacts; and

• The capacity of the assessment method to identify who may be adversely impacted.

One tool which is likely to be useful is a *geographic information system* (GIS), which allows users to manage, analyze, and display integrated data, such as source locations, ambient conditions derived from monitoring or modeling, and potentially impacted populations. Many organizations have found GIS useful in environmental impact analyses. GIS is not, however, a specific demographic or impact analysis method. Instead, GIS software can be used to perform a range of analyses and produce maps and other display products that are effective means of communicating the findings and facilitating public participation. For example, GIS is useful in overlaying data regarding adverse impacts on maps that display population data.

Many organizations are using GIS to produce integrated geographically-focused inventories of sources, which can be analyzed and displayed in conjunction with population *receptor* information as one type of initial focusing tool. Although such efforts do not necessarily agree completely with the results of more sophisticated analyses, many users are exploring how they can be used to help set priorities and identify areas of possible concern, which can help target outreach and further studies, such as the creation of more comprehensive data on sources and stressors. Also, while such approaches would rarely be used to indicate areas with adverse impacts, they may be useful in identifying communities in which to conduct area-specific Title VI approaches, or selecting permit decisions for further investigation in a case-by-case approach.

d. Relevant Data: Generally, all readily available and relevant data should be used to conduct adverse impact assessments. Data may vary in completeness, reliability, and geographic relevance to the assessment area. You should evaluate available data and place the greatest weight on the most reliable data. The following data, in approximate order of preference, could be used for assessments:

• Ambient monitoring data;

• *Modeled* ambient concentrations;

• Known emissions or other release of a pollutant or stressor;

• Production, use or storage of quantities of pollutants; and

• Presence of sources or activities associated with potential exposures.

Additional sources of information on tools and databases for conducting an adverse disparate impact analysis include:[16]

• An introduction to risk assessment concepts contained in the brochure, Air Pollution and Health Risk (*http://www.epa.gov/oar/oaqps/air_risc/3_90_022.html*);

• The Office of Civil Rights Web page on investigative methods contains background information provided to the *Science Advisory Board* (SAB) regarding possible disproportionate impact methodologies (*http://www.epa.gov/civilrights/investig.htm*);

[15] Estimations of risk or other measures of impact are also likely to be dependent on many other factors such as environmental conditions, stressor characteristics and interactions, exposure pathways, and receptor population characteristics.

[16] See *Draft Revised Investigation Guidance,* section VI (regarding how EPA expects to conduct and adverse disparate impact analysis in a complaint investigation).

• The SAB December 1998 report [17] on its review of EPA's adverse disparate impact methodologies is available at the Office of Civil Rights Web site (in Acrobat pdf format) at (*http://www.epa.gov/civilrights/investig.htm*); and

• The Cumulative Exposure Project is developing methods for evaluating the combined exposures to multiple pollutants through three different pathways—air, food, and drinking water. The goal is to examine the cumulative impacts of multiple pollutants and to determine the important contributors to *cumulative exposures*. Initial results for 1990 modeled ambient air concentrations are available from the EPA Web site at: *http://www.epa.gov/cumulativeexposure/*, with a cautionary note on the applicability of the results to current local conditions at *http://www.epa.gov/cumulativeexposure/air/intrair.htm*. As part of its National Air Toxics Assessments, EPA is using this same model, updated with 1996 data for 33 priority air toxics, and plans to release the modeled ambient air concentrations in Spring 2000. These data will also be used to model exposure estimates, which will be available later in 2000.

e. *Resources for Assessing Significance of Impact:* Assessing the significance of a risk or *measure of impact* involves legal, policy, and scientific considerations. Various environmental and health programs have used a range of values for determining regulatory or public health protection levels over time. Generally, the risk or measure of impact should first be evaluated and compared to *benchmarks* provided under relevant environmental statutes, regulations or policies. Where those risks meet or exceed a significance level as defined by law, policy or science, the measure of impact would likely be recognized as adverse in a Title VI approach.

In some cases, the relevant environmental laws may not identify regulatory levels for the risks of the health impact of concern. For example, an impact may result from cumulative or other risk of effects from multiple environmental exposure *media*. In such cases, you may consider whether any scientific or technical information indicates that those impacts should be recognized as significantly adverse under Title VI. This evaluation would need to take into account considerations such as policies developed for single stressors or sources without explicit consideration of cumulative contributions and uncertainties in estimates.

f. Conducting Disparity Analyses and Assessing Significance: As part of the adverse impact, one method of identifying an affected population would involve assessing the distribution of adverse impacts in the environment, and associating populations with them.[18] Where this method is infeasible, estimating affected populations based on proximity to sources may provide initial estimates for assessment. You may wish to also attempt to assess the demographic characteristics of the potentially affected population. In many cases, this will involve associating the impact assessment results with data from the 1990 (or later) [19] U.S. Census, which is readily available at a detailed level of geography. The residential census data includes population characteristics such as language spoken at home and degree of English fluency. This information will likely be helpful to you in determining when limited English proficiency might be an issue for outreach and public participation efforts.

Another element of this step involves a disparity analysis that compares the affected population to a comparison population to determine to what degree a disparity exists. EPA expects that appropriate comparison populations will be decided on a case-by-case basis. You could consider the situation in communities and/or permitting decisions together with the types of impacts. Generally, relevant comparison populations would be drawn from those who live within a *reference area* such as your jurisdiction (*e.g.*, an air district, a state), a political jurisdiction (*e.g.*, city, county). For example, where a complaint alleges that Asian Americans throughout a state bear adverse disparate impacts from permitted sources of water pollution, an appropriate reference area would likely be the state. Another potentially appropriate area might be one defined by environmental criteria, such as an airshed or watershed. Comparison populations should usually be larger than the affected population, and may include the *general population* for the reference area (*e.g.*, a county or state population which includes the affected population) or the *non-affected population* for the reference area (*e.g.*, those in the reference area which are not part of the affected population).

A disparity may be assessed using comparisons both of the different prevalence of race, color, or national origin of the two populations, and of the level of risk of adverse impacts experienced by each population. You may wish to conduct comparisons of demographic characteristics, such as the composition of an affected population to that of a non-affected population or general population; [20] and/or the probability of different demographic groups (*e.g.*, African Americans, Hispanics, Whites) in a surrounding jurisdiction being in an affected population or a highly affected portion of it. [21] In conjunction with comparisons of demographic characteristics between populations, you may also wish to compare the level of risk or other measure of potential adverse impacts between populations. These comparisons might include the average [22] or range of risks for demographic subgroups of the general population or between an affected population and the general population.

Measures of the demographic disparity between an affected population and a comparison population would normally be statistically evaluated to determine whether the differences achieved *statistical significance* to at least 2 to 3 standard deviations. The purpose of this review is to minimize the chance of a false measurement of difference where none actually exists (because of an inherent variability of the data). In your analysis, you may also wish to consider the demographic disparity measures and their results in the context of several related factors, such as the size of the affected population, the proportion of a jurisdiction's total population within an affected population, and the demographic composition of the general comparison population.

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[17] *An SAB Report: Review of Disproportionate Impact Methodoligies; A Review by the Integrated Human Exposure Committee (IHEC) of the Science Advisory Board (SAB).*

[18] See *Draft Revised Investigation Guidance*, section VI.B.5. (discussing how EPA expects to conduct disparity analyses in Title VI investigations).

[19] In 2000, the most current geographically detailed U.S. Census information is from the 1990 U.S. Census. Information from the 2000 U.S. Census will not be available until 2001.

[20] See, *e.g.*, *Draft Revised Demographic Information, Title VI Administrative Complaint, re: Louisiana Department of Environmental Quality/Permit for Proposed Shintech Facility*, April 1998 (*Shintech Demographic Information, April 1998*), Facility Distribution Charts D1 through D40 found at *http://www.epa.gov/civilrights/shinfileapr98.htm*, files t-d01-10.pdf, t-d11-20.pdf, t-d21-30.pfd, t-d31-40.pdf.

[21] See, *e.g.*, *Shintech Demographic Information, April 1998*, the last column in Tables A1 through B7 found at *http://www.epa.gov/civilrights/shinfileapr98.htm*, table-al.pdf through table-b.7.pdf.

[22] See, *e.g.*, *Shintech Demographic Information, April 1998*, last column in Tables C1 through C5 found at *http://www.epa.gov/civilrights/shinfileap98.htm*, table-cl.pdf through table-c5.pdf.

The determination of what level(s) of disparity that can be considered significant should take into account the nature of the decision being made (*e.g.*, allocation of resources, triggering further action); the type of disparity comparison; the consistency of results between multiple comparisons; and underlying data quality. In many instances, you should consider both the degree of disparity of population composition with the degree of disparity of estimated level of adverse impact. [23]

4. Encourage Intergovernmental Involvement

Bringing all agencies and parties together that may contribute to both the problems and the solutions is one effective way to reach innovative and comprehensive resolutions. You may not have the authority, resources, or expertise to address all of the elements that may contribute to the issues of concern to the community. For example, you may not have authority over zoning or traffic patterns. Including community representatives and the permit applicant in discussions regarding Title VI concerns and resolutions can be an important part of this process. The earlier you identify all appropriate parties, including other governmental agencies, and bring them into the process, the greater the likelihood that you will reach effective solutions.

5. Participate in Alternative Dispute Resolution

The ability to address identified or potential adverse impacts is critical to resolving problems that may form the basis for a Title VI complaint. The handling of Title VI concerns through the formal administrative process can consume a substantial amount of time and resources for all parties involved. Therefore, EPA strongly encourages you to use alternative dispute resolution (ADR) techniques to address concerns regarding adverse and disparate impacts from the issuance of permits. EPA expects that recipients with the ability to engage in ADR with affected communities and permit applicants are the most likely to have success in informally resolving these types of issues.

ADR is a collaborative effort to design and implement a process leading to an outcome acceptable to all parties. If you use ADR to address some Title VI concerns you may choose to review the recommendations in section II.B.2. of this guidance about effective public participation. Providing early, inclusive and meaningful public participation during the ADR process will help to ensure that the agreement reached through ADR provides solutions to reduce or eliminate: (1) Discriminatory human health, environmental, or other effects resulting from the issuance of permits; and/or (2) discrimination during the public participation process associated with the permitting process. Usually, an experienced third party (a "neutral") facilitates the process. The neutral would work with each of the parties to develop a mutually agreeable process.

There are several possible approaches to consider when developing an ADR process:

- *Dialogue*—Facilitated conversations for improving understanding and relationships;
- *Consensus-Building*—An informal, but structured process through which parties can participate in shared learning and creative problem-solving; and
- *Mediation*—A third party neutral, with no decision-making authority, helps all parties reach a voluntary negotiated settlement of their issues.

Three common elements of all these approaches include:

- Shared responsibility for the parties to find a resolution that can satisfy their important concerns;
- Voluntary resolutions that are not developed and imposed by an external authority; and
- A neutral environment where parties express their concerns and views in a neutral environment.

Often resolution through ADR results in new understandings of and innovative ideas to address issues of concern. It is also particularly helpful in building better relationships that may be important for future interactions between the parties.

Resources available to help you with informal dispute resolution include:

- The U.S. Institute for Environmental Conflict Resolution, located at Suite 3350, 110 S. Church Avenue, Tucson, Arizona 85701 (telephone: 520–670–5529, Web site: *http://www.ecr.gov*).
- *Alternative Dispute Resolution: A Resource Guide.* This guide, written by the U.S. Office of Personnel Management (OPM), provides an overall picture of how the most common forms of ADR are being implemented in Federal agencies. It summarizes a number of current ADR programs, and it includes descriptions of shared neutrals programs where agencies have collaborated to reduce the costs of ADR. It also provides a listing of training and resources available from Federal and non-Federal sources along with selected ADR-related Web sites. The document may be downloaded from the OPM Web site. *http://www.opm.gov/er/adrguide/adrhome.html.ssi*); and
- Various States have offices of dispute resolution that can provide information and resources.

6. Reduce or Eliminate Alleged Adverse Disparate Impact

EPA believes that cooperative efforts between permitting agencies and communities, whether or not in the context of Title VI-related approaches, frequently offer the best means of addressing potential problems. Efforts that focus on all contributions to the disparate impact, not just the permit at issue, will likely yield the most effective long-term solutions. It will be a rare situation where the permit which triggered the complaint is the sole reason a discriminatory effect exists.

The Agency expects that remedial measures that reduce or eliminate alleged disparate impacts will be an important focus of the informal resolution process.[24] You can offer to provide various forms of remediation, including remedial measures that are narrowly tailored toward sources using your existing permitting authorities. Alternatively or in addition, you can propose broader remedial measures that are outside those considerations ordinarily considered in the permitting process. Before selecting a remedial measure, analyze and compare all potential remedial measures. Remediation may take many forms, including:

- Changes in policies or procedures;
- Pollution reduction;
- *Pollution prevention*;
- Environmental remediation (*e.g.*, lead abatement);
- Emission *offsets*;
- Emissions caps for geographic areas of concern;
- Emergency planning and response measures; and
- Measures to promote equality in monitoring and enforcement.

The EPA *Supplemental Environmental Projects (SEPs) Policy* is a source of information for recipients on remedial options and procedures. SEPs are environmentally beneficial projects that may be part of a settlement of environmental enforcement cases. The EPA SEP Policy also contains a section on community input which may be

[23] See *Draft Revised Investigation Guidonce*, section VI.B.6. (discussing how EPA expects to assess the significance of disparity in Title VI investigations).

[24] For a more detailed discussion of measures to reduce or eliminate adverse disparate impact, see section IV.B. of the *Draft Revised Investigotion Guidance.*

especially useful guidance for involving the public in the development of remedial measures to address potentially disparate impacts. A copy of EPA's SEPs policy is available through the National Service Center for Environmental Publications (see reference section for address) and is also available at *http://www.epa.gov/oeca/sep/.*

7. Evaluate Title VI Activities

You may decide to evaluate your Title VI approach or Title VI activities to identify areas in need of improvement. For example, if you choose to develop a public participation program, you may wish to collect and analyze feedback from communities and businesses. In which case, it would be important to give communities and businesses the necessary information to provide appropriate feedback. The ability to effectively evaluate any approach or activity is based primarily on information and resource availability. If you choose to evaluate your Title VI approach or activities, you should also consider data quality when choosing an evaluation method. One resource on program evaluation is *Practical Evaluation for Public Managers, Getting The Information You Need* by the Department of Health and Human Services, Office of the Inspector General (see reference section for address).

C. Due Weight

As recipients, many of you have asked EPA to provide "incentives" for you to develop proactive Title VI-related approaches. In particular, some of you have asked EPA to recognize, and to the maximum extent possible, rely on the results of any such approaches in assessing complaints filed with EPA. While EPA encourages efforts to develop proactive Title VI approaches, under the Civil Rights Act of 1964, EPA is charged with assuring compliance with Title VI. Thus, EPA cannot completely defer to a recipient's own assessment that it has not violated Title VI or EPA's regulations and cannot rely entirely on an assertion that a Title VI approaches has been followed.[25] In addition, EPA cannot delegate its responsibility to enforce Title VI to its recipients. Thus, with regard to the processing of Title VI complaints, EPA retains the:

- Ability to supplement the recipient's analysis or to investigate the issues *de novo;*
- Approval authority over any proposed resolution; and
- Ability to initiate its own enforcement actions and compliance reviews.

Nevertheless, EPA believes that it can, under certain circumstances, recognize the results of analyses you submit and give them appropriate due weight.[26] For example, if you adopt any of the individual Title VI activities discussed above, and during the course of an investigation you seek to submit the results of those activities as evidence that you have not violated EPA's Title VI regulations, EPA will review the activity and the results to determine how much weight to give the submission in its investigation.

You may seek to conduct your own evaluation of whether a disparate impact exists and submit it to EPA. These evaluations should at a minimum generally conform to accepted scientific approaches. They may focus on a spectrum of potential adverse impacts, such as described in the analytical framework set forth in section II.B.3. above, or may be more focused, such as the impact of a specific pollutant on nearby populations (*e.g.*, a study regarding the impact of lead emissions on blood lead levels in the surrounding area). The weight given any evidence related to the level or existence of adverse impacts and the extent to which OCR may rely on it in its decision will likely vary depending upon:

- Relevance of the evidence to the alleged impacts;
- The validity of the recipient's methodologies;
- The completeness of the documentation that is submitted by the recipient;
- The degree of consistency between the methodology used and the findings and conclusions; and
- The uncertainties of the input data and results.

Consequently, submitted materials would be subject to scientific review by EPA experts.

OCR expects to give more weight to submitted analyses that are relevant to the Title VI concerns in the complaint and have sufficient scope, completeness, and accuracy. If the analyses submitted meet the factors above, OCR will not seek to duplicate or conduct such analyses, but instead will evaluate the appropriateness and validity of the relevant methodology and assess the overall reasonableness of the outcome or conclusions at issue.

If OCR's review reveals that the evidence contains significant deficiencies with respect to the factors above, then the analysis will likely not be relied upon in OCR's decision. If these factors are met, then OCR will likely rely on the evidence in its investigation. In the instance where a submitted analysis that shows no adverse disparate impact exists, and the analysis generally follows the steps in section II.B.3.b. of this document and meets the factors described above, then OCR may rely on it in a finding that the recipient is in compliance with EPA's Title VI regulation.

Some recipients may develop procedures for their permitting program that meet certain criteria designed to ensure a nondiscriminatory public participation process. OCR expects to give due weight to the public participation program if:

- The criteria that formed the basis for the program were sufficient to ensure a nondiscriminatory process;
- Your overall permitting process met those criteria; and you followed your program for the relevant case.

An example of a public participation process that meets these steps would be one that followed the guidelines for the EPA Brownfields Assessment Demonstration Pilot projects. A copy of *The Brownfields Economic Redevelopment Initiative Proposal Guidelines for Brownfields Assessment Demonstration Pilots* is available through the National Service Center for Environmental Publications (see reference section for address) and is also available at *http://www.epa.gov/swerosps/bf/html-doc/apappg00.htm#guide.*

EPA also intends to consider other available information, including information submitted by complainants when investigating Title VI complaints. If EPA's review reveals that the activity or analyses does not meet the criteria above, then EPA will likely not rely on the evidence in its decision. If EPA finds that the activity, whether it is a public participation process, disparate impact analysis, the results of an area-specific agreement, or other activity, is an acceptable approach to ensure nondiscrimination, EPA would generally rely upon this finding in subsequent decisions. Consequently,

[25] *See* 28 CFR 50.3(b) ("Primary responsibility for prompt and vigorous enforcement of Title VI rests with the head of each department and agency administering programs of Federal financial assistance."); Memorandum from Bill Lann Lee, Acting Assistant Attorney General, U.S. Department of Justice, to Executive Agency Civil Rights Directors (Jan. 28, 1999) (titled *Policy Guidance Document: Enforcement of Title VI of the Civil Rights Act of 1964 and Related Statutes in Block Grant-Type Programs*) ("It is important to remember that that Federal agencies are responsible for enforcing the nondiscrimination requirements that apply to recipients of assistance under their programs.")

[26] For more information on how OCR plans to determine the appropriate amount of due weight to give to evidence or information submitted by recipients, see section V.B. of the *Draft Revised Investigatian Guidance.*

OCR would generally dismiss future allegations related to issues covered by the activity, unless there is an allegation or information revealing that circumstances had changed substantially such that the activity is no longer adequate or that it is not being properly implemented.

III. Conclusion

This guidance recommends an approach to Title VI that focuses on recipients identifying areas of concern and addressing potential adverse impacts by implementing preventative activities or approaches. It also indicates EPA's objective of lending clarity to the process by providing due weight to a recipient's appropriate analytical efforts that assess and resolve disparate impact claims. This approach recommends community involvement at the beginning of the permitting process and collaboration at all levels of government to find innovative, cost-effective ways to reduce adverse disparate impacts. EPA believes that such an approach will enable potentially adversely impacted communities to be involved in the permit process in a meaningful manner, while also providing state and local decision-makers and businesses sufficient clarity regarding the Title VI process.

IV. Acronyms and Abbreviations

ADR—Alternative Dispute Resolution
AIRS—Aerometric Information Retrieval System
ASTM—American Society for Testing and Materials
BASINS—Better Assessment Science Integrating Point and Nonpoint Sources
CERCLIS—Comprehensive Environmental Response Compensation and Liability Information System
CFR—Code of Federal Regulations
ECOS—Environmental Council of States
EPA—United States Environmental Protection Agency
FRDS—Federal Reporting Data System
GIS—Geographic Information Systems
HHS—Department of Health and Human Services
NACEPT—National Advisory Council for Environmental Policy and Technology
NEJAC—National Environmental Justice Advisory Council
OCR—EPA's Office of Civil Rights
PCS—Permit Compliance System
PLAN—Plain Language Action Network
RCRA—Resource Conservation and Recovery Act
RCRIS—Resource Conservation and Recovery Information System
SAB—Science Advisory Board
SDWIS/FED—Safe Drinking Water Information System/Federal version
SEP—Supplemental Environmental Projects
STORET—Storage and Retrieval of Water-Related Data System
TRI—Toxics Release Inventory
TRIS—Toxics Release Inventory System

V. References

ASTM, 1998, *ASTM E 1984—98, Standard Guide to the Process of Sustainable Brownfields Redevelopment,* American Society for Testing and Materials, Environmental Risk Management/Sustainable Development/Pollution Prevention Subcommittee (For more information on this standard, contact ASTM at 610–832–9585. (The ASTM Web site location is *http://www.astm.org).*

ECOS, 1998, *Proposed Elements of Environmental Justice Programs, Draft,* October 9, 1998, Environmental Council of States, Washington, DC (For more information on this draft document, contact ECOS at 444 North Capitol Street, N.W., Suite 305, Washington, DC 20001 or call 202–624–3660 (The ECOS Web site is http://www.sso.org/ecos).

EPA, 1999, *The Brownfields Economic Redevelopment Initiative Proposal Guidelines for Brownfields Assessment Demonstration Pilots,* October 1999. (A copy of the guidelines is available through the National Service Center for Environmental Publications, P.O. Box 42419, Cincinnati, OH 45242–2419 or call 800–490–9198 and is available at *http://www.epa.gov/swerosps/bf/html-doc/apappg00.htm#guide).*

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EPA, 1996, *RCRA Public Participation Manual,* United States Environmental Protection Agency, Solid Waste and Emergency Response, Washington, DC, September 1996, EPA530-R–96–007 (This manual is available in English and Spanish through the National Service Center for Environmental Publications. Contact information is provided in the previous reference. This manual is also available at *http://www.epa.gov/epaoswer/hazwaste/permit/pubpart.*

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HHS, 1994, *Practical Evaluation for Public Managers, Getting The Information You Need,* Department of Health & Human Services, Office of Inspector General, Washington, DC (For a copy of this book contact the HHS Office of the Inspector General, Office of Evaluation and Inspections at 330 Independence Avenue, S.W., Room 5660, Washington, DC 20201 or call 202-691–0480).

NACEPT, 1999, *Report of the Title VI Implementation Advisory Committee, Next Steps for EPA, State, and Local Environmental Justice Programs,* April 1999, EPA 1000–4–99–004. (The report is available on the OCR Web site at *http://www.epa.gov/civilrights/t6faca.htm.* However, Appendices 1–3 and A–N are not posted on the OCR Web site, but are available by ordering a paper copy, using a form on the OCR Web site).

NEJAC, 1996, *The Model Plan for Public Participation,* the Public Participation and Accountability Subcommittee of the National Environmental Justice Advisory Council, A Federal Advisory Committee to the EPA (The OEJ Web site location is *http://es.epa.gov/oeca/main/ej/index.html).*

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PLAN, 1998, Writing User-Friendly Documents, Plain Language Action Network (available at *http://www.plainlanguage.gov*).

SAB, 1999, *An SAB Report: Review of Disproportionate Impact Methodologies,* A Review by the Integrated Human Exposure Committee (IHEC) of the Science Advisory Board (SAB)", EPA-SAB–99–007, December 1998, United States Environmental Protection Agency, Science Advisory Board, Washington, DC (This SAB report is available in Acrobat pdf format via the OCR Web site at *http://www.epa.gov/civilrights/investig.htm*).

Glossary of Terms

The definitions provided in this glossary only apply to the *Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs* and the *Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits,* unless a direct citation to the Code of Federal Regulations (CFR) is provided. Please note that italicized words are ones for which definitions are available in this glossary.

Term	Definition
Accuracy	The measure of the correctness of data, as given by the difference between the measured value and the true or standard value.
Adverse Impact	A negative impact that is determined by EPA to be significant, based on comparisons with benchmarks of significance. These benchmarks may be based on law, policy, or science.
Affected Population	A population that is determined to bear an adverse impact from the source(s) at issue.
Ambient Standards	A level of pollutants prescribed by regulations that are not to be exceeded during a given time in a defined area. (*e.g., National Ambient Air Quality Standards*).
Ambient	Any unconfined portion of a water body, land area, or the atmosphere, such as the open air or the environment surrounding a source.
Attainment Area	An area considered to have air quality as good as or better than the national ambient air quality standards as defined in the Clean Air Act. An area may be an attainment area for one pollutant and a non-attainment area for others. (See also *non-attainment area*).
Benchmark	A value used as a standard for comparison. Several types used in Title VI investigations include benchmarks of exposure level, risk, and significance. (See also *RfC, RfD, threshold*)
Brownfields	Abandoned, idled, or under-used industrial and commercial facilities/sites where expansion or redevelopment is complicated by real or perceived environmental contamination. They can be in urban, suburban, or rural areas.
Carcinogen	A chemical or other stressor capable of inducing a cancer response.
Chronic Toxicity	The capacity of a substance to cause long-term harmful health effects.
Comparison Population	A population selected for comparison with an affected population in determining whether the affected population is significantly different with respect to demographic characteristics or degree of adverse impact.
Criteria Pollutants	The 1970 Clean Air Act (CAA) required EPA to set National Ambient Air Quality Standards for certain pollutants known to be hazardous to human health. EPA has identified and set standards to protect human health and welfare for six pollutants: Ozone, carbon monoxide, particulate matter, sulfur dioxide, lead, and nitrogen oxide. The term, "criteria pollutants" derives from the requirement that EPA must describe the characteristics and potential health and welfare effects of these pollutants in "criteria." See CAA section 108.
Cumulative Exposure	Total exposure to multiple environmental *stressors* (*e.g.,* chemicals), including exposures originating from multiple *sources*, and traveling via multiple *pathways* over a period of time.
Cumulative Impact	The harmful health or other effects resulting from *cumulative exposure.*
Disparity (Disparate Impact)	A measurement of a degree of difference between population groups for the purpose of making a finding under Title VI. Disparities may be measured in terms of the respective composition (demographics) of the groups, and in terms of the respective potential level of *exposure*, risk or other measure of *adverse impact.*
Due Weight	The importance or reliance EPA gives to evidence or agreements to reduce impacts provided by recipients or complainants, depending on a review of relevance, scientific validity, completeness, consistency, and uncertainties. Where evidence or agreements prove to be technically satisfactory, OCR may rely upon that information rather than attempting to duplicate the analysis.
Environmental Council of States (ECOS)	The Environmental Council of States (ECOS) is a national non-partisan, nonprofit association of state and territorial environmental commissioners.
Exposure	Contact with, or being subject to the action or influence of, environmental *stressors*, usually through ingestion, inhalation, or dermal contact.
Exposure Pathway	The physical course a chemical or other *stressor* takes from its source to the exposed *receptor* (See also *Exposure Route*).
Exposure Route	The avenue by which a chemical or other stressor comes into contact with an organism (*e.g.,* inhalation, ingestion, dermal contact).
Exposure Scenario	A set of facts, assumptions, and inferences about how *exposure* takes place that aids in evaluating, estimating, or quantifying exposures (*e.g., exposure pathway,* environmental conditions, time period of exposure, *receptor* lifetime, average body weight).
Financial Assistance	Any grant or cooperative agreement, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which EPA provides or otherwise makes available assistance in the form of: (1) Funds; (2) Services of personnel; or (3) Real or personal property or any interest in or use of such property, including: (i) Transfers or leases of such property for less than fair market value or for reduced consideration; and (ii) Proceeds from a subsequent transfer or lease of such property if EPA's share of its fair market value is not returned to EPA. 40 CFR 7.25.
General Population	A comparison population that consists of the total set of persons in a jurisdiction or area of potential impact, including an *affected population.*

Term	Definition
GIS (Geographic Information System)	An organized computer system designed to efficiently capture, analyze, and display information in a geographically referenced manner, such as a map. Commonly, GIS is used to produce maps which combine various data and analysis results together, allowing for convenient visual analysis.
Hazard	The degree of potential for a *stressor* to cause illness or injury in a *receptor*, or the inherent toxicity of a compound.
Hazard Index	A summation of *hazard quotients* for multiple chemicals; a measure of cumulative risk for substances which exhibit a *threshold* for toxicity.
Hazard Quotient	The ratio of a single substance exposure level to a *reference dose* or *benchmark* for that substance. An exposure at the same concentration as the *reference dose* would have a hazard quotient of 1.
Hazardous Air Pollutant (HAP)	Air toxics which have been specifically listed for regulation under Clean Air Act section 112.
Health Outcome	A measure of disease rate or similar impact, such as age-adjusted cancer death rate.
Impact	In the health and environmental context, a negative or harmful effect on a receptor resulting from *exposure* to a stressor (*e.g.*, a case of disease). The likelihood of occurrence and severity of the impact may depend on the magnitude and frequency of exposure, and other factors affecting toxicity and receptor sensitivity.
Informal Resolution	Any settlement of complaint allegations prior to the issuance of a formal finding of noncompliance by EPA.
Measure of Impact	A measure used in evaluating the significance of an impact, which may involve the general likelihood, frequency, rate or number of instances of the occurrence of an impact. (See *risk,* which is similar, but expressed as a numeric probability of occurrence).
Media or Medium	Specific environmental compartments such as air, water, or soil, that are the subject of regulatory concern and activities.
Mitigation	Measures taken to reduce or eliminate the intensity, severity or frequency of an adverse disparate impact.
Mobile Source	Any non-stationary source of air pollution such as cars, trucks, motorcycles, buses, airplanes, ships or locomotives.
Model/Modeling/Modeled	A set of procedures or equations (usually computerized) for estimating or predicting a value, *e.g.*, the ambient environmental concentration of a stressor. Also, the act of using a model.
National Ambient Air Quality Standards (NAAQS).	Standards established by EPA pursuant to Clean Air Act section 109 that apply for outdoor air throughout the country. (See *criteria pollutants*)
New Permit	For the purposes of this guidance, the term "new permits" refers to the initial issuance of any permit, including permits for (1) The construction of a new facility, (2) the continued operation of an existing facility that previously operated without that type of permit, and (3) an existing facility that adds a new operation that would require a new type of permit (*e.g.*, newly issued water discharge permit), in addition to the facility's existing permits (*e.g.*, existing air emission permit). (See *permit*).
Non-Affected population	The remainder of a *general population* which is not found to be part of an *affected population* (*e.g.*, a county population minus those in an affected population).
Non-Attainment Area	Area that does not meet one or more of the National Ambient Air Quality Standards for the criteria pollutants designated in the Clean Air Act.
Non-Point Source	A diffuse water pollution source (*i.e.*, without a single point of discharge to the environment). Common non-point sources include agricultural, forestry, mining, or construction areas, areas used for land disposal, and areas where collective pollution due to everyday use can be washed off by precipitation, such as city streets. (See also *point source*).
Noncompliance	A finding by EPA that a recipient's program or activities do not meet the requirements of EPA's Title VI implementing regulations.
Offsets	A concept whereby emissions from proposed new or modified stationary sources are balanced by reductions from existing sources to stabilize total emissions.
Pathway (exposure)	The physical course a chemical or other stressor takes from its source to the exposed *receptor* (See also *Exposure Route*).
Pattern (of disparate impact)	An allegation or finding that multiple sources of a certain type are consistently associated with likely adverse impacts to a protected group.
Permit	An authorization, license, or equivalent control document issued by EPA or other agency to implement the requirements of an environmental regulation (*e.g.*, a permit to operate a wastewater treatment plant or to operate a facility that may generate harmful emissions).
Plain Language Action Network	Plain Language Action Network (PLAN) is a government-wide group working to improve communications from the federal government to the public.
Point Source	A stationary location or fixed facility from which pollutants are discharged; any single identifiable source of a stressor (*e.g.*, a pipe, ditch, small land area, pit, stack, vent, building).
Pollution Prevention	The practice of identifying areas, processes, and activities that create excessive waste products or stressors, and reducing or preventing them from occurring through altering or eliminating a process or activity.
Potency Factor	A measure of the power of a toxic *stressor* to cause harm at various levels of *exposure* (sometimes based on the slope of a dose-response curve), or above a single specific value.
Receptor	An individual or group that may be exposed to *stressors*.
Recipient	Any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. 40 CFR 7.25.
Reference Area	An area from which one or more comparison populations are drawn for conducting a disparity analysis.

Term	Definition
Reference Dose	See *RfC* and *RfD*.
Release	The introduction of a *stressor* to the environment, where it may come in contact with receptors. Includes, among other things, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.
RfC (inhalation reference concentration)	An estimate (with uncertainty spanning perhaps an order of magnitude) of the daily *exposure* of the human population to a chemical, through inhalation, that is likely to be without risk of harmful effects during a lifetime.
RfD (oral reference dose)	An estimate (with uncertainty spanning perhaps an order of magnitude) of the daily *exposure* of the human population to a chemical, through ingestion, that is likely to be without risk of harmful effects during a lifetime.
Risk	A measure of the probability that damage to life, health, property, and/or the environment will occur as a result of a given hazard. In quantitative terms, risk is often expressed in values ranging from zero (representing the certainty that harm will not occur) to one (representing the certainty that harm will occur). The following are examples showing the manner in which cancer risk is expressed: E–4 = 1 in 10–4, or a risk of 1 in 10,000; E–5 = a risk of 1/100,000; E–6 = a risk of 1/1,000,000. Similarly, 1.3E–3 = a risk of 1.3/1000 = 1 chance in 770.
Risk Assessment	Qualitative and quantitative evaluation of the risk posed to human health and/or the environment by the actual or potential presence and/or use of specific *stressors*. This involves a determination of the kind and degree of *hazard* posed by a stressor (*e.g., toxicity*), the extent to which a particular group of people has been or may be exposed to the agent, and the present or potential health risk that exists due to the agent.
Science Advisory Board (SAB)	A group of external scientists who advise EPA on science and policy.
Significant	A determination that an observed value is sufficiently large and meaningful to warrant some action. (See *statistical significance*).
Source	The site, facility, or origin from which one or more environmental *stressors* originate (*e.g.,* factory, incinerator, landfill, storage tank, field, vehicle).
Statistical Significance	An inference that there is a low probability that the observed difference in measured or estimated quantities is due to variability in the measurement technique, rather than due to an actual difference in the quantities themselves.
Stressor	Any factor that may adversely affect *receptors*, including chemical (*e.g., criteria pollutants*, toxic contaminants), physical (*e.g.,* noise, extreme temperatures, fire) and biological (*e.g.,* disease pathogens or parasites). Generally, any substance introduced into the environment that adversely affects the health of humans, animals, or ecosystems. Airborne stressors may fall into two main groups: (1) Those emitted directly from identifiable sources and (2) those produced in the air by interaction between chemicals (*e.g.,* most ozone).
Threshold	The dose or *exposure* level below which an adverse impact is not expected. Most carcinogens are thought to be non-threshold chemicals, to which no exposure can be presumed to be without some risk of contracting the disease.
Toxicity	The degree to which a substance or mixture of substances can harm humans or animals. (See *chronic toxicity*).
Unit Risk Factor	A measure of the power of a toxic *stressor* to cause cancer at various levels of *exposure* (based on the slope of a dose-response curve, combined with an *exposure scenario*).
Universe of Sources	A category of relevant and/or nearby sources of similar *stressors* to those from the permitted activity included in assessments of potential *adverse disparate impacts*.
Voluntary Compliance	Settlement between EPA and a recipient after a formal finding of noncompliance.

C. Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Draft Revised Investigations Guidance)

I. Introduction

A. Purpose of the Revised Investigation Guidance

The *Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Draft Revised Investigation Guidance)* is intended to provide a framework for the United States Environmental Protection Agency's (EPA or Agency) Office of Civil Rights (OCR) to process complaints filed under Title VI of the Civil Rights Act of 1964, as amended (Title VI),[27] and EPA's Title VI implementing regulations[28] alleging discriminatory effects resulting from the issuance of pollution control *permits*[29] by *recipients* of EPA *financial assistance.*

B. Title VI of the Civil Rights Act of 1964, as Amended

The goal of the Civil Rights Act of 1964 is to eliminate discrimination in several areas of American society.[30] The Act prohibits discrimination in public accommodations (Title II); segregation in public facilities (Title III); segregation in public schools (Title IV); and discrimination in employment (Title VII).[31] Title VI of the Act, which prohibits discrimination on the basis of race, color, and national origin in all Federally-assisted programs and activities, applies to the recipients of an estimated $900 billion in Federal assistance distributed annually by approximately 27 Federal agencies.[32] When submitting the Civil Rights Act to Congress, President Kennedy stated that "[s]imple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion, which encourages, entrenches, subsidizes, or results in racial discrimination."[33]

Title VI itself prohibits intentional discrimination.[34] In addition, the Supreme Court has stated that Title VI authorizes agencies to adopt implementing regulations that also prohibit discriminatory effects.[35] This is often referred to as reaching actions that have an unjustified adverse disparate impact. EPA in 1973 promulgated regulations that implement Title VI and revised them in 1984.[36] Under EPA's Title VI implementing regulations, agencies receiving EPA financial assistance are prohibited, among other things, from using "criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, [or] national origin."[37] As applied to the permitting process, recipients of EPA financial assistance may not issue permits that are intentionally discriminatory or have a discriminatory effect based on race, color, or national origin.

C. Scope of Guidance

While this guidance is directed at the processing of discriminatory effects allegations, Title VI complaints may also allege discriminatory intent in the context of environmental permitting. Such complaints generally will be investigated by OCR under Title VI, EPA's Title VI regulations, and applicable intentional discrimination case law. Moreover, even for allegations of discriminatory effects, this document is not intended to comprehensively address every scenario that may arise in the interaction between Title VI, EPA's Title VI regulations, and environmental permitting.[38] Given the infinite number of possible permutations of facts, allegations, and circumstances, such an approach is infeasible. Instead, this guidance provides a detailed framework explaining how OCR intends to process and investigate allegations about discriminatory effects resulting from environmental permitting decisions. In particular, OCR generally expects to use this guidance for complaints involving allegations related to environmental permits, such as Clean Air Act[39] permits, Clean Water Act[40] discharge permits, Safe Drinking Water Act[41] permits, underground injection[42] permits, and Resource Conservation and Recovery Act[43] permits for treatment, storage, and disposal.[44]

The types of allegations that complainants have identified in previous complaints span a wide range, and may involve public participation, as well as adverse disparate impacts from the issuance of permits. Some are focused narrowly on the impacts from a single permitted activity or facility, while others have identified concerns with groups of similar facilities (*e.g.*, all waste disposal sites in an area), or the combined *impacts* of facilities and other sources in a particular area (*e.g.*, major permitted sources together with other stationary, *mobile*, or *non-point sources*). In some cases, allegations suggest that the recipient's permitting action may be part of a discriminatory *pattern* of decision-making for certain types of facilities (*e.g.*, hazardous waste landfills throughout a state). The nature of each of the allegations accepted for investigation in a particular complaint

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[27] 42 U.S.C. 2000d to 2000d–7.

[28] 40 CFR part 7.

[29] The underlined terms are defined or explained in the attached Glossary.

[30] See, *e.g.*, 110 Cong. Rec. 7062 (1964) ("[T]he purpose of title VI is to make sure that funds of the United States are not used to support racial discrimination.") (statement of Sen. Pastore).

[31] Civil Rights Act of 1964, Public Law 88–352, 78 Stat. 241 (codified as amended in scattered sections of 42 U.S.C.).

[32] U.S. Commission on Civil Rights, *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs*, p.12 (June 1996) [hereinafter *Federal Title VI Enforcement*].

[33] H.R. Doc. No. 124, 88th Cong., 1st Sess. (1963), reprinted in 1963 U.S.C.C.A.N. 1534.

[34] *Guardians Ass'n* v. *Civil Serv. Comm'n*, 463 U.S. 582, 589 (1983).

[35] See *Alexander* v. *Choate*, 469 U.S. 287, 292–94 (1985); Guardians Ass'n, 463 U.S. at 589–93.

[36] 38 FR 17968 (1973), as amended by 49 FR 1656 (1984) (codified at 40 CFR part 7).

[37] 40 CFR 7.35(b).

[38] Title VI "delegated to the agencies in the first instance the complex determination of what sorts of *disparate impacts* upon minorities constituted sufficiently significant social problems, and were readily enough remediable, to warrant altering the practices of the federal grantees that had produced those impacts." *Alexander* v. *Choate*, 469 U.S. 287, 292–94 (1985). In addition, DOJ, which is charged with coordinating the Federal government's Title VI work, Executive Order 12250, 45 FR 72995 (1980), issued regulations that provide, in part, that "Federal agencies shall publish Title VI guidelines for each type of program to which they extend financial assistance." 28 CFR 42.404(a). Furthermore, Executive Order 12250 requires agencies to issue appropriate implementing directives in the form of policy guidance or regulations that are consistent with requirements prescribed by the Attorney General. Pursuant to that authority, EPA is issuing the *Draft Revised Investigation Guidance* and the *Draft Recipient Guidance.*

[39] Clean Air Act, 42 U.S.C. 7401 to 7671q.

[40] Federal Water Pollution Control Act, 33 U.S.C. 1251 to 1387.

[41] Safe Drinking Water Act, 42 U.S.C. 300f to 300j–26.

[42] Underground injections are regulated pursuant to the Safe Drinking Water Act.

[43] Resource Conservation and Recovery Act, 42 U.S.C. 6901 to 6992k.

[44] Use permits, such as those issued for pesticides, have some similarities to the permits listed above. OCR may usa this guidance for complaints involving use permits if appropriate for the allegations and facts. For example, if a complaint alleged discriminatory effects from the application of a state-registered pesticide in a particular location, this guidance could be relevant. For investigations about such allegations, the term "permitted activity" would substitute for "source" in this guidance.

will generally form the basis for the scope of the investigation, which is further described in Section VI of this document.

Application of Title VI to issues other than environmental permitting, such as allegations concerning enforcement-related matters and public participation, will be addressed in future internal EPA guidance documents, as appropriate. Once that further guidance is available, complaints involving such allegations will be addressed under both EPA's Title VI regulations, which provide a general process for investigation of complaints, and that guidance. Until that time, such allegations will be addressed under the regulations.

This guidance does not discuss in detail specific remedies for violations of Title VI or EPA's implementing regulations because remedies tend to be case-specific. Nonetheless, it should be noted at the outset that Title VI provides a variety of options in the event that EPA finds a recipient in violation of the statute or regulations. The primary administrative remedy described in the regulations involves the termination of EPA assistance to the recipient.[45] Alternatively, EPA may use other means authorized by law to obtain compliance (*e.g.*, referral to the Department of Justice (DOJ) for judicial enforcement).[46] However, as noted elsewhere in this document, EPA encourages the use of *informal resolution* to address Title VI complaints whenever possible.

It will likely be a rare situation where the permit that triggered the complaint is the sole reason discriminatory effects exist. EPA believes that cooperative efforts between permitting agencies and communities, whether or not in the context of Title VI-related programs, frequently offer the best means of dealing with such impacts, either before or after an investigation and finding. Efforts that focus on all contributions to the adverse disparate impact, not just from the permit at issue, will likely yield the most effective long-term solutions.

The statements in this document are intended solely as guidance. This document is not intended, nor can it be relied upon, to create any rights or obligations enforceable by any party in litigation. EPA may decide to follow the guidance provided in this document, or to act at variance with the guidance, based on its analysis of the specific facts presented. This guidance may be revised to reflect changes in EPA's approach to implementing Title VI. In addition, this guidance does not alter in any way, a regulated entity's obligation to comply with applicable environmental laws. This guidance uses mandatory language when repeating explicit requirements found in EPA's Title VI regulations. The remainder of the guidance is discretionary and gives EPA flexibility to address the particularities of each complaint.

This guidance does not address complaints against EPA recipients that are Federally-recognized Indian tribes. That subject will be addressed by EPA in separate guidance because the applicability of Title VI to Federally-recognized Indian tribes involves unique issues of Federal Indian law.

D. Coordination With Recipient Guidance

Concurrently with this Draft Revised Investigation Guidance, EPA has issued *Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs* (*Draft Recipient Guidance*), which provides a series of recommendations designed to improve existing programs of EPA recipients and reduce the likelihood or necessity for persons to file Title VI complaints. Implementation of the approaches suggested by the *Draft Recipient Guidance* should reduce the likelihood or necessity for communities to file Title VI administrative complaints with EPA alleging either: (1) Discriminatory human health or environmental effects resulting from the issuance of permits; or (2) discrimination during the public participation process associated with the permit. The *Draft Revised Investigation Guidance* and the *Draft Recipient Guidance* documents were developed concurrently to ensure consistency. Furthermore, both Title VI guidance documents reference appropriate sections of the other and share an attached glossary.

The attached *Summary of Key Stakeholder Issues Concerning EPA Title VI Guidance* document provides an additional discussion that addresses questions and concerns expressed in comments the Agency has received on the issue of Title VI guidance.

E. Principles for Implementing Title VI at EPA

In implementing Title VI and developing this draft guidance, EPA adheres to the following principles[47]:

- All persons regardless of race, color, or national origin are entitled to a safe and healthful environment.
- Strong civil rights enforcement is essential.
- Enforcement of civil rights laws and environmental laws are complementary, and can be achieved in a manner consistent with sustainable economic development.
- Potential adverse disparate *cumulative impacts* from *stressors* should be assessed, and reduced or eliminated wherever possible.
- Research efforts by EPA and state and local environmental agencies into the nature and magnitude of *exposures*, stressor *hazards*, and *risks* are important and should be continued.
- Decreases in environmental impacts through applied *pollution prevention* and technological innovation should be encouraged to prevent, reduce, or eliminate adverse disparate impacts.
- Meaningful public participation early and throughout the decision-making process is critical to identify and resolve issues, and to assure proper consideration of public concerns.
- Early, preventive steps, whether under the auspices of state and local governments, in the context of voluntary initiatives by industry, or at the initiative of community advocates, are strongly encouraged to prevent potential Title VI violations and complaints.
- Use of informal resolution techniques in disputes involving civil rights or environmental issues yield the most desirable results for all involved.
- Intergovernmental and innovative problem-solving provide the most comprehensive response to many concerns raised in Title VI complaints.

F. EPA's Nondiscrimination Responsibilities and Commitment

Title VI is inapplicable to EPA actions, including EPA's issuance of permits, because it only applies to the programs and activities of recipients of Federal financial assistance, not to Federal agencies. The statute clearly excludes Federal agencies from its definition of "program or activity."[48] Nonetheless, EPA is committed to a policy of nondiscrimination in its own permitting programs. The equal protection guarantee in the Due Process Clause of the U. S. Constitution prohibits the Federal government from engaging in intentional

[45] 40 CFR 7.130(a).

[46] *Id.*

[47] The guiding principles were adapted, in part, from the consensus principles identified by the Title VI Implementation Advisory Committee under EPA's National Advisory Council for Environmental Policy and Technology.

[48] 42 U.S.C. 2000d–4a.

discrimination.[49] Moreover, section 2–2 of Executive Order 12898, "Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," [50] directs Federal agencies to ensure, in part, that Federal actions substantially affecting human health or the environment do not have discriminatory effects based on race, color, or national origin. Consequently, EPA intends to conduct itself in a manner consistent with EPA's Title VI regulations.

II. Framework for Processing Complaints

The following discussion describes how OCR intends to process Title VI complaints alleging discriminatory effects in the context of environmental permitting under EPA's Title VI implementing regulations.[51] In order to find a recipient in violation of the discriminatory effects standard in EPA's Title VI implementing regulations, OCR would determine whether the recipient's programs or activities have resulted in an unjustified adverse disparate impact.[52] In other words, OCR would assess whether the impact is both adverse and borne disproportionately by a group of persons based on race, color, or national origin,[53] and, if so, whether that impact is justified.[54] Assessing background sources of stressors allegedly contributing to discriminatory effects may be required to understand whether an *adverse impact* exists. However, in determining whether a recipient is in violation of Title VI or EPA's implementing regulations, the Agency expects to account for the adverse disparate impacts resulting from sources of stressors (*e.g.*, facilities), stressors (*e.g.*, chemicals or pathogens), and/or impacts (*e.g.*, risk of disease) within the recipient's authority.[55]

It is worth noting that it is possible to have a violation of Title VI or EPA's Title VI regulations based solely on discrimination in the procedural aspects of the permitting process (*e.g.*, public hearings, translations of documents) without a finding of discrimination in the substantive outcome of that process (*e.g.*, discriminatory human health or environmental effects). Likewise, it is possible to have a violation due to discriminatory human health or environmental effects without the presence of discrimination in the public participation process. It is also important to keep in mind that OCR is committed to pursuing informal resolution of Title VI complaints whenever possible because informal resolution will often lead to the most expeditious and effective outcome for all parties.[56]

A. Summary of Steps

The steps that OCR will follow in complaint processing, as required by EPA's Title VI implementing regulations, are summarized below. These steps comport with the Federal government-wide standard for processing Title VI complaints.[57]

1. Acknowledgment of Complaint

OCR will notify the complainant and the recipient in writing within five calendar days of the receipt of the complaint by EPA.[58] The recipient may then make a written submission responding to, rebutting, or denying the complaint within 30 calendar days of receiving the notification.[59]

2. Acceptance for Investigation, Rejection, or Referral

A complaint may contain more than one allegation. Each allegation that satisfies the jurisdictional criteria[60] will be accepted for investigation[61] within 20 calendar days of acknowledgment of its receipt, and the complainant and the recipient will be so notified.[62] In some cases, individual allegations within a single complaint may be treated differently. Some allegations may meet the jurisdictional criteria in EPA's implementing regulations, some may not, and still others may need further clarification.

If OCR does not accept an allegation for investigation, it will be rejected or referred to the appropriate Federal agency.[63] A referral is appropriate when it is evident that another Federal agency has jurisdiction over the subject matter.[64] If a complaint lacks sufficient information to determine whether any of the allegations contained in it should be accepted for investigation, OCR expects to request clarification. OCR will then decide whether to accept the allegation for investigation or to reject it within 20 calendar days of receiving the clarifying information. Failure of a complainant to respond within the specified time period OCR provides in its letter requesting clarification may result in rejection of those allegations.

3. Investigation

OCR intends to promptly investigate all Title VI complaints that satisfy the jurisdictional criteria.[65] If a complaint is accepted for investigation, OCR will first attempt to resolve it informally.[66] If informal resolution fails, OCR will conduct a factual investigation to determine whether the permit(s) at issue will create an adverse disparate impact or add to an existing adverse disparate impact on persons based on race, color, or national origin. The investigation would consider any steps taken by the recipient to address Title VI concerns, as described in sections V and VI. Within 180 calendar days from the start of the complaint investigation, OCR will notify the recipient by certified mail of preliminary findings.[67] If, based on its investigation, OCR concludes that there is no discriminatory effect (*i.e.*, no unjustified adverse disparate impact), the complaint will be dismissed.[68] If OCR finds that there is a discriminatory effect, a preliminary finding of noncompliance with EPA's Title VI regulations will be made.[69]

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[49] See U.S. Const. amend. V; see also *Washington* v. *Davis*, 426 U.S. 229, 239 (1976); *Bolling* v. *Sharpe*, 347 U.S. 497, 499–500 (1954).

[50] Section 2–2 provides: Each Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin. Executive Order 12898, 59 FR 7629 (1994).

[51] 40 CFR part 7.

[52] See 40 CFR 7.30, 7.35 (stating prohibitions against discrimination).

[53] See section VI (describing analysis for determining whether adverse disparate impact exists).

[54] See section VII (discussing justification).

[55] See section VI.B.2. (discussing scope of investigation).

[56] See section IV (discussing informal resolution).

[57] See 28 CFR 42.101 to 42.112 (DOJ's regulations implementing Title VI); 28 CFR 42.401 to 42.415 (DOJ's regulations for coordinating enforcement of Title VI); Executive Order 12250, 45 FR 72995 (1980) (Executive Order giving authority for coordinating Federal government's implementation of Title VI to DOJ).

[58] 40 CFR 7.120(c).

[59] 40 CFR 7.120(d)(1)(iii).

[60] See section III.A. (describing jurisdictional criteria).

[61] "Acceptance" of a complaint merely indicates that the complainant has satisfied the basic jurisdictional criteria described in this section. The fact that OCR accepts a complaint for investigation does not in any way mean that a finding of *noncompliance* with Title VI will result. OCR must conduct an investigation to determine whether the recipient has complied with its Title VI responsibilities.

[62] 40 CFR 7.120(d)(1)(i), (ii).

[63] 40 CFR 7.120(d)(1).

[64] 40 CFR 7.125.

[65] 40 CFR 7 120.

[66] 40 CFR 7.120(d)(2). See also section IV. (discussing informal resolution). Even in cases where informal resolution occurs, OCR may investigate the allegations to some extent to get a better understanding of the facts and circumstances.

[67] 40 CFR 7.115(c)(1).

[68] 40 CFR 7.120(g).

[69] 40 CFR 7.115(c).

4. Preliminary Finding of Noncompliance

If OCR makes a preliminary finding of noncompliance with the regulations, it will notify both the recipient and the complainant, and send a copy to the EPA grant award official (Award Official) and the Assistant Attorney General for Civil Rights.[70] OCR's notice generally will include recommendations for the recipient to achieve *voluntary compliance* and notification of the recipient's right to engage in voluntary compliance negotiations.[71] In determining whether a recipient is in violation of Title VI or EPA's implementing regulations, the Agency expects to assess whether the adverse disparate impact results from factors within the recipient's authority to consider as defined by applicable laws and regulations. The recipient may submit a written response, within 50 calendar days of receiving the preliminary finding, demonstrating that the preliminary findings are incorrect or that compliance may be achieved through steps other than those recommended by OCR.[72]

5. Formal Finding of Noncompliance

If, within 50 calendar days of receipt of the notice of preliminary finding, the recipient either fails to submit a written response or states that it does not agree to OCR's recommendations, OCR will issue a formal written determination of noncompliance to the recipient within 14 calendar days. A copy of the formal determination of noncompliance will also be sent to the Award Official and the Assistant Attorney General for Civil Rights.[73]

6. Voluntary Compliance

EPA's Title VI regulations provide that the recipient will have 10 calendar days from receipt of the formal determination of noncompliance within which to come into voluntary compliance.[74] If the recipient fails to meet this deadline, OCR must start procedures to deny, annul, suspend, or terminate EPA assistance, or may use any other means authorized by law to ensure compliance, including referring the matter to DOJ for litigation.[75]

[70] 40 CFR 7.115(c).

[71] *Id.*

[72] 40 CFR 7.115(d).

[73] *Id.*

[74] See section VII.A.3. (discussing voluntary compliance), 40 CFR 7.115(e).

[75] 40 CFR 7.115(e), 7.130(b). OCR may postpone or pause proceedings to deny, annul, suspend, or terminate EPA assistance, if the recipient has demonstrated a good faith effort (*e.g.*, signed a voluntary compliance agreement) to come into compliance.

7. Hearing/Appeal Process

Within 30 calendar days of receipt of the formal finding of noncompliance, the recipient must file a written answer and may request a hearing before an EPA administrative law judge (ALJ). Following the hearing and receipt of the ALJ's determination, the recipient may, within 30 calendar days, file its exceptions to that determination with the Administrator. The Administrator may elect to review the ALJ's determination. If the Administrator decides not to review the determination, then the ALJ's determination is final. If the Administrator reviews the determination, all parties will be given reasonable opportunity to file written statements. Subsequently, if the Administrator decides to deny an application for financial assistance, or annul, suspend, or terminate EPA assistance, that decision becomes effective 30 calendar days after the Administrator submits a written report to Congress.[76]

Recipients may be able to challenge EPA's finding in court. Moreover, those who believe they have been discriminated against in violation of Title VI or EPA's implementing regulations may challenge a recipient's alleged discriminatory act in court without exhausting their Title VI administrative remedies with EPA.[77]

B. Roles and Opportunities To Participate

1. Recipients

OCR may work closely with recipients to ensure that the Agency has a complete and accurate record of all relevant information pertaining to the complaint, and a full understanding of the recipient's position relating to the allegations. In order for OCR to perform the appropriate analyses, one of the most important things recipients may do as early as possible is to provide OCR with all of the information relevant to the complaint, including, but not limited to, background information, the permit application(s), monitoring data, computer *modeling*, other aspects of the recipient's analysis of the application(s), and any information relating to steps the recipient took to address potential Title VI concerns, as described in Section V. B. of this document. OCR may request interviews of a recipient's staff, and copies of or access to relevant documents in the recipient's possession. Moreover, under EPA's Title VI regulations, OCR has the authority to obtain information from recipients and interview recipient staff.[78] Full and expeditious disclosure of such information would facilitate resolution of Title VI complaints.[79]

EPA's Title VI implementing regulations provide the recipient with several opportunities to respond to the complaint and to OCR's finding. First, the recipient may make a written submission responding to, rebutting, or denying the allegations raised in a complaint within 30 calendar days of receiving notification that OCR has received the complaint for investigation.[80] Second, OCR will attempt to resolve the complaint informally, during which time the recipient will be able to state its position. Third, if OCR makes a preliminary finding of noncompliance with the regulations, the recipient may submit a written response within 50 calendar days of receiving the preliminary finding, demonstrating that the preliminary findings are incorrect or that compliance may be achieved through steps other than those recommended by OCR.[81] Finally, if OCR begins the procedure to deny, annul, suspend, or terminate EPA assistance, recipients may request a hearing before an ALJ[82] and, if the ALJ's decision upholds a finding of noncompliance, the recipient may then file exceptions with the Administrator.[83]

2. Complainants

Once OCR accepts a complaint for investigation, complainants may play an important role in the administrative process; however, that role is determined by the nature and circumstances of the claims. As with the recipient, one of the most important things that complainants may do is to provide OCR with all of the information in their possession relevant to their complaint. OCR may request interviews of complainants, and copies of or access to relevant documents in the complainant's possession.

Also, complainants may play an important role in the informal resolution process. Upon accepting a complaint for investigation, OCR may suggest that the complainant and the recipient attempt to informally resolve

[76] 40 CFR 7.130(b).

[77] See *Powell* v. *Ridge*, 189 F.3d 387, 397–400 (3d Cir.), cert. denied, 120 S. Ct. 579 (1999) (finding that citizens have a private right of action under agency's regulations promulgated under section 602 of Civil Rights Act of 1964).

[78] 40 CFR 7.85(b), (f).

[79] In addition to considering information supplied by recipients, OCR will also evaluate information provided by complainants and may develop its own information and analyses.

[80] 40 CFR 7.120(d)(1).

[81] 40 CFR 7.115(d).

[82] 40 CFR 7.130(b)(2).

[83] 40 CFR 7.130(b)(3).

their issues with minimal direct involvement by OCR. In such cases, complainants would clearly have a significant role in the process. Alternatively or in addition to that process, OCR may seek to informally resolve the complaint directly with the recipient. In those situations, the complainant's role is determined by the nature and circumstances of the claims.

It is important to note that EPA does not represent the complainants, but rather the interests of the Federal government, in ensuring nondiscrimination by its recipients. The investigation of Title VI complaints does not involve an adversarial process between the complainant and the recipient. Instead, it should be viewed as OCR following up on information that alleges EPA funds are being used inappropriately. Consequently, the complainants do not have the burden of proving that their allegations are true, although their complaint should present a clearly articulated statement of the alleged violation. It is OCR's job to investigate allegations and determine compliance, although OCR may have difficulty conducting its investigation if complainants are unable or unwilling to provide relevant information. In addition, because the Title VI administrative process is not an adversarial one between the complainant and recipient, there are no appeal rights for the complainant built into EPA's Title VI regulatory process.

III. Accepting or Rejecting Complaints

A. Criteria

It is the general policy of OCR to investigate all administrative complaints concerning the conduct of a recipient of EPA financial assistance [84] that satisfy the jurisdictional criteria in EPA's implementing regulations.[85] OCR does not expect to investigate complaints that are so incoherent that they cannot be considered to be grounded in fact and those that fail to provide an avenue for contacting the complainant (*e.g.*, no phone number, no address).

OCR intends to accept and investigate a complaint if it meets the following jurisdictional criteria:

(1) It is written (*i.e.*, oral complaints will not be accepted for investigation); [86]

(2) It identifies the entity that allegedly performed the discriminatory act [87] and describes the alleged discriminatory act(s) that violates EPA's Title VI regulations (*i.e.*, an act of intentional discrimination or one that has the effect of discriminating on the basis of race, color, or national origin); [88]

(3) It is filed within 180 calendar days of the alleged discriminatory act(s); [89] and

(4) It is filed by:

(a) A person who was allegedly discriminated against in violation of EPA's Title VI regulations;

(b) A person who is a member of a specific class of people that was allegedly discriminated against in violation of EPA's Title VI regulations; or

(c) A party that is authorized to represent a person or specific class of people who were allegedly discriminated against in violation of EPA's Title VI regulations.[90]

EPA's Title VI regulations state that OCR will make a determination to accept for investigation, reject, or refer to the appropriate Federal agency, a complaint within 20 calendar days of acknowledgment of its receipt.[91] Also, if OCR needs clarification before any of the above listed determinations can be made on particular allegations, it will request further clarification.

If a complaint contains multiple allegations, it is possible that OCR may reject some allegations, refer some allegations to other appropriate Federal agencies, and/or request clarification on some allegations. OCR will notify the complainant and the recipient of such actions.[92]

It is expected that some recipients may voluntarily adopt individual activities or more comprehensive approaches designed to identify and address potential Title VI concerns. Section II of the *Draft Recipient Guidance* discusses steps that recipients can take to reduce the likelihood of Title VI complaints, including emphasizing effective public participation and identifying areas for development of agreements to reduce impacts. The identification and remedy of such concerns, independent of a particular permitting decision or early in a permitting process, may lead to generalized improvements in public health and the environment and may reduce the number of Title VI complaints filed with EPA. Recipients can combine individual activities and approaches encouraged in the *Draft Recipient Guidance* to address a range of potential issues that might result in Title VI complaints.[93] However, OCR's threshold decision to accept a complaint for investigation or to reject it is based on the jurisdictional criteria provided in EPA's Title VI regulations,[94] regardless of whether the recipient adopted any individual activities or a more comprehensive approach to address Title VI concerns.

B. Timeliness of Complaints

1. Start of 180-day "Clock"

Under EPA's regulations, a complaint must be filed within 180 calendar days of the alleged discriminatory act.[95] Complaints alleging discriminatory effects resulting from a permit should be filed with EPA within 180 calendar days of issuance of that permit. If the 180th day falls on a weekend or holiday, that day will not be counted and the deadline for filing will be extended to the next business day. However, weekends and holidays that occur before the 180th day should be counted toward the 180 days. OCR generally considers a complaint to be "filed" on the date that it arrives at EPA, not on the date that the complaint is mailed or otherwise transmitted to EPA by the complainant. EPA will likely accept a complaint alleging a continuing violation as long as action subject to Title VI has occurred within the 180-day period.

Allegations concerning a discriminatory public participation process should be filed within 180 calendar days of the alleged discriminatory act in that process. For example, if complainants allege that the recipient improperly excluded them from participating in a hearing, then the complaint should be filed within 180 calendar days of that hearing.

Complaints not filed within the 180 calendar day time period will generally be considered untimely and will not be accepted for investigation. While a specific complaint may be rejected on the basis of untimeliness, OCR may choose to conduct a compliance review of the recipient's relevant permit

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[84] See 40 CFR 7.15.

[85] See 40 CFR 7.120.

[86] 40 CFR 7.120(b)(1).

[87] Because EPA's Title VI regulations apply only to recipients of EPA financial assistance, OCR will, within the 20-day period, establish whether the person or entity that took the alleged discriminatory act is in fact an EPA recipient as defined by 40 CFR 7.25.

[88] 40 CFR 7.120(b)(1).

[89] 40 CFR 7.120(b)(2); see also section III.B. (discussing timeliness of complaints).

[90] 40 CFR 7.120(a). Information submitted by parties that does not satisfy these criteria may be used by OCR to determine whether to perform a compliance review under 40 CFR 7.110, 7.115.

[91] 40 CFR 7.120(d)(1).

[92] 40 CFR 7.120(d)(1)(ii).

[93] See Sections V.B.2. and VI.B.1.b. (discussing *"due weight"* for recipient's complaint-specific analyses and other Title VI efforts).

[94] See 40 CFR 7.120; see also Section III.A.

[95] 40 CFR 7.120(b)(2). It should be emphasized that "180 calendar days" is not the same as "six months."

program either at that point in time or at some future date.[96]

OCR may waive the 180-day time limit for good cause.[97] OCR will determine on a case-by-case basis whether to waive the time limit for good cause.

3. Ongoing Permit Appeals or Litigation

OCR will generally dismiss complaints without prejudice[98] if the issues raised in the complaint are the subject of either ongoing administrative permit appeals or litigation in Federal or state court. The outcome of such permit appeals or litigation could affect the circumstances surrounding the complaint and any investigation that OCR may conduct. In such cases, OCR believes that it should await the results of the permit appeal or litigation. As a result, such complaints will generally be closed, but OCR expects to waive the time limit to allow complainants to re-file their complaints after the appeal or litigation, rather than conduct a simultaneous investigation on the basis of facts that may change due to the outcome of the administrative appeal or litigation.

a. Permit Appeal Processes: OCR believes, in making a good cause determination, that it is appropriate to consider a complainant's pursuit of its Title VI concerns through the recipient's administrative appeal process. This will encourage complainants to exhaust administrative remedies available under the recipient's permit appeal process and foster early resolution of Title VI issues. Under such circumstances and after evaluating other considerations relevant to the particular case, OCR may waive the 180 day filing time limit if the complaint is filed within a reasonable time period after the conclusion of the administrative appeal process. Generally, that reasonable time period will be no more than 60 calendar days.

b. Litigation: If the complainant seeks to pursue a Title VI complaint with OCR on issues that are the subject of ongoing Federal or state court litigation, the complaint should be re-filed within a reasonable time period, generally no more than 60 calendar days after the conclusion of the litigation. However, OCR may choose not to proceed with a complaint investigation if the allegations in the complaint were actually litigated and substantively decided by a Federal court. For example, if a Federal court reviewed evidence presented by both parties and issued a decision that stated the allegations of discrimination were not true, OCR may choose not to investigate allegations in the complaint that deal with those same issues. In addition, if a state court reviewed evidence presented by both parties and issued a decision, then OCR may consider the outcome of the court's proceedings to determine if they inform OCR's decision making process.

Generally, OCR may choose to investigate if the complaint raises issues that were not actually litigated or substantively decided by a Federal court, or if it raises unique and important legal or policy issues. OCR may look for guidance to judicial principles and other provisions of law on how prior court decisions may affect OCR's determination of whether to investigate a complaint.

4. Premature Complaints

When complaints alleging discriminatory effects from a permit are filed prior to the issuance of the permit by the recipient, OCR expects to notify the complainant that the complaint is premature and dismiss the complaint without prejudice. If the complainant is not satisfied Title VI nondiscrimination requirements have been met when the permit is issued, the complainant can re-file its compliant if and when the permit is issued. In any case, OCR intends to provide the recipient with a copy of the complaint to facilitate the recipient's ability to appropriately address the concerns raised in the complaint during the permitting process.

IV. Resolving Complaints

EPA's Title VI regulations call for OCR to pursue informal resolution of administrative complaints wherever practicable.[99] To conserve EPA investigative resources and to obtain beneficial results for the parties, EPA encourages pursuit of informal resolution from the beginning of the administrative process. The term "informal resolution" refers to any settlement of complaint allegations prior to the issuance of a formal finding of noncompliance. Settlement after a formal finding is referred to as reaching "voluntary compliance." Voluntary compliance agreements must be in writing, set forth the specific steps the recipient has agreed to take, and be signed by the Director of OCR or her designee and an official with legal authority to bind the recipient.[100]

A. Reaching Informal Resolution

OCR will encourage informal resolution in both the notification of receipt of a complaint and again with acceptance of a complaint for investigation. Informal resolution may follow either of the two approaches below.

1. Informal Resolution Between Recipient and Complainant

The first approach is for the recipients and complainants to try to resolve the issues between themselves. To the extent resources are available, EPA expects to provide support for efforts at informal resolution. If the resolution results in withdrawal of the Title VI administrative complaint, OCR would expect to dismiss the complaint, notify the recipients and complainants, and close the complaint file. OCR encourages recipients to consider the use of alternative dispute resolution (ADR) techniques when appropriate to informally resolve the complaint. ADR includes a variety of approaches including the use of a third party neutral acting as a mediator or the use of a structured process through which the parties can participate in shared learning and creative problem solving to reach a consensus.[101]

2. Informal Resolution Between EPA and Recipient

A second approach is for OCR and the recipient to reach agreement on relief. Depending upon the facts and circumstances of the complaint, OCR may seek participation from the complainant, the permittee, or others. In appropriate situations, OCR expects to use ADR techniques to informally resolve the complaint.

OCR will discuss offers by recipients to reach informal resolution at any point during the administrative process before the formal finding. However, it is OCR's responsibility to ensure that the interests of the Federal government are served and no violations of Title VI or EPA's implementing regulations exist in a recipient's programs or activities. Therefore, before any agreement between the recipient and OCR can be reached, an investigation may be needed to determine the appropriate relief and/or corrective action necessary to eliminate or reduce to the extent required by Title VI the adverse disparate impacts.

[96] See, 40 CFR 7.110, 7.115.

[97] 40 CFR 7.120(b)(2).

[98] In other words, OCR may dismiss the complaint, but that dismissal would not prohibit the complainant from re-filing its complaint at a later date.

[99] 40 CFR 7.120(d)(2).

[100] 40 CFR 7.115(f).

[101] See *Draft Recipient Guidance*, Section II.B.5. (providing additional information about alternative dispute resolution).

B. Implementing Informal Resolutions [102]

As described above, EPA encourages recipients to informally resolve Title VI complaints with complainants and/or OCR. In appropriate circumstances, the Agency expects that measures that eliminate or reduce to the extent required by Title VI the alleged adverse disparate impacts will be an important focus of the informal resolution process. Denial of the permit at issue will not necessarily be an appropriate solution. It will likely be a rare situation where the permit that triggered the complaint is the sole reason a discriminatory effect exists. During the informal resolution process, whether with EPA or with complainants, recipients can offer to provide various measures to reduce or eliminate impacts that are narrowly tailored toward contributing *sources*, including the permit at issue, using the recipient's existing permitting authorities. Such measures include changes in policies or procedures, additional pollution control, pollution prevention, *offsets*, and emergency planning and response.

Alternatively or in addition, during the informal resolution process, recipients can propose broader measures that are outside those matters ordinarily considered in the permitting process. For example, in response to a complaint alleging that airborne lead emissions from a permitted facility will have an adverse disparate impact on nearby residents, the recipient and complainant could agree to an informal resolution under which the recipient would obtain lead emissions reductions from that facility, as well as from other facilities contributing lead emission in the area. The recipient could also offer to work with other agencies to establish a household lead abatement program to further reduce the facility's impact.[103] If the issues are informally resolved and the complainant withdraws the complaint, OCR expects to close its investigation.

During the informal resolution process, the recipient may independently submit a plan to OCR to eliminate or reduce, to the extent required by Title VI, adverse disparate impacts. While the plan may be developed without consulting with complainants or others, EPA expects that informal resolution will be more successful if recipients work with OCR, complainants, and other appropriate parties to develop a plan for eliminating or reducing the alleged adverse disparate impact. Cooperative approaches, such as area-specific agreements [104] to eliminate or reduce, to the extent required by Title VI, adverse disparate impacts, will more likely adequately address the Title VI concerns.

If the recipient is pursuing a resolution with OCR, the sufficiency of such an approach would likely be evaluated in consultation with experts in the EPA program at issue. OCR may also consult with complainants, although their consent is not necessary. If, based on its review, OCR agrees that the adverse disparate impact will be eliminated or reduced, to the extent required by Title VI, pursuant to the plan, the parties will be so notified. Assuming that sufficient assurances are provided regarding implementation of such a plan, the complaint would be resolved and closed. The measures should be established in a settlement agreement to be monitored by OCR. Any settlement agreement should provide for enforcement by EPA, which may include special conditions on future assistance grants for failure to comply with the agreement.

It may be possible to reach informal resolution regarding some, but not all, of the allegations OCR accepts for investigation. Those not informally resolved will be investigated and resolved through the process outlined in EPA's Title VI regulations and in accordance with this guidance. OCR may also reopen a complaint if the recipient does not comply with its commitments in the settlement agreement.

V. Investigative Procedures

The process of investigating a Title VI complaint is not analogous to a judicial process in which plaintiffs and defendants must each present information and arguments supporting a particular finding. EPA, like other Federal agencies, is responsible for investigating formal complaints concerning the administration of programs by recipients of financial assistance. However, EPA expects that this process will often be substantially improved and expedited by information submitted by complainants and recipients.

A. Submission of Additional Information

During the course of the investigation, complainants and recipients may submit additional relevant information to supplement EPA's analyses. OCR intends to balance the need for a thorough investigation with the need to complete the investigation in a timely manner. Therefore, at the conclusion of interviews of the complainants, recipients, or other witnesses, OCR expects to ask each to submit, within a reasonable time of the interview (*e.g.*, 14 calendar days), any additional information that they would like considered as OCR drafts its investigative report.

EPA encourages recipients to adopt individual activities or more comprehensive approaches designed to identify and address potential Title VI concerns. Section II of the Draft Recipient Guidance offers suggestions that recipients can take to reduce the likelihood of Title VI complaints, including emphasizing effective public participation, and identifying areas for development of agreements to reduce impacts. The identification and remedy of such concerns, independent of a particular permitting decision or early in a permitting process, may lead to generalized improvements in public health and the environment, and may reduce the number of Title VI complaints filed with EPA. OCR will carefully review any information provided by a recipient concerning the procedures and outcomes of programs adopted to address Title VI concerns.

B. Granting Due Weight to Submitted Information

Under the Civil Rights Act of 1964, EPA is charged with assuring compliance with Title VI and cannot delegate its responsibility to enforce Title VI to its recipients.[105] Therefore, OCR cannot grant a recipient's request that EPA defer to a recipient's own assessment that it has not violated Title VI or EPA's regulations or that EPA rely on an assertion that a Title VI program has been followed.[106] Thus, with regard

[102] See *Draft Recipient Guidance*, section II.B.6. (providing additional information about remedial measures).

[103] See *Draft Recipient Guidance*, section II.B.4. (providing additional information about intergovernmental involvement).

[104] See sections V.B.2. and VI.B.1.b. (discussing area-specific agreements); see also, *Draft Recipient Guidance*, section II.A.2. (describing geographic area-specific approaches).

[105] 42 U.S.C. 2000d–1.

[106] See 28 CFR 50.3(b) ("Primary responsibility for prompt and vigorous enforcement of Title VI rests with the head of each department and agency administering programs of Federal financial assistance."); Memorandum from Bill Lann Lee, Acting Assistant Attorney General, U.S. Department of Justice, to Executive Agency Civil Rights Directors, p. 3 (Jan. 28, 1999) (titled *Policy Guidance Document: Enforcement of Title VI of the Civil Rights Act of 1964 and Related Statutes in Block Grant-Type Programs*) ("It is important to remember that Federal agencies are responsible for enforcing the nondiscrimination requirements that apply to recipients of assistance under their programs.").

to the processing of Title VI complaints, EPA is required to retain the:

- Ability to supplement the recipient's analysis or to investigate the issues *de novo*;
- Approval authority over any proposed resolution; and
- Ability to initiate its own enforcement actions and compliance reviews.

1. Analyses or Studies [107]

In response to allegations, or during the course of an investigation, recipients as well as complainants may submit evidence such as data and analyses to support their position that an adverse disparate impact does or does not exist.[108] EPA believes that it can, under certain circumstances, recognize the results of such analyses and give them appropriate due weight.

OCR would expect that a relevant adverse impact analysis or a *disparity* analysis would, at a minimum, generally conform to accepted scientific approaches. It may focus on a spectrum of potential adverse impacts, such as described in the analytical framework set forth in section VI below, or may be more focused, such as upon the impact of a specific pollutant on nearby populations (*e.g.*, a study regarding the impact of lead emissions on blood lead levels in the surrounding area). The weight given any information related to the level or existence of adverse impacts and the extent to which OCR may rely on it in its decision will likely vary depending upon the following elements:

- Relevance of the evidence to the alleged impacts;
- Validity of the methodologies;
- Completeness of the documentation submitted;
- Degree of consistency between the methodology used, and the findings and conclusions; and
- Uncertainties of the input data and results.

Consequently, submitted materials would be subject to scientific review by EPA experts.

OCR expects to give more weight to submitted analyses that are relevant to the Title VI concerns in the complaint and have sufficient scope, completeness, and *accuracy*. If the analyses submitted meet the elements above, OCR will not seek to duplicate or conduct such analyses, but instead will evaluate the appropriateness and validity of the relevant methodology and assess the overall reasonableness of the outcome or conclusions at issue.

If the elements above are met, then OCR will likely rely on the evidence in its decision. In the instance where a submitted analysis shows no adverse disparate impact exists, and the analysis generally follows the procedures in section VI below and meets the elements described above, then OCR may rely on it in a finding that the recipient is in compliance with EPA's Title VI regulations. If OCR's review reveals that the evidence contains *significant* deficiencies with respect to the elements above, then the analysis will likely not be relied upon in OCR's decision.

2. Area-specific Agreements

In the Draft Recipient Guidance, EPA encourages recipients to identify geographic areas where adverse disparate impacts may exist and to enter into agreements with affected residents and stakeholders to eliminate or reduce, to the extent required by Title VI, adverse disparate impacts in those specific areas.[109] Collaboration with communities and other appropriate stakeholders to develop the criteria used to identify the geographic areas and in designing potential solutions to address any adverse disparate impacts will be an important element of the approach.

An example of an approach to develop an area-specific agreement might be where a recipient, in collaboration with communities and other appropriate stakeholders, identifies a section of a city as an area where permitted lead emissions are contributing to discriminatory health effects on African Americans. The recipient then might convene a group of stakeholders with the ability to help solve the identified lead problem, including owners of facilities with lead emissions, other state and local government agencies, affected community members, and non-governmental organizations. The group may develop an agreement where each party agrees to particular actions that will eliminate or reduce the adverse lead impacts in that specific area.

Another example might be an area-specific agreement that establishes a ceiling on pollutant *releases* with a steady reduction in those pollutants over time. The period of time over which those reductions should occur will likely vary with a number of factors, including the magnitude of the adverse disparate impact, the number and types of sources involved, the scale of the geographic area, the *pathways* of exposure, and the number of people in the *affected population*. It is worth noting, however, that pre-existing obligations to reduce impacts imposed by environmental laws (*e.g.*, "reasonable further progress" as defined in Clean Air Act section 171(1)) might not be sufficient to constitute an agreement meriting due weight. Also, area-specific agreements need not be limited to one environmental *media* (*e.g.*, air emissions), they may also cover adverse disparate impacts in several environmental media (*e.g.*, air and water).

If OCR accepts a complaint for investigation involving allegations of adverse disparate impacts related to any of the permitting actions covered by an area-specific agreement, OCR expects, under certain circumstances, to review and give due weight to the agreement if it:

- Is supported by underlying analyses that have sufficient depth, breadth, completeness, and accuracy, and are relevant to the Title VI concerns; and
- Will result in actual reductions over a reasonable time to the point of eliminating or reducing, to the extent required by Title VI, conditions that might result in a finding of non-compliance with EPA's Title VI regulations.[110]

The greatest weight OCR could accord such an agreement is to find that the actions taken under it will eliminate or reduce, to the extent required by Title VI, existing adverse disparate impacts. If OCR makes such a finding, it would then close its investigation into the allegation.

If a later-filed complaint raises allegations regarding other permitting actions by the recipient that are covered by the same area-specific agreement, OCR would generally rely upon its earlier finding and dismiss the allegations. An exception to this general guideline would occur where there is an allegation or information revealing that circumstances had changed substantially such that the area-specific

[107] While recipients are not required to submit complaint-specific analyses or to develop more comprehensive Title VI approaches, such as the area-specific agreements described below, such efforts could help avoid Title VI problems by identifying and addressing potential adverse disparate impacts.

[108] This *Draft Revised Investigation Guidance* is limited to investigating allegations of discriminatory effects resulting from the issuance of permits; therefore, investigatory techniques and the concept of due weight applied in the context of allegations regarding discrimination in public participation processes are not addressed. However, the *Draft Recipient Guidance*, section II.C. contains a discussion of the circumstances under which OCR might accord a public participation process due weight.

[109] See *Draft Recipient Guidance*, section II.A.2. (discussing area-specific agreements).

[110] The determination that an area-specific agreement will result in actual reductions of adverse disparate impacts will likely entail many of the same steps described in sections VI.B.2 through 4.

agreement is no longer adequate or that it is not being properly implemented.

If OCR's review reveals that the area-specific approach, the specific agreement, or its underlying analyses do not result in actual reductions to the point of significantly reducing or eliminating impacts that would result in a finding of non-compliance with EPA's Title VI regulations, then it will likely not be relied upon in OCR's decision. In that instance, OCR would be more likely to conduct a first-hand investigation of the allegations. Throughout the investigation, EPA also intends to consider other available information, including information submitted by complainants.

C. Submission of Additional or Amended Complaints

During the course of OCR's investigations, complainants can also submit additional allegations of violations of EPA's Title VI regulations. Each additional allegation would have to satisfy the jurisdictional criteria described in section III.A. above in order to be accepted for investigation.[111] Generally, the additional allegations will be considered a new and separate complaint. In some cases, for reasons of efficiency, OCR may treat the new allegations as amendments to the existing complaint and incorporate them into the existing investigation.

For example, assume OCR accepts a complaint for investigation that only alleges that a recently issued water discharge permit has a discriminatory human health impact on African Americans. Two months after OCR conducts interviews, complainants attempt to amend their complaint by alleging that two air emissions permits issued for a different part of the source have a discriminatory effect on African Americans. In this instance, OCR will generally consider the allegations regarding the air permits as a new complaint, not an amendment to the existing complaint, because incorporating the new allegations would substantially change the scope of the existing investigation. Complainants and recipients will be appropriately notified.

If a complainant amends its complaint with additional allegations before OCR decides to accept for investigation, reject, or refer the allegations to another Federal agency, OCR intends to acknowledge receipt of the new allegations and notify the recipient. Both the complainant and the recipient should also be notified that OCR expects to make a determination to accept for investigation, reject, request clarification, or refer all of the allegations within 20 calendar days of receipt of the most recent allegations.[112]

D. Discontinued Operations/Mootness

OCR expects to dismiss allegations about discriminatory effects of a permit if, prior to commencement of any activities allowed by the permit and before OCR completes its investigation, that permit is withdrawn or revoked, or if a final decision is made by the permittee not to operate under that permit. If the activities commence under the permit at issue, but are permanently halted for any reason prior to the conclusion of OCR's investigation, OCR may continue its investigation because some discriminatory effects may have occurred as a result of operations. However, the current status of the source should be taken into account in the analysis. OCR expects that other allegations that are not specific to the permit (*e.g.*, allegations concerning state-wide issues) would not be closed because those issues may continue to exist notwithstanding the status of the permit.

E. Filing/Acceptance of Title VI Complaint Does Not Invalidate Permit

Neither the filing of a Title VI complaint nor the acceptance of one for investigation by OCR stays the permit at issue.

VI. Adverse Disparate Impact Analysis

Evaluations of alleged violations of EPA's Title VI regulations should be based upon the facts and totality of the circumstances that each case presents, and show both an adverse and disparate effect. Rather than using a single technique for analyzing and evaluating adverse disparate impact allegations in all situations, OCR expects to use several techniques within the broad framework discussed here. Moreover, OCR expects that parts of the analytical framework described in this section will be omitted, altered, or supplemented to address the particular characteristics of each complaint. Any method of evaluation chosen within that framework will be a reasonably reliable indicator of the level of potential adverse impacts and disparity.

A. Framework for Adverse Disparate Impact Analysis

The framework that OCR expects to use for determining whether an adverse disparate impact exists should generally be performed in a step-wise fashion in the order set forth below.

Step 1: Assess Applicability

- Determine the type of permit action at issue (*i.e., new permit,* renewal, modification). Generally, OCR will not initiate an investigation where the permit that triggered the complaint is a modification, such as a facility name change or a change in a mailing address, that does not involve actions related to the stressors identified in the complaint.
- Determine whether the relevant permit is covered by an area-specific agreement that OCR has already determined will eliminate or reduce, to the extent required by Title VI, the adverse disparate impacts. If so, then the investigation of the allegation will likely be closed.[113]
- If the complaint alleges discriminatory effects from emissions, including cumulative emissions, determine whether the permit action that triggered the complaint significantly decreases overall emissions at the facility. If so, then OCR will likely close the investigation of allegations regarding cumulative impacts.
- If the complaint alleges discriminatory effects from emissions, including cumulative emissions, and it specifies certain pollutants of concern, determine whether the permit action that triggered the complaint significantly decreases those pollutants of concern named in the complaint or those pollutants EPA reasonably infers are the potential source of the alleged impact. If so, then OCR will likely close the investigation of allegations regarding cumulative impacts.

Step 2: Define Scope of Investigation: Determine the nature of stressors, sources of stressors, and/or impacts cognizable under the recipient's authority; review available data; determine which sources of stressors should be included in the analysis; and develop a project plan.

Step 3: Conduct Impact Assessment: Determine whether the activities of the permitted entity at issue, either alone or in combination with other relevant sources, are likely to result in an impact.

Step 4: Make Adverse Impact Decision: Determine whether the estimated risk or *measure of impact* is adverse. If the impact is not adverse, the allegation will not form the basis of a finding of non-compliance with EPA's Title VI regulations and will be closed. If the permit action clearly leads to a decrease in adverse disparate impacts, it is not expected to form the basis of a finding of a recipient's non-compliance with EPA's Title VI regulations and will be closed.

[111] See 40 CFR 7.120.

[112] 40 CFR 7.120(d)(1).

[113] See section V.B.2. (discussing criteria for area-specific agreements that would receive due weight).

Step 5: Characterize Populations and Conduct Comparisons: Determine the characteristics of the affected population. Conduct an analysis to determine whether a disparity exists between the affected population and an appropriate *comparison population* in terms of race, color, or national origin, and adverse impact.

Step 6: Make Adverse Disparate Impact Decision: Determine whether the disparity is significant. If it is not significant, the allegation will not likely form the basis of a finding of non-compliance with EPA's Title VI regulations and will likely be closed.

Each of these steps is described more fully below.

B. Description of Adverse Disparate Impact Analysis

1. Assess Applicability

Assessing the applicability involves three initial considerations as outlined below.

a. Determine Type of Permit: Allegations that concern impacts resulting from a recipient's permitting actions can arise in several different contexts: (1) The issuance of new permits; (2) the renewal of existing permits; and (3) the modification of existing permits. Regardless of the type of permit involved, if a complaint is filed with OCR alleging that the recipient violated Title VI or EPA's regulations, OCR's decision to accept the complaint for investigation or to reject it must be based on the jurisdictional criteria provided in EPA's Title VI regulations.[114]

Modifications, such as a facility name change or a change in a mailing address, that do not involve actions related to the stressors identified in the complaint, generally will not form the basis for a finding of noncompliance and will likely be closed.

The following type of permit actions could form the basis for initiating a Title VI investigation of the recipient's permitting program:

- Permit actions, including new permits, renewals, and modifications, if the permit causes a net increase in the level of stressors or predicted risks or measures of impact (*e.g.*, an increase in pollutants with no offsetting reductions).
- Permit actions, including new permits, renewals, and modifications, that allow existing levels of stressors, predicted risks, or measures of impact to continue unchanged.

If an allegation regarding a permit modification is accepted for investigation, EPA expects the analysis would only evaluate the modification and its effects.

There are two situations where OCR will likely close its investigation into allegations of discriminatory effects:[115]

(1) If the complaint alleges discriminatory effects from emissions, including cumulative emissions, and the permit action that triggered the complaint significantly decreases overall emissions[116] at the facility; and

(2) If the complaint alleges discriminatory effects from emissions, including cumulative emissions, and the permit action that triggered the complaint significantly decreases all pollutants of concern named in the complaint or all the pollutants EPA reasonably infers are the potential source of the alleged impact.[117]

In both situations, the recipients should demonstrate[118] (not merely assert) that the decrease is actual and is significant.[119] The decreases should be in the same media, as well as from the same facility, as alleged in the complaint (*i.e.*, a decrease in discharges to water may not form the basis for closing investigations into allegations of cumulative air impacts). The decreases are measured based on actual, contemporaneous[120] emissions from the facility being permitted. In situations where OCR determines that significant uncertainty exists regarding the significance of the overall decrease or whether the decrease will actually occur, OCR will normally resolve such uncertainty in favor of proceeding to investigate for potential discriminatory effects. If the permit action includes an increase in any emissions, then it would generally result in a decision to investigate the cumulative impact allegation.

OCR will determine the relevant pollutant(s) or stressors of concern based on the allegations in the complaint. However, if a complaint does not explicitly name or refer to particular pollutants or stressors of concern and refers generally to "cumulative impacts" or "overburdened" communities, EPA will use its expertise to determine which pollutants or stressors are of concern based on the complaint and the permitting action at issue.

While a specific complaint may be dismissed on the basis of a decrease, OCR may choose to conduct a compliance review of the recipient's relevant permit program either at that point in time or at some future date.[121] The analysis of whether discriminatory effects result from cumulative emissions, and any resulting remedy, would include consideration of the emissions from the permit actions that triggered the original complaint (*i.e.*, the one that had the decrease).

The above discussion regarding decreases does not affect allegations relating to public participation.

b. Determine if Permit is Part of an Agreement to Reduce Adverse Disparate Impacts: Recipients may have identified geographic areas where adverse disparate impacts may exist, and may have entered into agreements with the affected communities and stakeholders to reduce impacts in those specific areas.[122] If the relevant permit is covered by an area-specific agreement that OCR has already determined will eliminate adverse disparate impacts, then the allegation will likely be closed.

2. Define Scope of Investigation

Determine the nature of stressors, sources of stressors, and/or impacts cognizable under the recipient's authority; review available data; determine which sources of stressors should be included in the analysis; and develop a project plan.

In defining the scope of an investigation, OCR expects to rely on four sets of information: The complaint's allegations, an understanding of the recipient's authorities, the results of an evaluation of relevant scientific information, and relevant available data. In particular, assessing background sources of stressors (*e.g.*, mobile source air

[114] 40 CFR 7.120. See also section III.A.

[115] This guidance does not alter in any way, a regulated entity's obligation to comply with applicable environmental laws. Merely proposing a decrease in emissions does not entitle the permit applicant to a permit.

[116] Assessing a significant overall decrease would entail taking into account factors such as total quantity and relative *toxicity* of the emissions reductions.

[117] It is important to remember that OCR will treat a decrease in emissions at a particular facility differently from an area-specific agreement that eliminates adverse disparate impacts as discussed in section V.B.2. While the decrease in emissions from a single permit may result in dismissal of the instant complaint, other complaints regarding permit renewals and increases in emissions for other sources in the area may be investigated. However, if OCR determines that an area-specific agreement meets the criteria described in section V.B.2, then investigations into future complaints regarding permit actions covered by the area-specific agreement generally will be closed.

[118] A recipient may use actual monitoring data, reasonable estimates, permit limits, parametric monitoring, or any other reliable means to demonstrate the decrease to the satisfaction of EPA.

[119] EPA will determine significance of a decrease in the context of a specific case.

[120] Contemporaneous emissions decreases are required. Banking over time is not a basis for a decrease dismissal.

[121] See 40 CFR 7.110, 7.115.

[122] See section V.B.2. (discussing criteria for area-specific agreements that would receive due weight).

emissions, non-point source runoff) allegedly contributing to discriminatory effects, as discussed below, may be required to understand whether an adverse impact is created or exacerbated. However, in determining whether a recipient is in violation of Title VI or EPA's implementing regulations, the Agency expects to account for the adverse disparate impacts resulting from sources of stressors, stressors, and/or impacts cognizable under the recipient's authority.[123]

a. Determine the Nature of Stressors and Impacts Considered: In determining the nature of stressors (*e.g.*, chemicals, noise, odor) and impacts to be considered, OCR would expect to determine which stressors and impacts are within the recipient's authority to consider, as defined by applicable laws and regulations. These could include laws and regulations that concern permitting programs and laws and regulations that involve broader, cross-cutting matters, such as state environmental policy acts. For example, a state statute might require all major state actions (including the issuance of certain air pollution control permits) to take into consideration impacts resulting from noise and odors associated with the action. Even if these were not explicitly covered by the permitting program, they would appropriately be considered as part of the adverse disparate impact analysis, since the recipient has some obligation or authority regarding them. A recipient need not have exercised this authority for the stressor or impact to be deemed within the recipient's authority to consider.

OCR will also review the allegations presented in the complaint concerning geographic scope, sources of concern, pollutants or other stressors, and potentially affected populations. OCR expects to supplement this review using available data on identified stressors, as well as others that may be associated with the identified permitted activities, (*e.g.*, TRI and other pollutant inventories that include chemicals not listed in most permits) and other sources of stressors. This review will include information about the characteristics of the sources and stressors (*e.g.*, toxicity, physical-chemical properties) as well as available reports describing possible exposures or risks of release of stressors from permitted activities and sources.

b. Determine Universe of Sources: In performing assessments of potential adverse disparate impacts, OCR may consider other relevant and/or nearby sources of similar stressors for inclusion in the analysis. Those included in the analysis are referred to as the *universe of sources.* When a complaint contains more than one allegation, there may be more than one appropriate universe of sources for an investigation. OCR intends to determine the appropriate universe(s) of sources based upon the allegations and facts of a particular case.

As noted above, the relevant universe of sources contributing to the potential adverse impacts could include, if appropriate, background sources (*e.g.*, mobile source air emissions, non-point source runoff). For example, in the case of lead, preexisting or estimated children's blood lead levels that may result from both a permitted source and household lead paint exposures would be used to help decide whether additional emissions of lead are adverse. Thus, cumulative impacts of regulated and unregulated sources can be considered to determine the cumulative level of potential adverse impacts. OCR would generally expect to assess potential adverse cumulative impacts to the extent appropriate data are available, taking into account the uncertainties associated with the data.

In many cases, the nature of the sources of stressors, the stressors, or the impact being alleged is clear from the complaint. For example, complainants may allege that air emissions from specific chemical plants have resulted in higher cancer rates for Hispanics living near those facilities. In some cases, the nature of the sources of stressors or other important information, is not clear. For example, complainants may allege that Asian Americans are "overburdened by pollution" or suffer a variety of impacts from multiple, unidentified types of sources.

In cases where it is unclear, OCR will attempt to determine the source of the stressors and/or the nature of the impact(s) being alleged, based on the type of permitted entity at issue and the kinds of impacts EPA expects could result from the situation described in the complaint. This determination would be made after consulting such resources as scientific literature reviews, engineering studies, and technical experts.

In addition to considering the scope of the allegations and the circumstances of each complaint, OCR expects that the universe of sources will fall into three main categories. One category includes allegations that involve a permitted facility that is one of a number of similar sources in a geographic area. These facilities, together or in conjunction with background sources, may present a cumulative adverse disparate impact or may reflect a pattern of adverse disparate impact. In these cases, OCR expects an assessment will need to evaluate the cumulative impacts of pollution from a broad universe of regulated and permitted sources[124] (*e.g.*, large manufacturing facilities), as well as regulated but usually unpermitted sources (*e.g.*, some paint stripping or metal finishing operations, mobile sources, sources of surface water runoff), and unregulated sources.

Another universe of sources may include only those that are regulated or permitted. For example, a complaint may allege that the permitting of sanitary landfills throughout the state resulted in discriminatory human health effects for African Americans. If the complaint does not contain an allegation of cumulative impacts from multiple sources, then without any evidence to suggest that permitted sanitary landfills is an inappropriate universe of sources, OCR would investigate the impacts from those regulated sources (*e.g.*, sanitary landfills) described in the complaint.

In some instances, a third universe of sources category, a single permitted entity alone, may support an adverse disparate impact claim. While such a case has not yet been presented to EPA, it might, for example, involve a permitted activity that is unique (*i.e.*, "one of a kind") under a recipient's program, such as a permit to store or dispose of a unique type of stressor (*e.g.*, radioactive materials, pathogens). In these cases, only pollutants or other stressors from the specific individual entity that was the focus of the complaint would be considered in the adverse disparate impact analysis. Background sources would generally not be considered in the analysis.

Where the activities covered by a recipient's authority constitute a portion of the impact, OCR would expect to attempt to conduct an assessment to identify the relative contribution of various source categories. Some cases may require updating the scope of the assessment as a result of an initial review of available materials or investigation. For example, available data estimates or initial assessments of the status of environmental conditions in a study area may change.

[123] See section VII (discussing findings of noncompliance).

[124] In this context, "regulated or permitted" sources include those with permits, as well as those subject to Federal or state requirements for reporting of waste generation or emissions (*e.g.*, Toxics Release Inventory reporters, Resource Conservation and Recovery Act hazardous waste generator sites).

Having identified the relevant sources and stressors, OCR would then expect to define the overall scope of the adverse disparate impact investigation, and develop time and resource estimates. The investigation may focus on one or more exposure *pathways* that stressors could travel from the permitted entity and other sources to potential *receptors*. This process will also involve forming a project team; assessing data availability, relevance, and reliability; and reviewing the availability of assessment tools, such as appropriate mathematical models and *exposure scenarios*. The team would develop an initial project scope plan, identify information products, and create a schedule with milestones for the analysis.

3. Impact Assessment

Determine whether the activities of the permitted entity at issue, either alone or in combination with other relevant sources, may result in an adverse impact.

In this step, the investigatory team develops an assessment to determine whether the alleged discriminatory act may cause or is associated with one or more impacts. This involves confirming that an entity is a source of stressor(s) that could cause or be associated with an exacerbation of the alleged impacts, and that there is a plausible mechanism and *exposure route* (*e.g.*, release of a stressor with known *chronic toxicity* effects that may be transported via air to receptors for inhalation). EPA expects to attempt to quantify potential impacts, using data on sources, stressors, and associated potential impacts. While EPA will rely on the best available relevant data in its investigations, the utility of available data to make a finding will likely vary with the environmental *medium*, geographic area, and the recipient's program, among other things. OCR expects to use all readily available relevant data in conducting its assessments.

However, data may not be readily available for many types of impacts, or where available, may not be relevant to the appropriate geographic area. In some situations, the data may be insufficient to perform an analysis. OCR expects to use available data in a hierarchical fashion, depending on their completeness and reliability, placing greatest weight on the most reliable. The following is an example of this hierarchy of data types, in approximate descending order of preference, that OCR expects to use for assessments:

- Ambient monitoring data;
- Modeled exposure concentrations or surrogates in various environmental media;
- Known releases of pollutants or stressors into the environment;
- The manufacture, use, or storage of quantities of pollutants, and their potential for release; and
- The existence of sources or activities associated with potential exposures to stressors (*e.g.*, facilities that are generally likely to use significant quantities of toxic chemicals which could be routinely or catastrophically released; types of agricultural production usually associated with chemical application).

Depending on the allegations in a particular case, and the availability of data, any of these above sources of information may be considered relevant.

The reliability, degree of scientific acceptance, and uncertainties of impact assessment methods varies greatly. In each case, the investigation report is expected to include a discussion of uncertainties in the impact assessment. OCR expects to weigh these uncertainties in the data and methods as part of its decision process (in Step 5). As part of its identification and development of methods for conducting impact assessments, OCR submitted several example assessment tools for review by the EPA *Science Advisory Board*.[125] OCR expects to select from the following set of approaches. The facts and circumstances of each complaint will determine whether a likely causal link exists.

Direct link to impacts. The strongest evidence demonstrating a causal link between the alleged discriminatory act and the alleged adverse impact would directly link an adverse health or environmental outcome with the source of a stressor. Although such evidence is preferred in reaching a decision, it is rarely available. Not only must one have a set of geographically-specific health or environmental outcome data (*e.g.*, age-adjusted cancer rates), but also evidence that the health or environmental outcomes stem from environmental stressors from the permitted entity. Many types of adverse health impacts may require years of exposure to a large number of people in order to be observed in *health outcome* data.

Risk. Another approach involves prediction of potentially significant exposures and risks resulting from stressors created by the permitted activities or other sources. These predictions may be based on *ambient* levels of stressors derived from monitoring or modeling, with information about the likelihood of toxic effects occurring. In estimating cancer risks, such *unit risk factors* estimate the probability of contracting a cancer case for a unit of exposure.[126] For example, an area's predicted cancer risk could be based on the estimated ambient concentration times the unit risk factor. These could be assessed for single chemicals, or be summed for multiple chemicals, based on releases from a single source or a combination of sources and background levels.[127]

Toxicity-weighted emissions. This approach sums the releases of multiple stressors (usually chemicals) that may be associated with significant risks, weighted by a relative measure of each's toxicity or potential to cause impacts. This approach does not present an explicit prediction of ambient concentrations or levels of the stressors. For example, OCR could obtain or estimate the release quantity of each chemical stressor from a source, multiply it by a chronic toxicity *potency factor* score, then sum the products across chemicals to yield a total toxicity-weighted stressor score per source. Sources with higher levels of toxicity-weighted stressors would be expected to be associated with a higher likelihood of causing potential adverse impacts.

Concentration levels. This approach would include modeled or monitored ambient concentrations of stressors that may indicate potential levels of concern. For example, if the result of an analysis is a series of chemical concentration estimates, these would be compared to benchmarks of concern for each chemical separately. These benchmarks may be based on several things, including toxicity potency factors

[125] The findings were presented in the December 1998 report, *An SAB Report: Review of Disproportionate Impact Methodologies; A Review by the Integrated Human Exposure Committee (IHEC) of the Science Advisory Board (SAB).* The report and related materials are available on the OCR Web site at *http://www.epa.gov/civilrights/investig.htm.*

[126] A unit of exposure could include an exposure scenario of a person breathing, on average over a lifetime, a concentration of 1 microgram of pollutant per cubic meter of air.

[127] For non-*carcinogens*, it is not possible to estimate a probability of occurrence (*i.e.*, risk); however; a ratio of the estimated exposures to *benchmark* levels can be calculated (*i.e.*, a *hazard quotient*). Hazard quotients for individual chemicals may be combined to create a cumulative *hazard index*, which may be used to evaluate the cumulative impact potential. If an exposure occurs at a level below the benchmark level (which would result in a hazard index value less than 1), this usually indicates that no adverse effects would occur. A *reference dose* is a frequently used example of such a benchmark. However, if an exposure occurs above a benchmark level, it may not be possible to conclude from those data alone that an effect would necessarily occur.

similar to those outlined in the Risk discussion above, or rely on less quantitative data.

4. Adverse Impact Decision

Determine whether an estimated risk or measure of impact is significantly adverse. If the impact is not significantly adverse, the allegation is not expected to form the basis of a finding of non-compliance with EPA's Title VI regulations and will likely be closed.

OCR intends to use all relevant information to determine whether the predicted impact is significantly adverse under Title VI. Generally, OCR would first evaluate the risk or measure of impact compared to benchmarks for significance provided under any relevant environmental statute, EPA regulation, or EPA policy. Where the risks or other measure of potential impact meet or exceed a significance level, they generally would be recognized as adverse under Title VI.

OCR will work with other appropriate EPA offices to evaluate the results. If exposures exceed established environmental or human health benchmarks, the appropriate EPA program office or the Office of Enforcement and Compliance Assurance will be notified so they may take appropriate action under environmental laws and regulations. OCR will coordinate its investigation into potential Title VI violations with any actions taken by other EPA offices. Where no adverse impacts are present for any of the sources or combination of sources described above, the allegation will not form the basis of a finding of non-compliance with EPA's Title VI regulations and will be closed.

This evaluation would need to take into account considerations such as policies developed for single stressors or sources without explicit consideration of cumulative contributions and uncertainties in estimates. In some cases, the relevant environmental laws may not identify regulatory levels for the risks of the alleged human health impact or may not address them for Title VI purposes. For example, the alleged impact may result from cumulative or other risk of effects from multiple environmental exposure *media.* In such cases, OCR could consider whether any scientific or technical information indicates that those impacts should be recognized as adverse under Title VI. In making that determination, OCR would work closely with other EPA offices with relevant regulatory programs. Again, where no such risks or impacts are present for any of the sources or combination of sources described above, the allegation will not form the basis for a finding of non-compliance with EPA's Title VI regulations and will be closed.

a. Example of Adverse Impact Benchmarks: EPA uses a range of risk values for implementing various environmental programs, depending upon the legal, technical, and policy context of the decision at issue. Based on these values, OCR would expect that cumulative risks of less than 1 in 1 million (10^{-6}) of developing cancer would be very unlikely to support a finding of adverse impact under Title VI. OCR may make a finding in instances where cumulative risk levels fall in the range of 1 in 1 million (10^{-6}) to 1 in 10,000 (10^{-4}). OCR would be more likely to issue an adversity finding for Title VI purposes where the cumulative cancer risk in the affected area was above 1 in 10,000 (10^{-4}). A finding of adverse impact at this stage of the investigation does not represent a finding of noncompliance under Title VI, but rather represents a criterion for proceeding further in the analysis.

For cumulative non-cancer health effects, which are often measured as a hazard index, the range of values previously used is less well documented, and has been less often applied in a *cumulative exposure* context. Based on the available precedents, OCR generally would be very unlikely to use values of less than 1 to support a finding of adverse impact under Title VI. Values above 1 cannot be represented as a probability of developing disease or other effect.[128] Generally, the farther the hazard index is above 1, the more likely OCR will be to issue an adversity finding under Title VI.

Compliance with environmental laws does not constitute per se compliance with Title VI. Frequently, discrimination results from policies and practices that are neutral on their face, but have the effect of discriminating. EPA recognizes that most permits control pollution rather than prevent it altogether. Also, there may be instances in which environmental laws do not regulate certain concentrations of sources, or take into account impacts on some subpopulations which may be disproportionately present in an affected population. For example, there may be evidence of adverse impacts on some subpopulations (*e.g.*, asthmatics) and that subpopulation may be disproportionately composed of persons of a particular of a race, color, or national origin. Title VI is concerned with how the effects of the programs and activities of a recipient are distributed based on race, color, or national origin. A recipient's Title VI obligation exists in addition to the Federal or state environmental laws governing its environmental permitting program.

b. Use of National Ambient Air Quality Standards: EPA and the states have promulgated a wide series of regulations to implement public health protections. Some of these regulations are based on assessment of public health risks associated with certain levels of pollution in the ambient environment. The *National Ambient Air Quality Standards (NAAQS)* established under the Clean Air Act are an example of this kind of health-based *ambient standard* setting. By establishing an ambient, public health *threshold*, the primary NAAQS contemplate multiple source contributions and establish a protective limit on cumulative pollution levels that should ordinarily prevent an adverse air quality impact on public health. Air quality that adheres to such standards (*e.g.*, air quality in an *attainment area*) is presumptively protective of public health in the general population.

If an investigation includes an allegation raising air quality concerns regarding a pollutant regulated pursuant to a primary NAAQS, and where the area in question is attaining that standard, the air quality in the surrounding community will generally be considered presumptively protective and emissions of that pollutant should not be viewed as "adverse" within the meaning of Title VI. However, if the investigation produces evidence that significant adverse impacts may occur, this presumption of no adverse impact may be overcome.

For example, one situation where the presumption could be overcome is the following: An area may be in attainment with the lead NAAQS, but in some cases residents could still suffer adverse effects from lead. The lead standard was designed to take into account both exposures from inhalation of airborne lead (subject to the standard) and exposures resulting from non-air pathways such as ingestion of lead contained in paint, soil, or water (not subject to the standard).[129] Contributions to total exposure from non-air sources, however, can vary widely, and unusually high levels of lead in paint, soil, or water might cause residents of some areas to experience adverse effects even if the standard is

[128] For further discussions of this issue, see the preceding footnote.

[129] See 43 FR 46248, 46252–54 (Oct. 5, 1978); *Lead Industr. Ass'n* v. *EPA*, 647 F.2d 1130, 1141–45 (D.C. Cir. 1980).

met. In such cases, the presumption of no adverse impacts from lead could be overcome.[130]

c. Assessing Decreases in Adverse Impacts in a Permit Action: In some circumstances, such as where a decrease in certain emissions is accompanied by an increase in other emissions and OCR determines that the permit action identified in the complaint clearly leads to a significant decrease in adverse disparate impacts, OCR's voluntary compliance measures will take that decrease into account, because it is unlikely the permit is solely responsible for the adverse disparate impacts.[131] In general, OCR expects any alleged decrease in impact to be clearly evident and will likely involve the same types of pollutants and pathways that are alleged in the complaint. Generally, when determining whether the alleged discriminatory act increases, decreases, or does not affect the level of adverse impacts, OCR expects to evaluate the allowable release levels in the permit.

5. Characterize Populations and Conduct Comparisons

Identify and determine the characteristics of the affected population, and conduct an analysis to determine whether a disparity exists between the affected population and an appropriate comparison population in terms of race, color, or national origin, and adverse impact. If there is no disparity, the allegation will not form the basis of a finding of non-compliance with EPA's Title VI regulations and will be closed.

a. Identify and Characterize Affected Population: The first element of this step is to identify the affected population. The affected population is that which suffers the adverse impacts of the stressors from assessed sources. Depending on the allegations and facts in the case, various affected populations may be identified.[132] The affected population may be categorized, for example, by likely risk or measure of impact above a threshold of adversity, or by the sources or pathways of the adverse impacts.

The impacts from permitted entities and other sources are not always distributed in a predictable and uniform manner. Therefore, the predicted degree of potential impacts could be associated with a possible receptor population in several ways. Based on Step 3's assessment, which predicted the magnitude (and in some cases, the geographic distribution) of stressor levels associated with adverse impacts, OCR expects to use mathematical models, when possible, to estimate the location and size of the affected populations. An area of adverse impacts may be irregularly shaped due to environmental factors or other conditions such as wind direction, stream direction, or topography. Likewise, depending upon the location of a plume or pathway of impact, the affected population may or may not include those people with residences in closest proximity to a source.

However, simpler approaches based primarily on proximity may also be used where more detailed (*e.g.*, modeled) estimates cannot be developed. The proximity analysis would reflect the environmental medium and impact of concern in the case. For example, for air releases, an inverse relationship with distance from a source could be used within a circle (*i.e.*, the further away from a source, the less the potential degree of impact to a population). For surface water releases, the impact allocation might involve identifying downstream receptor populations. All of these approaches may incorporate the contribution of other sources of chemical stressors to assess potential cumulative impacts.

The analysis would also attempt to determine the race, color, or national origin of the affected population(s). OCR intends to use available data and demographic analysis methods, such as the currently available U.S. Census information[133] in *geographic information systems* (GIS) to describe the affected population. In conducting a typical analysis to determine an affected population, OCR would likely generate data estimating the race, color or national origin and density of populations within a certain proximity from a facility or within the geographic distribution pattern predicted by scientific models. OCR would expect to use the smallest geographic resolution feasible for the demographic data, such as census blocks, when conducting disparity assessments. OCR would expect to characterize the affected population for the permitted entity at issue, as well as those in other areas of estimated cumulative adverse impacts.

b. Comparison to Assess Disparity: The second element of this step involves a disparity analysis that compares the affected population to an appropriate comparison population to determine whether disparity exists that may violate EPA's Title VI regulations. OCR would consider the allegations and factors of each case, and would generally expect to draw relevant comparison populations from those who live within a *reference area* such as the recipient's jurisdiction (*e.g.*, an air district, a state, an area of responsibility for a branch office), within a political jurisdiction (*e.g.*, town, county, state), or an area defined by environmental criteria, such as an airshed or watershed. For example, where a complaint alleges that Asian Americans throughout a state bear adverse disparate impacts from permitted sources of water pollution, an appropriate reference area would likely be the state. Comparison populations would usually be larger than the affected population, and may include the *general population* for the reference area (*e.g.*, a county or state population which includes the affected population) or the *non-affected population* for the reference area (*e.g.*, those in the reference area who are not part of the affected population).

A disparity may be assessed using comparisons both of the different prevalence of race, color, or national origin of the two populations, and of the level of risk of adverse impacts experienced by each population. Since there is no one formula or analysis to be applied, OCR intends to use appropriate comparisons to assess disparate impact depending on the facts and circumstances of the complaint.

As part of OCR's assessment, it is expected that at least one and usually more of the following comparisons of demographic characteristics will be conducted:

- The demographic characteristics of an affected population to demographic characteristics of a non-affected population or general population;[134]
- The demographic characteristics of most likely affected (*e.g.*, highest 5% of

[130] Note also that even if an area is in compliance with the NAAQS for a *criteria pollutant*, there still may be Title VI concerns related to other criteria pollutants, to toxic hot spots associated with *hazardous air pollutants* under section 112 of the Clean Air Act, or to pollutants from other media.

[131] See section VII.A.3. (discussion of voluntary compliance).

[132] This could occur when a complaint contains more than one allegation, and/or different populations may be disproportionately affected by different pollutants or exposure pathways.

[133] The most current geographically detailed Census information is from the 1990 U.S. Census. Information from the 2000 U.S. Census will not be available until 2001.

[134] See, *e.g.*, *Draft Revised Demographic Information, Title VI Administrative Complaint re: Louisiana Department of Environmental Quality/ Permit for Proposed Shintech Facility, April, 1998 (Shintech Demographic Information, April 1998)*, Facility Distribution Charts D1 through D40 found at *http://www.epa.gov/civilrights/shinfileapr98.htm*, files t–d01–10.pdf, t–d11–20.pdf, t–d21–30.pdf, t–d31–40.pdf.

risk or measure of adverse impact) to least likely affected (*e.g.*, lowest 5%) [135]

- The probability of different demographic groups (*e.g.*, African Americans, Hispanics, Whites) in a surrounding jurisdiction being in an affected population or a highly affected portion of it; [136]

OCR also expects to compare the level of risk or measure of potential adverse impacts:

- The average risk or measure of adverse impact by demographic group within the general population or within an affected population; [137] or
- The range of risk or measure of adverse impact by demographic group within the general population or within an affected population.

6. Adverse Disparate Impact Decision

Determine whether the disparity is significant. If it is not, the complaint will likely be closed.

The final step of the analysis is to determine whether the disparities demonstrated by comparisons in Step 5 are significant under Title VI. OCR generally expects to review both the disparity in demographic characteristics and in levels of risk or other measure of potential impacts, in the context of the allegations identified in the complaint and investigation scope.

In determining whether a disparity is significant, OCR generally expects to review several possible measures (described in the previous step), and take into account to what degree they are consistent. Moreover, the significance of a given level of disparity may vary depending upon the facts and circumstances of the complaint and comparison population at issue. Nevertheless, OCR intends to apply a few basic rules in assessing the significance of disparity.

For instance, measures of the demographic disparity between an affected population and a comparison population would normally be statistically evaluated to determine whether the differences achieved *statistical significance* to at least 2 to 3 standard deviations. The purpose of this initial review is to minimize the chance of a false measurement of difference where none actually exists (*e.g.*, because of an inherent variability of the data). OCR expects to work with statisticians to evaluate initial disparity calculations done by investigators.

Initial assessments of disparity would thus be informed by expert opinion, and take into account other considerations such as uncertainties. For example, some time may have passed since the most recent Census, and residential population shifts may have occurred, resulting in uncertainties in demographic characterization. Uncertainties in adverse impact assessments might include the accuracy of predicted risk levels, and the applicability of these levels to potentially exposed populations (*e.g.*, subsistence fish consumption patterns).

OCR would also expect to evaluate the demographic disparity measures and their results in the context of several related factors such as:

- Affected population size;
- Overall demographic composition of the general comparison population (especially those with very low or very high proportions of particular subgroups); and
- The overall proportion of a jurisdiction's total population within an affected population.

In evaluating disparity in adverse impacts, OCR would expect to also consider such factors as:

- The level of adverse impact (*e.g.*, a little or a lot above a threshold of significance);
- The severity of the impact; and
- Its frequency of occurrence.

OCR expects to weigh carefully the potential uncertainties along with these factors in making the determination of whether an adverse disparate impact exists, and whether a finding of noncompliance with EPA's regulations is warranted. EPA generally would expect the risk or measure of potential adverse impact for affected and comparison populations to be similar under properly implemented programs, unless justification can be provided.

A finding of an adverse disparate impact is most likely to occur where significant disparity is clearly evident in multiple measures of both risk or measure of adverse impact, and demographic characteristics, although in some instances results may not be clear. For example, where credible measures of both the demographic disparity and the disparity in rates of impact are at least a factor of 2 times higher in the affected population, OCR would generally expect to find disparate impact under Title VI. Similarly, in instances where the disparity of both demographic characteristics and impacts are relatively slight, a finding of disparate impact is somewhat less likely (*e.g.*, in cases where both the disparity of impact and demographics are not statistically significant). Finally, where a large disparity exists in terms of impact and a relatively slight disparity exists with regard to demographics (or vice versa), EPA will ordinarily attempt to balance these factors, taking into account the particular circumstances of the case. For instance where a large disparity (*e.g.*, a factor of 10 times higher) exists with regard to a significant adverse impact, OCR might find disparate impact even though the demographic disparity is relatively slight (*e.g.*, under 20%).

However, for both demographic disparity and disparity of impact, there is no fixed formula or analysis to be applied. The significance of a level of disparity may vary depending upon the facts and circumstances of the complaint, the analysis, and the comparison population. Given the wide variability in many of the underlying factors such as the proportion of racial subgroups in the general population, [138] it is impossible to determine a single factor that could be applicable in all cases.

VII. Determining Whether a Finding of Noncompliance is Warranted

In order to find a recipient in violation of the discriminatory effects standard in EPA's Title VI implementing regulations, OCR would determine whether the recipient's programs or activities have resulted in an unjustified adverse disparate impact. [139] In other words, OCR would assess whether the impact is both adverse and borne disproportionately by a group of persons based on race, color, or national origin, [140] and, if so, whether that impact is justified. [141] While assessing background sources of stressors contributing to alleged

[135] These values approximate the outlying portions (sometimes called the "tails") of a distribution of risk that are beyond two standard deviations of the mean value.

[136] See, *e.g.*, *Shintech Demographic Information*, April 1998, the last column in Tables A1 through B7 found at *http://www.epa.gov/civilrights/shinfileapr98.htm*, table-a1.pdf through table-b.7.pdf.

[137] See, *e.g.*, *Shintech Demographic Information*, April 1998, last column in Tables C1 through C5 found at *http://www.epa.gov/civilrights/shinfileapr98.htm*, table-c1.pdf through table-c5.pdf.

[138] For example, state populations may be used as a basis for comparison with the affected population. Recent data show that the proportion of total "minority" populations (defined as other than white races together with white Hispanics) range from about 4% to 50% of various state populations. In light of that variance, the adoption of a single level of disparity, such as a factor of 2, as the only indicator of significance, would lead to highly inconsistent results. If a complaint alleged discrimination against minorities, as defined above, in some states, a significant disparity would be presumed to exist if less than 10% of an affected population were minority, whereas in other states, the percentage would have to reach 100%.

[139] See 40 CFR 7.30, 7.35 (stating prohibitions against discrimination).

[140] See section VI (describing analysis for determining whether adverse disparate impact exists).

[141] See section VII.A. (discussing justification).

discriminatory effects may be required to understand whether an adverse impact is created or exacerbated, in determining whether a recipient is in violation of Title VI or EPA's implementing regulations and the extent of any voluntary compliance measures, the Agency expects to account for the adverse disparate impacts resulting from sources of stressors, the stressors themselves, and/or impacts cognizable under the recipient's authority.[142]

OCR also expects to base a preliminary finding of noncompliance on the results of the adverse disparate impact analysis, and any information submitted by the complainant or recipient, and any defenses presented by the recipient during the investigation. Within 50 calendar days of OCR's preliminary findings, the recipient may:

(1) Submit a written response demonstrating that the preliminary findings are incorrect;

(2) Agree to OCR's recommendations for voluntary compliance; or

(3) Argue that compliance may be achieved through steps other than those recommended by OCR.[143]

If the recipient does not take one of these actions, EPA's Title VI regulations require OCR to send a formal written determination of noncompliance to the recipient, the Award Official, and the Assistant Attorney General.[144] If the recipient does not voluntarily comply within 10 calendar days of receipt of the formal determination of noncompliance, OCR must start proceedings to deny, annul, suspend, or terminate EPA assistance.[145] Recognizing that elimination of adverse disparate impacts within 10 days may not be achievable; therefore, OCR may postpone proceedings to deny, annul, suspend, or terminate EPA assistance, if the recipient has demonstrated a good faith effort (*e.g.*, signed a voluntary compliance agreement) to come into compliance.

A. Justification

The recipient will have the opportunity to "justify" the decision to issue the permit notwithstanding the adverse disparate impact, based on a substantial, legitimate justification.[146] The recipient may offer its justification following its receipt of the notice of complaint,[147] or after a preliminary finding of non-compliance with Title VI or EPA's implementing regulations.[148]

1. Types of Justification

Determining what constitutes an acceptable justification will necessarily be based on the facts of the case. Generally, the recipient would attempt to show that the challenged activity is reasonably necessary to meet a goal that is legitimate, important, and integral to the recipient's institutional mission.[149] For example, because recipients are environmental permitting agencies, OCR expects to consider provision of public health or environmental benefits (*e.g.*, waste water treatment plant) to the affected population from the permitting action to be an acceptable justification because such benefits are generally legitimate, important, and integral to the recipient's mission.

In addition, OCR would also likely consider broader interests, such as economic development, from the permitting action to be an acceptable justification, if the benefits are delivered directly to the affected population and if the broader interest is legitimate, important, and integral to the recipient's mission. OCR will generally consider not only the recipient's perspective, but the views of the affected community in its assessment of whether the permitted facility, in fact, will provide direct, economic benefits to the community. However, a justification may be rebutted if EPA determines that a less discriminatory alternative exists, as discussed below.

2. Less Discriminatory Alternatives

Courts have defined the term "less discriminatory alternative" to be an approach that causes less disparate impact than the challenged practice, but is practicable and comparably effective in meeting the needs addressed by the challenged practice.[150] OCR will likely consider cost and technical feasibility in its assessment of the practicability of potential alternatives. Practicable *mitigation* measures[151] associated with the permitting action could be considered as less discriminatory alternatives, including, in some cases, modifying permit conditions to lessen or eliminate the demonstrated adverse disparate impacts.

3. Voluntary Compliance

OCR expects to explore a range of possible options to achieve voluntary compliance. Narrowly focused approaches to eliminate or reduce unjustified adverse disparate impacts might deal solely with the permitted activities that triggered a complaint. More broadly focused remedial efforts might deal with the combined impacts of several contributing sources, taking into account their approximate relative contributions. The Agency expects to account for the adverse disparate impacts resulting from factors within the recipient's authority.[152] In addition, the approaches explored may be assessed with respect to implementation considerations such as cost and technical feasibility.

As previously mentioned, it is expected that denial or revocation of a permit is not necessarily an appropriate solution, because it is unlikely that a particular permit is solely responsible for the adverse disparate impacts. Also in some circumstances, such as where OCR's investigation shows that the permit action identified in the complaint clearly leads to a significant decrease in adverse disparate impacts, OCR will likely recommended voluntary compliance measures that take this decrease into account. OCR will likely recommend that the recipient focus on other permitted entities and other sources within their authority to eliminate or reduce, to the extent required by Title VI, the adverse disparate impacts of their programs or activities.

B. Hearing/Appeal Process

If compliance with EPA's Title VI regulations cannot be achieved by informal resolution or voluntary compliance, OCR must make a finding of noncompliance.[153] Within 30 days of receipt of the formal finding of noncompliance, the recipient must file a written answer and may request a hearing before an EPA ALJ.[154] If the recipient does not request a hearing, it shall be deemed to have waived its right to a hearing, and OCR's finding will be deemed to be the ALJ's

[142] See section VI.B.2. (discussing defining the scope of an investigation).

[143] 40 CFR 7.115(c), (d).

[144] 40 CFR 7.115(d).

[145] 40 CFR 7.115(e), 7.130(b).

[146] In some circumstances, recipients may justify adverse disparate impacts under Title VI as described in the text. This guidance, however, does not concern justifications for any violations of environmental law.

[147] 40 CFR 7.120(d)(1)(ii).

[148] 40 CFR 7.115(d)(2).

[149] See *Donnelly* v. *Rhode Island Bd. of Governors for Higher Educ.*, 929 F. Supp. 583, 593 (D.R.I. 1996), aff'd on other grounds, 110 F.3d 2 (1st Cir. 1997); *Elston* v. *Talladega County Bd. of Educ.*, 997 F.2d 1394, 1412–13 (11th Cir. 1993); see also *NAACP* v. *Medical Center, Inc.*, 657 F.2d 1322, 1328 (3d Cir. 1981).

[150] See *Georgia State Conference of Branches of NAACP* v. *Georgia*, 775 F.2d 1403, 1417 (11th Cir. 1985); *Elston*, 997 F.2d at 1413.

[151] For further discussion of potential measures that may reduce or eliminate adverse disparate impacts, see section IV.B.

[152] See section VI.B.2.a. (discussing the scope of recipient's authority).

[153] 40 CFR 7.115(e); 7.130(b)(1).

[154] 40 CFR 7.130(b)(2)(i), (ii).

determination.[155] Following receipt of the ALJ's determination, the recipient may, within 30 days, file its exceptions to that determination with the Administrator.[156] The Administrator may, within 45 days after the ALJ's determination, serve notice that she will review the determination.[157] If the recipient does not file exceptions or if the Administrator does not provide notice of review, the ALJ's determination constitutes the Administrator's final decision.[158] If the Administrator reviews the determination, all parties will be given reasonable opportunity to file written statements.[159] Subsequently, if the Administrator's decides to deny an application, or annul, suspend, or terminate EPA assistance, that decision becomes effective 30 days after the Administrator submits a written report to Congress.[160]

Appendix A: Glossary of Terms

The definitions provided in this glossary only apply to the *Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs* and the *Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits*, unless a direct citation to the Code of Federal Regulations (CFR) is provided. Please note that italicized words are ones for which definitions are available in this glossary.

Term	Definition
Accuracy	The measure of the correctness of data, as given by the difference between the measured value and the true or standard value.
Adverse Impact	A negative impact that is determined by EPA to be significant, based on comparisons with benchmarks of significance. These benchmarks may be based on law, policy, or science.
Affected Population	A population that is determined to bear an adverse impact from the source(s) at issue.
Ambient Standards	A level of pollutants prescribed by regulations that are not to be exceeded during a given time in a defined area. (*e.g., National Ambient Air Quality Standards.*)
Ambient	Any unconfined portion of a water body, land area, or the atmosphere, such as the open air or the environment surrounding a source.
Attainment Area	An area considered to have air quality as good as or better than the national ambient air quality standards as defined in the Clean Air Act. An area may be an attainment area for one pollutant and a non-attainment area for others. (*See also non-attainment area.*)
Benchmark	A value used as a standard for comparison. Several types used in Title VI investigations include benchmarks of exposure level, risk, and significance. (*See also RfC, RfD, threshold.*)
Brownfields	Abandoned, idled, or under-used industrial and commercial facilities/sites where expansion or redevelopment is complicated by real or perceived environmental contamination. They can be in urban, suburban, or rural areas.
Carcinogen	A chemical or other stressor capable of inducing a cancer response.
Chronic Toxicity	The capacity of a substance to cause long-term harmful health effects.
Comparison Population	A population selected for comparison with an affected population in determining whether the affected population is significantly different with respect to demographic characteristics or degree of adverse impact.
Criteria Pollutants	The 1970 Clean Air Act (CAA) required EPA to set National Ambient Air Quality Standards for certain pollutants known to be hazardous to human health. EPA has identified and set standards to protect human health and welfare for six pollutants: ozone, carbon monoxide, particulate matter, sulfur dioxide, lead, and nitrogen oxide. The term, "criteria pollutants" derives from the requirement that EPA must describe the characteristics and potential health and welfare effects of these pollutants in "criteria." *See* CAA section 108.
Cumulative Exposure	Total exposure to multiple environmental *stressors* (*e.g.*, chemicals), including exposures originating from multiple *sources*, and traveling via multiple pathways over a period of time.
Cumulative Impact	The harmful health or other effects resulting from *cumulative exposure.*
Disparity (Disparate Impact)	A measurement of a degree of difference between population groups for the purpose of making a finding under Title VI. Disparities may be measured in terms of the respective composition (demographics) of the groups, and in terms of the respective potential level of *exposure*, *risk* or other measure of *adverse impact.*
Due Weight	The importance or reliance EPA gives to evidence or agreements to reduce impacts provided by recipients or complainants, depending on a review of relevance, scientific validity, completeness, consistency, and uncertainties. Where evidence or agreements prove to be technically satisfactory, OCR may rely upon that information rather than attempting to duplicate the analysis.
Environmental Council of States (ECOS).	The Environmental Council of States (ECOS) is a national non-partisan, nonprofit association of state and territorial environmental commissioners.
Exposure	Contact with, or being subject to the action or influence of, environmental *stressors,* usually through ingestion, inhalation, or dermal contact.
Exposure Pathway	The physical course a chemical or other *stressor* takes from its source to the exposed *receptor* (See also *Exposure Route.*)
Exposure Route	The avenue by which a chemical or other *stressor* comes into contact with an organism (*e.g.,* inhalation, ingestion, dermal contact).
Exposure Scenario	A set of facts, assumptions, and inferences about how *exposure* takes place that aids in evaluating, estimating, or quantifying exposures (*e.g., exposure pathway,* environmental conditions, time period of exposure, *receptor* lifetime, average body weight).
Financial Assistance	Any grant or cooperative agreement, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which EPA provides or otherwise makes available assistance in the form of: (1) Funds; (2) Services of personnel; or (3) Real or personal property or any interest in or use of such property, including: (i) Transfers or leases of such property for less than fair market value or for reduced consideration; and (ii) Proceeds from a subsequent transfer or lease of such property if EPA's share of its fair market value is not returned to EPA. 40 CFR 7.25.

[155] 40 CFR 7.130(b)(2)(ii).
[156] 40 CFR 7.130(b)(3)(i).
[157] *Id.*
[158] *Id.*
[159] 40 CFR 7.130(b)(3)(ii).
[160] 40 CFR 7.130(b)(3)(iii).

Term	Definition
General population	A comparison population that consists of the total set of persons in a jurisdiction or area of potential impact, including an *affected population*.
GIS (Geographic Information System).	An organized computer system designed to efficiently capture, analyze, and display information in a geographically referenced manner, such as a map. Commonly, GIS is used to produce maps which combine various data and analysis results together, allowing for convenient visual analysis.
Hazard	The degree of potential for a *stressor* to cause illness or injury in a *receptor,* or the inherent toxicity of a compound.
Hazard Index	A summation of *hazard quotients* for multiple chemicals; a measure of cumulative risk for substances which exhibit a *threshold* for toxicity.
Hazard Quotient	The ratio of a single substance exposure level to a *reference dose* or *benchmark* for that substance. An exposure at the same concentration as the *reference dose* would have a hazard quotient of 1.
Hazardous Air Pollutant (HAP)	Air toxics which have been specifically listed for regulation under Clean Air Act section 112.
Health Outcome	A measure of disease rate or similar impact, such as age-adjusted cancer death rate.
Impact	In the health and environmental context, a negative or harmful effect on a receptor resulting from *exposure* to a stressor (*e.g.*, a case of disease). The likelihood of occurrence and severity of the impact may depend on the magnitude and frequency of exposure, and other factors affecting toxicity and receptor sensitivity.
Informal Resolution	Any settlement of complaint allegations prior to the issuance of a formal finding of noncompliance by EPA.
Measure of Impact	A measure used in evaluating the significance of an impact, which may involve the general likelihood, frequency, rate or number of instances of the occurrence of an impact. (See *risk*, which is similar, but expressed as a numeric probability of occurrence.)
Media or Medium	Specific environmental compartments such as air, water, or soil, that are the subject of regulatory concern and activities.
Mitigation	Measures taken to reduce or eliminate the intensity, severity or frequency of an adverse disparate impact.
Mobile Source	Any non-stationary source of air pollution such as cars, trucks, motorcycles, buses, airplanes, ships or locomotives.
Model/Modeling/Modeled	A set of procedures or equations (usually computerized) for estimating or predicting a value, *e.g.,* the ambient environmental concentration of a stressor. Also, the act of using a model.
National Ambient Air Quality Standards (NAAQS).	Standards established by EPA pursuant to Clean Air Act section 109 that apply for outdoor air throughout the country. (See *criteria pollutants*.)
New Permit	For the purposes of this guidance, the term "new permits" refers to the initial issuance of any permit, including permits for (1) the construction of a new facility, (2) the continued operation of an existing facility that previously operated without that type of permit, and (3) an existing facility that adds a new operation that would require a new type of permit (*e.g.,* newly issued water discharge permit), in addition to the facility's existing permits (*e.g.,* existing air emission permit). (See *permit*).
Non-affected population	The remainder of a *general population* which is not found to be part of an *affected population* (*e.g.*, a county population minus those in an affected population).
Non-Attainment Area	Area that does not meet one or more of the National Ambient Air Quality Standards for the criteria pollutants designated in the Clean Air Act.
Non-Point Source	A diffuse water pollution source (i.e., without a single point of discharge to the environment). Common non-point sources include agricultural, forestry, mining, or construction areas, areas used for land disposal, and areas where collective pollution due to everyday use can be washed off by precipitation, such as city streets. (See also *point source*).
Noncompliance	A finding by EPA that a recipient's program or activities do not meet the requirements of EPA's Title VI implementing regulations.
Offsets	A concept whereby emissions from proposed new or modified stationary sources are balanced by reductions from existing sources to stabilize total emissions.
Pathway (exposure)	The physical course a chemical or other stressor takes from its source to the exposed *receptor* (See also *Exposure Route*).
Pattern (of disparate impact)	An allegation or finding that multiple sources of a certain type are consistently associated with likely adverse impacts to a protected group.
Permit	An authorization, license, or equivalent control document issued by EPA or other agency to implement the requirements of an environmental regulation (*e.g.*, a permit to operate a wastewater treatment plant or to operate a facility that may generate harmful emissions).
Plain Language Action Network	Plain Language Action Network (PLAN) is a government-wide group working to improve communications from the federal government to the public.
Point Source	A stationary location or fixed facility from which pollutants are discharged; any single identifiable source of a stressor (*e.g.*, a pipe, ditch, small land area, pit, stack, vent, building).
Pollution Prevention	The practice of identifying areas, processes, and activities that create excessive waste products or stressors, and reducing or preventing them from occurring through altering or eliminating a process or activity.
Potency factor	A measure of the power of a toxic *stressor* to cause harm at various levels of *exposure* (sometimes based on the slope of a dose-response curve), or above a single specific value.
Receptor	An individual or group that may be exposed to *stressors*.
Recipient	Any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. 40 CFR 7.25.
Reference area	An area from which one or more comparison populations are drawn for conducting a disparity analysis.
Reference dose	See *RfC* and *RfD*.
Release	The introduction of a *stressor* to the environment, where it may come in contact with receptors. Includes, among other things, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.

Term	Definition
RfC (inhalation reference concentration).	An estimate (with uncertainty spanning perhaps an order of magnitude) of the daily *exposure* of the human population to a chemical, through inhalation, that is likely to be without risk of harmful effects during a lifetime.
RfD (oral reference dose)	An estimate (with uncertainty spanning perhaps an order of magnitude) of the daily exposure of the human population to a chemical, through ingestion, that is likely to be without risk of harmful effects during a lifetime.
Risk	A measure of the probability that damage to life, health, property, and/or the environment will occur as a result of a given hazard. In quantitative terms, risk is often expressed in values ranging from zero (representing the certainty that harm will not occur) to one (representing the certainty that harm will occur). The following are examples showing the manner in which cancer risk is expressed: E–4=1 in 10^{-4}, or a risk of 1 in 10,000; E–5=a risk of 1/100,000; E–6=a risk of 1/1,000,000. Similarly, 1.3E–3=a risk of 1.3/1000=1 chance in 770.
Risk Assessment	Qualitative and quantitative evaluation of the risk posed to human health and/or the environment by the actual or potential presence and/or use of specific *stressors*. This involves a determination of the kind and degree of *hazard* posed by a stressor (*e.g., toxicity*), the extent to which a particular group of people has been or may be exposed to the agent, and the present or potential health risk that exists due to the agent.
Science Advisory Board (SAB)	A group of external scientists who advise EPA on science and policy.
Significant	A determination that an observed value is sufficiently large and meaningful to warrant some action. (*See statistical significance*).
Source	The site, facility, or origin from which one or more environmental *stressors* originate (*e.g.,* factory, incinerator, landfill, storage tank, field, vehicle).
Statistical significance	An inference that there is a low probability that the observed difference in measured or estimated quantities is due to variability in the measurement technique, rather than due to an actual difference in the quantities themselves.
Stressor	Any factor that may adversely affect *receptors,* including chemical (*e.g., criteria pollutants,* toxic contaminants), physical (*e.g.*, noise, extreme temperatures, fire) and biological (*e.g.,* disease pathogens or parasites). Generally, any substance introduced into the environment that adversely affects the health of humans, animals, or ecosystems. Airborne stressors may fall into two main groups: (1) Those emitted directly from identifiable sources and (2) those produced in the air by interaction between chemicals (*e.g.,* most ozone).
Threshold	The dose or *exposure* level below which an adverse impact is not expected. Most carcinogens are thought to be non-threshold chemicals, to which no exposure can be presumed to be without some risk of contracting the disease.
Toxicity	The degree to which a substance or mixture of substances can harm humans or animals. (See *chronic toxicity*).
Unit risk factor	A measure of the power of a toxic *stressor* to cause cancer at various levels of *exposure* (based on the slope of a dose-response curve, combined with an *exposure scenario*).
Universe of Sources	A category of relevant and/or nearby sources of similar *stressors* to those from the permitted activity included in assessments of potential *adverse disparate impacts*.
Voluntary Compliance	Settlement between EPA and a recipient after a formal finding of noncompliance.

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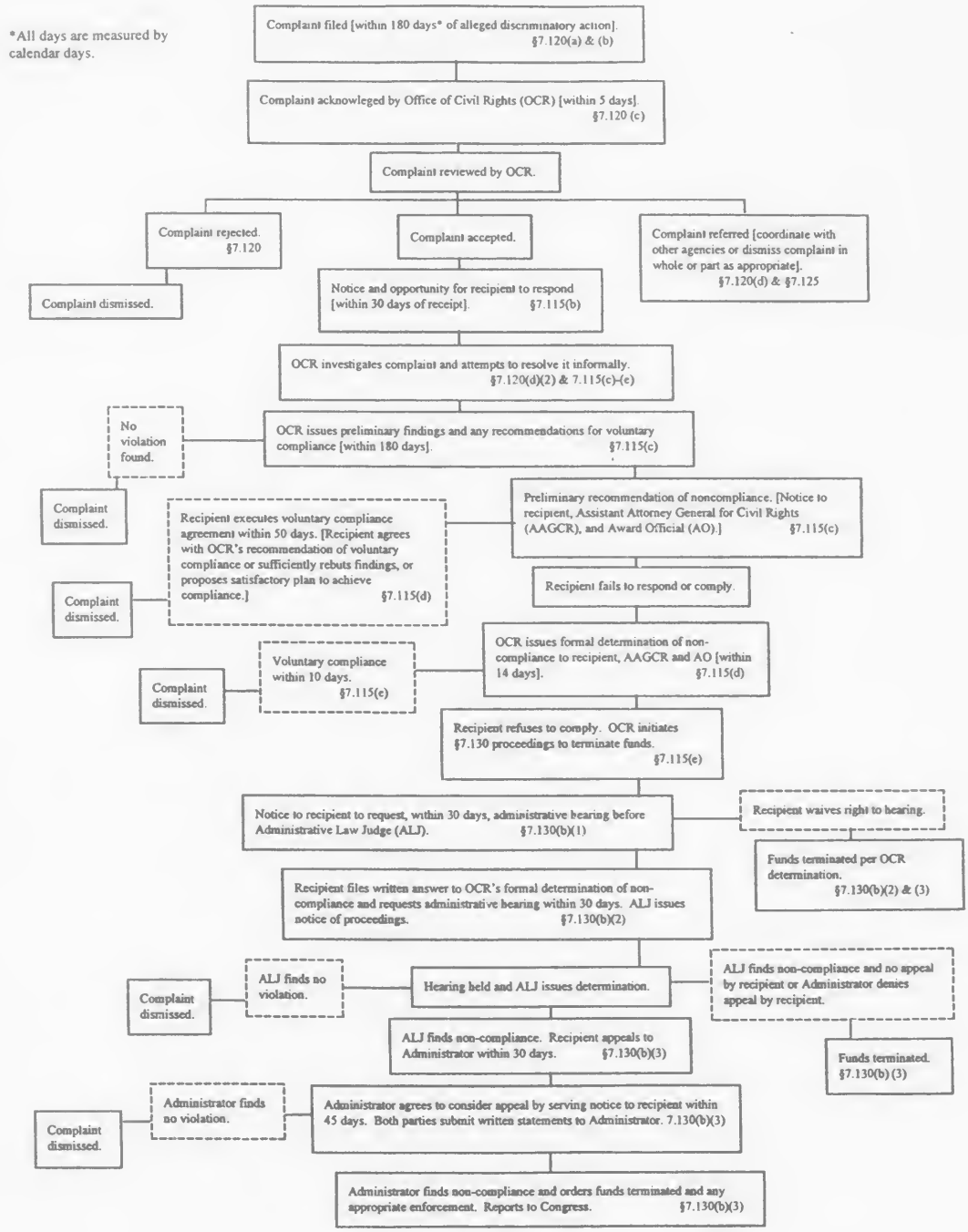
APPENDIX B: TITLE VI COMPLAINT PROCESS FLOW CHART

Title VI Complaint Process
40 CFR Part 7



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D. Summary of Key Stakeholder Issues Concerning EPA Title VI Guidance

This document summarizes and addresses the key issues raised in comments received by the U.S. Environmental Protection Agency (EPA) concerning the February 4, 1998, *Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits* (*Interim Guidance*). These key issues were raised in a number of forums, including the over 120 written comments received on the *Interim Guidance*, meetings with a number of stakeholder representatives over the past two years, the meetings of the Title VI Implementation Advisory Committee of the National Advisory Council for Environmental Policy and Technology (Title VI Implementation Advisory Committee), a facilitated meeting with a variety of stakeholders on draft options under consideration for inclusion in the revised investigation guidance, and the internal EPA and Department of Justice review processes.

This summary explains how the *Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits* (*Draft Revised Investigation Guidance*) and the *Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs* (*Draft Recipient Guidance*), which are being published in the **Federal Register** concurrently with this document, deal with the key issues raised. This summary should not be read without also considering the two draft guidance documents.

The statements in this document are intended solely as guidance. This document is not intended, nor can it be relied upon, to create any rights or obligations enforceable by any party in litigation. EPA may decide to follow the guidance provided in this document, or to act at variance with the guidance, based on its analysis of the specific facts presented. This guidance may be revised to reflect changes in EPA's approach to implementing Title VI. In addition, this guidance does not alter in any way, a regulated entity's obligation to comply with applicable environmental laws.

General Issues

Stakeholder Input

A number of commenters raised questions about the stakeholder input process for the *Interim Guidance* and the *Draft Revised Investigation Guidance*.

Response: Issuance of the *Interim Guidance* opened a continuing dialogue with stakeholders that helped to shape the Agency's *Draft Revised Investigation Guidance*. EPA provided a 90-day comment period on the *Interim Guidance* during which time more than 120 commenters representing a broad range of interested parties provided written comments. The Title VI Implementation Advisory Committee, with representatives from environmental justice organizations, community groups, state and local governments, businesses, and academia, also provided input about the *Interim Guidance*. In addition, over the past two years, EPA staff have met with other representatives from those groups to discuss their concerns about environmental justice and Title VI issues. Furthermore, in September 1999, EPA held three sessions with representatives of various stakeholder groups to discuss policy options the Agency was considering as it revised the *Interim Guidance*. (A current list of scheduled outreach meetings is posted on EPA's Office of Civil Rights' (OCR) Web site at *www.epa.gov/civilrights*).

Based upon that input and on experience gained from processing and investigating complaints during the intervening months, EPA developed the *Draft Revised Investigation Guidance*. In today's **Federal Register** document, EPA has established a 60-day public comment period on both the *Draft Revised Investigation Guidance* and the *Draft Recipient Guidance*. During the public comment period, EPA will host five public listening sessions at EPA headquarters and regional offices. Details regarding the listening sessions are provided in the Public Comment Period section of this notice. Additionally, EPA staff will meet with various stakeholder groups during the public comment period to listen to their comments.

EPA's Authority To Issue Guidance

A number of commenters raised concerns about EPA's authority to issue the *Interim Guidance*, including one who stated that EPA's regulatory authorities under Title VI extend only to prohibiting cases of intentional discrimination and not to prohibiting instances of discriminatory effects. The commenter asserted that the Supreme Court has held that the Fourteenth Amendment to the U.S. Constitution prohibits only intentional discrimination, and not instances of discriminatory effects. Likewise, the commenter claimed, the Supreme Court held that the authority granted under Title VI extends no further than the Fourteenth Amendment, and therefore does not prohibit discriminatory effects. A further commenter stated that a Supreme Court decision invalidated EPA's Title VI regulations.

Response: Title VI itself prohibits intentional discrimination.[161] To find intentional discrimination, it must be proven that "a challenged action was motivated by an intent to discriminate."[162] This standard requires a showing that the recipient was aware of the complainant's race, color, or national origin, and that the recipient acted, at least in part, because of the complainant's race, color, or national origin.[163] Evidence of discriminatory intent may be direct or circumstantial.[164]

In addition, the Supreme Court has stated that Title VI authorizes agencies to adopt implementing regulations that also prohibit discriminatory effects.[165] This is often referred to as reaching actions that have an unjustified disparate impact. In July 1994, the Attorney General issued a memorandum to the heads of all Federal agencies with Title VI responsibilities stating that "[e]nforcement of the disparate impact provisions is an essential component of an effective civil rights compliance program."[166] The Attorney General directed the head of each Federal agency "to make certain that Title VI is not violated, [and] ensure that the disparate impact provisions in [the Title VI] regulations are fully utilized."[167]

Congress intended that its policy against discrimination by recipients of Federal assistance be implemented, in part, through administrative rulemaking.[168] Federal agencies were directed to promulgate standards in the form of rules, regulations, and orders, governing the administration of Title VI.[169] Title VI "delegated to the agencies in the first instance the complex determination of what sorts of disparate impacts upon minorities constituted sufficiently significant social problems, and were readily enough remediable, to warrant altering the practices of the federal grantees that had produced those impacts."[170] EPA promulgated regulations that implement Title VI in 1973 and revised those regulations in 1984.[171]

EPA's regulations implementing Title VI adopt a discriminatory effects standard and expressly provide that:

> A recipient shall not use criteria or methods of administering its programs which have the *effect* of subjecting individuals to discrimination because of their race, color, [or] national origin * * * or have the *effect* of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, [or] national origin * * *.[172]

Frequently, discrimination results from policies and practices that are neutral on their face, but have the effect of discriminating. Facially neutral policies and practices that result in discriminatory effects violate EPA's Title VI regulations, unless it is shown that they are legitimately justified and there is no less discriminatory alternative.[173]

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[161] *Guardians Ass'n* v. *Civil Serv. Comm'n*, 463 U.S. 582, 589 (1983).

[162] *Elston* v. *Talladega County Bd. of Educ.*, 997 F.2d 1394, 1406 (11th Cir. 1993).

[163] See Civil Rights Division, U.S. Department of Justice, *Title VI Legal Manual* 48–53 (Sept. 1998).

[164] *Id.*

[165] See *Alexander* v. *Choate*, 469 U.S. 287, 292–94 (1985); *Guardians Ass'n*, 463 U.S. at, 584 n.2 (White, J.); *id.* at 623 n.15 (Marshall, J.); *id.* at 642–45 (Stevens, Brennan, Blackmun, JJ.).

[166] See Memorandum from Janet Reno, Attorney General, to Heads of Departments and Agencies that Provide Federal Financial Assistance 1 (July 14, 1994) (titled *The Use of the Disparate Impact Standard in Administrative Regulations Under Title VI of the Civil Rights Act of 1964*).

[167] *Id.*

[168] 42 U.S.C. 2000d–1.

[169] *Id.*

[170] *Alexander*, 469 U.S. at 293–94; see also Charles F. Abernathy, *Title VI and the Constitution: A Regulatory Model for Defining Discrimination*, 70 Geo. L.J. 1, 32 (1981) (concluding that Congress intended ot confer wide discretion on agencies by giving them rule making authority).

[171] 38 FR 17968 (1973), as amended by 49 FR 1656 (1984) (codified at 40 CFR part 7).

[172] 40 CFR 7.35(b) (emphasis added).

[173] See Memorandum from Attorney General, *supra* note 7, at 1–2.

In enacting Title VI, Congress relied on the Fifth and Fourteenth Amendments to the Constitution, which guarantee due process and equal protection under laws.[174] In addition, Congress relied on its authority under the spending clause of the Constitution,[175] rather than its authority under the commerce clause.[176] Title VI was not intended to serve as a regulatory measure over state and local activities, rather, it allows the Federal government to require compliance with Title VI as a condition of receiving assistance. "No recipient [was] required to accept Federal aid. If he [did] so voluntarily, he must take it on the conditions on which it [was] offered.[177] EPA is unaware of any case law that overturned the Supreme Court's decision and invalidated Federal agencies' Title VI implementing regulations.

Interplay Between Guidance and Executive Order 12898

A number of commenters argued that EPA incorrectly relied on Executive Order 12898, "Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," as authority to issue the Interim Guidance.

Response: EPA did not rely on Executive Order 12898[178] to provide authority for issuing the *Interim Guidance*. EPA relied on Title VI itself. Title VI "delegated to the agencies in the first instance the complex determination of what sorts of disparate impacts upon minorities constituted significant social problems, and were readily enough remediable, to warrant altering the practices of the Federal grantees that had produced those impacts."[179] In addition, the Department of Justice (DOJ), which is charged with coordinating the Federal government's Title VI work,[180] issued regulations that provide, in part, that "Federal agencies shall publish Title VI guidelines for each type of program to which they extend financial assistance."[181] Further, Executive Order 12250, which directed the Attorney General to coordinate the implementation and enforcement of Title VI by Federal agencies, also requires agencies to issue appropriate implementing directives either in the form of policy guidance or regulations that are consistent with requirements proscribed by the Attorney General.[182] Pursuant to that authority, EPA issued the Interim Guidance, and is now issuing the Draft Revised Investigation Guidance and the Draft Recipient Guidance.

Consistency With EPA's Title VI Regulations

Some commenters thought that the Interim Guidance was inconsistent with EPA's existing Title VI regulations at 40 CFR part 7.

Response: The *Interim Guidance* and the *Draft Revised Investigation Guidance* are both consistent with EPA's Title VI implementing regulations. The *Interim Guidance*, however, did not mention all of the elements of the investigative process described in the regulations because it only focused on certain elements of that process. As a result, some commenters may have had the mistaken impression that OCR did not intend to conform its investigations to the regulations. In order to remedy that problem, the *Draft Revised Investigation Guidance* makes clear that OCR will conform its investigations to EPA Title VI regulations and it includes a complete discussion of the regulations' complaint handling procedures, including the 30-day opportunity for recipients to respond to the allegations, as specified in 40 CFR 7.120(d)(iii). In addition, the *Draft Revised Investigation Guidance* eliminates the initial finding of disparate impact, which was included in the *Interim Guidance* primarily to promote informal resolution before a preliminary finding of noncompliance.

Interim Guidance and Notice-and-Comment Rulemaking

Some commenters argued that the *Interim Guidance* constitutes a rule and should have been issued pursuant to the Administrative Procedure Act and the requirements of the Small Business Regulatory Enforcement Fairness Act.

Response: OCR only intends the *Interim Guidance* and the *Draft Revised Investigation Guidance* to provide a framework for the *processing* of complaints filed under Title VI. The draft guidance documents update the Agency's *procedural and policy* framework to accommodate the increasing number of Title VI complaints that allege discrimination in the environmental permitting context. Neither creates any new substantive rights nor establishes any binding legal requirements. Accordingly, both the *Interim Guidance* and the *Draft Revised Investigation Guidance* are expressly exempted from the notice-and-comment rulemaking requirements of the Administrative Procedure Act by section 553(b)(A).[183] Nonetheless, EPA is publishing the *Draft Revised Investigation Guidance* in the **Federal Register** and on EPA's Web site to solicit written public comment, and EPA will also hold a series of public listening sessions to obtain additional feedback.

With respect to impacts on small entities, including small businesses, because the *Interim Guidance* did not, and the *Draft Revised Investigation Guidance* will not, establish any binding legal requirements, there is no regulatory impact to any entity of any size. The analytical requirements of the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act, only apply to certain regulations that impose an impact on those small entities directly regulated by a proposed or final regulation.[184] That is not the case here.

Scope and Applicability of the Guidance and Permit Modifications

EPA received comments regarding the scope of activities that the *Interim Guidance* is intended to address. Some felt that it should address a broader range of activities, such as allegations regarding discriminatory enforcement or discrimination in public participation processes. Other commenters felt that it should be narrowed by limiting its applicability to only new permits. EPA received numerous comments about permit modifications, some of which suggested that modifications should be covered by the guidance, and others of which suggested that all or some modifications should be excluded.

Response: In order to maximize the use of its limited resources, OCR felt

[174] For a further discussion of the legislative history of Title VI, see U.S. commission on Civil Rights, *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs* 25–30 (June 1996).

[175] U.S. Const., art. I, section 8, cl. 1.

[176] U.S. Const., art. I, section 8, cl. 3.

[177] 110 Cong. Rec. S6546 (1964) (statement of Sen. Humphrey).

[178] Executive Order 12898, 59 FR 7629 (1994). Executive Order 12898, in part, directs Federal agencies to ensure that Federal actions substantially affecting human health or the environment do not have discriminatory effects based on race, color, or national origin.

[179] *Alexander* v. *Choate*, 469 U.S. 287, 292–94 (1985); see also Charles F. Abernathy, Title VI and the Constitution: A Regulatory Model for Defining Discrimination, 70 Geo. L.J. 1, 32 (1981) (concluding that Congress intended to confer wide discretion on agencies by giving them rule making authority).

[180] Executive Order 12250, 45 FR 72995 (1980).

[181] 28 CFR 42.404(a).

[182] Executive Order 12250, section1–402.

[183] 5 U.S.C. 553(b)(A) ("Except when notice or hearing is required by statute, this subsection does not apply * * * to interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice.").

[184] *Motor & Equip. Mfg. Ass'n* v. *Nichols*, 142 F.3d 449 (D.C. Cir. 1998); *Mid-Tex Elec. Coop., Inc.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985).

that it should focus the *Interim Guidance* and the *Draft Revised Investigation Guidance* on environmental permitting because the majority of Title VI complaints filed with EPA allege discrimination associated with the issuance of environmental permits. Also, most of the complaints to date have made allegations of discriminatory *effects*; however, Title VI complaints may also allege discriminatory intent. The focus of the *Draft Revised Investigation Guidance* is on the more common effects allegations, rather than investigating allegations of discriminatory intent. Discriminatory intent complaints generally will be investigated by OCR under Title VI, EPA's Title VI regulations, and applicable intentional discrimination case law. EPA intends to issue guidance on other applications of Title VI, as appropriate, in the future.

Under the *Draft Revised Investigation Guidance*, OCR expects that any type of permit actions, including new permits, renewals, and modifications, could form the basis for an investigation if the permit allows existing levels of alleged adverse disparate impacts to continue unchanged or causes an increase (*e.g.*, landfill capacity doubled).[185] For all types of permits, the mere filing of a Title VI complaint, whether or not accepted by OCR for investigation, will not stay or reverse the permitting action.

The *Draft Revised Investigation Guidance* states that permit modifications that are merely administrative, such as a facility name change, and that do not involve actions related to the impacts identified in the complaint, are not likely to form the basis for an investigation. If this were the case, OCR would likely close the complaint investigation.[186]

The *Draft Revised Investigation Guidance* addresses permits that either result in decreases in emissions or decreases in adverse disparate impacts. OCR will likely not initiate an investigation of complaints alleging discriminatory effects from emissions, including cumulative emissions, where the permit action that triggered the complaint significantly decreases overall emissions[187] at the facility. In addition, OCR would not initiate an investigation of allegations alleging discriminatory effects from emissions, including cumulative emissions of pollutants or stressors of concern named in the complaint where the permit action that triggered the complaint significantly decreases all named pollutants of concern or all the pollutants OCR reasonably infers are the potential source of the alleged impact. Recipients should demonstrate[188] (not merely assert) that the decrease is actual and is significant.

If an investigation is conducted and OCR determines that the permit that triggered the complaint clearly leads to a significant decrease in adverse disparate impacts, then any voluntary compliance measures required by OCR take that decrease into account, because it is unlikely that particular permit is solely responsible for the adverse disparate impacts. While a specific complaint may be dismissed on the basis of a decrease, OCR may choose to conduct a compliance review of the recipient's relevant permit program either at that point in time or at some future date. (40 CFR 7.110 and 7.115). The analysis of whether discriminatory effects result from cumulative emissions, and any resulting remedy, would include consideration of the emissions from the permit actions that triggered the original complaint (*i.e.*, the one that resulted in the decrease).

Federally Recognized Indian Tribes

One commenter asserted that Tribes should not be excluded from the *Interim Guidance* because they too receive Federal funds.

Response: The *Draft Revised Investigation Guidance* does not address complaints against EPA recipients that are Federally-recognized Indian tribes. That subject will be addresses by EPA in separate guidance because the applicability of Title VI to Federally-recognized tribes involves unique issues of Federal Indian law. EPA recently concluded a consultation with Federally-recognized tribes and now plans to address the issue in collaboration with DOJ.

Application of Title VI and the Interim Guidance to EPA Permitting Actions

Several comments concerned whether Title VI and the Interim Guidance applied to EPA.

Response: EPA is committed to a policy of nondiscrimination in its own permitting programs. The equal protection guarantee in the Due Process Clause of the U. S. Constitution prohibits the Federal government from engaging in intentional discrimination.[189] Moreover, section 2–2 of Executive Order 12898[190] is designed to ensure that Federal actions substantially affecting human health or the environment do not have discriminatory effects based on race, color, or national origin. However, Title VI is inapplicable to EPA actions, including EPA's issuance of permits, because it only applies to recipients of Federal financial assistance, not to Federal agencies. The statute clearly defines "program or activity" to exclude Federal agencies.[191]

Consistency With State Permitting Procedures

A number of commenters suggested that the *Interim Guidance* was not fully consistent with state permitting procedures, and therefore inappropriate because it requires actions that may go beyond the authority provided in existing statutes and regulations.

Response: The *Interim Guidance* was issued to implement Title VI of the Civil Rights Act of 1964. It was not intended to implement environmental law. EPA believes that compliance with environmental laws does not constitute *per se* compliance with Title VI. Frequently, discrimination results from policies and practices that are neutral on their face, but have the effect of discriminating. EPA recognizes that most permits control pollution, which is beneficial, but could, in some cases, still raise Title VI concerns because environmental laws do not account for disparity on the basis of race, color, or national origin. Title VI is concerned with how the effects of the programs and activities of a recipient are distributed based on race, color, or national origin. No Federal environmental laws address the issue of a disparity of impacts based on race, color, or national origin that may result from environmental permits.

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[185] See *Draft Revised Investigation Guidance*, section VI.B.1.a.

[186] *Id.*

[187] Assessing a significant overall decrease would entail taking into account factors such as total quantity and relative toxicity of the emissions reductions.

[188] A recipient may use actual monitoring data, reasonable estimates, permit limits, parametric monitoring, or any other reliabale means to demonstrate the decrease to the satisfaction of EPA.

[189] U.S. Const. amend. V; see also *Washington* v. *Davis*, 426 U.S. 229, 239 (1976).

[190] Section 2–2 provides: Each Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.

Executive Order 12898, 59 FR 7629 (1994).

[191] 42 U.S.C. 2000d–4a. See also *Soberal-Perez* v. *Heckler*, 717 F.2d 36, 38 (2d Cir. 1983) ("[Title VI] was meant to cover only those situations where federal funding is given to a non-federal entity which, in turn, provides financial assistance to the ultimate beneficiary."); *Williams* v. *Glickman*, 936 F. Supp. 1, 5 (D.D.C 1996) ("Title VI does not apply to the programs conducted directly by federal agencies.").

Consequently, the scope of a recipient's Title VI obligation is not circumscribed by the framework established to carry out their environmental regulatory program.[192]

A recipient's Title VI obligation is layered upon its separate, but related obligations under the Federal or state environmental laws governing its environmental permitting program. Applicants for EPA financial assistance are required to submit an assurance with their applications stating that they will comply with the requirements of EPA's Title VI regulations.[193] Recipient agencies must comply with EPA's Title VI regulations, which are incorporated by reference into the grants, as a condition of receiving funding under EPA's continuing environmental programs. It is EPA's position that Title VI and EPA's implementing regulations act as a substantive bar to discrimination under programs operated by EPA assistance recipients.

A number of commenters argued that the key reasons why adverse disparate impacts might exist are controlled by factors outside the powers of state permitting agencies. One commenter cited factors such as market forces, stringency of environmental regulation and zoning, and land use laws. One commenter suggested that if disparate impact were found, EPA should curtail funding for agencies with authority over local land use planning, and not agencies with no control over siting or zoning.

Response: Some have argued that the issuance of environmental permits does not "cause" discriminatory effects.[194] Instead, they claim that local zoning decisions or siting decisions determine the location of the sources and the distribution of any impacts resulting from the permitted activities. However, in order to operate, the source's owners must both comply with local zoning requirements and obtain the appropriate environmental permit.

In the Title VI context, the issuance of a permit is the necessary act that allows the operation of a source in a given location that could give rise to the adverse disparate effects on individuals. Therefore, a state permitting authority has an independent obligation to comply with Title VI, which is a direct result of its accepting Federal assistance and giving its assurance to comply with Title VI. In accordance with 40 CFR 7.35(b), recipients are responsible for ensuring that the activities authorized by their environmental permits do not have discriminatory effects, regardless of whether the recipient selects the site or location of permitted sources. Accordingly, if the recipient did not issue the permit, altered the permit, or required mitigation measures, certain impacts that are the result of the operation of the source could be avoided. The recipient's operation of its permitting program is independent of the local government zoning activities.

Impact on States and Other Recipient's Environmental Programs

Some comments expressed concern about whether the *Interim Guidance* can be implemented consistently with environmental laws. In particular, some believed that the *Interim Guidance* may open recipients' permitting decisions to legal challenge. Others felt that the *Interim Guidance* requires recipients to address social and economic issues that they are not prepared to address.

Response: EPA prohibits discriminatory effects in programs and activities administered by its recipients. With regard to environmental permitting programs, the scope of coverage includes, but is not limited to, the screening of permit applications, the public participation process for permit issuance, and the adverse disparate impacts that may result from the permits that the recipient issues. Recipients use a variety of criteria or methods of administration to implement their permitting programs, and they have a duty to comply with their Title VI obligation in exercising their permitting authority. This means that recipients have an obligation under Title VI and EPA's regulations to ensure that their approval of a permit does not subject those protected under Title VI to unjustified discriminatory effects, including human health and environmental effects.

The *Interim Guidance* should not interfere with permitting programs that have properly been designed to meet Title VI obligations. The *Draft Recipient Guidance* suggests approaches and individual activities that recipients can develop to proactively address Title VI concerns in the permitting process.[195] In terms of states' susceptibility to legal challenges to permitting decisions, recipients are already subject to legal challenges by individuals who have a private right of action in court to enforce the nondiscrimination requirements in Title VI and EPA's Title VI implementing regulations without exhausting their administrative remedies.[196]

EPA has issued the *Draft Revised Investigation Guidance* to clarify how EPA will handle complaint investigations and thereby reduce confusion. Neither the *Interim Guidance* nor the *Draft Revised Investigation Guidance* requires EPA recipients to take any action. The documents merely provide a framework for OCR to address certain complaints. Similarly, the *Draft Recipient Guidance* only offers suggestions for recipients to address Title VI concerns, but it does not require that recipients take any action. On the other hand, Title VI and EPA's Title VI implementing regulations prohibit entities from discriminating when they accept EPA's financial assistance. Rather than impeding a recipient's efforts to balance environmental protection with other considerations and to operate its permitting program, Title VI and EPA's regulations should help guide recipients in those efforts.

Neither the *Interim Guidance* nor the *Draft Revised Investigation Guidance* requires recipients to address social and economic issues that they are not authorized to address. EPA expects to only assess the adverse disparate impact that result from factors within the recipient's authority to consider as defined by applicable laws, including those that involve broader cross-cutting matters.[197]

Public Participation and Stakeholder Input in the Permitting Process

Several comments concerned the relationship between the public participation processes required by environmental law and the process discussed in the Interim Guidance.

Response: Although the *Interim Guidance* does not specify how to approach Title VI concerns in the public participation process, the *Draft Recipient Guidance* provides suggestions and techniques that a recipient can use to develop procedures for its permitting process to ensure a non-discriminatory public participation process.[198] EPA recognizes that recipients have different resources, organizational structures, and issues. Therefore, if a recipient elects to develop or modify its public participation process, it is up to the

[192] Although not determinative, compliance with certain types of environmental standards may play a role in a Title VI investigation. See *Draft Revised Investigation Guidance* section VI.B.4.b.

[193] 40 CFR 7.80(a)(1).

[194] If an EPA recipient is involved in the siting of a facility, EPA's Title VI regulations also prohibit recipients from choosing a site that has discriminatory effects. 40 CFR 7.35(c).

[195] See Draft Recipient Guidance, section II.

[196] See *Powell* v. *Ridge*, 189 F.3d 387, 399 (3rd Cir.), cert. denied, 120 S. Ct. 579 (1999).

[197] See *Draft Revised Investigation Guidance*, section VI.B.2.a.

[198] See *Draft Recipient Guidance*, section II.B.2. (discussing factors that contribute to effective and meaningful public participation).

recipient to choose which suggestions or techniques are most suitable to address its needs. It is not limited to adopting the suggestion or technique mentioned in the *Draft Recipient Guidance*. If OCR accepts a complaint regarding a recipient's public participation process, OCR expects to give due weight [199] to a permitting program if it ensures a non-discriminatory public participation process.[200]

Need for External Guidance

Some commenters requested that EPA develop guidance for recipients to assist them in their efforts to comply with Title VI and EPA's Title VI regulations.

Response: EPA encourages recipients to address Title VI issues early in the permitting process to reduce the likelihood that Title VI complaints will be filed after a permit has been issued. Although the *Interim Guidance* does not provide a framework for addressing Title VI concerns before the permit has been issued, the *Draft Recipient Guidance* provides recipients with suggestions that they can voluntarily use to address potential Title VI problems and reduce the likelihood of Title VI complaints.

The *Draft Recipient Guidance* offers several suggestions to assist recipients in addressing those issues, including: (1) Development of new public participation procedures, or modification of existing procedures, to better incorporate and address the public's concerns; [201] (2) creation of an approach to identify areas where adverse impacts disparately affect people on the basis of race, color, or national origin, and to reduce those impacts over time; [202] and (3) performance of additional Title VI-related analyses and actions in some permitting decisions to address Title VI concerns.[203] If recipients decide to develop Title VI programs, they may take the steps they deem appropriate to address their particular Title VI concerns and they are not limited to the suggestions offered by the *Draft Recipient Guidance*.

Definition of Terms

A variety of commenters requested that EPA provide more precise definitions of terms used in the *Interim Guidance* (*e.g.*, disparate impact, affected population, mitigation). These commenters argued that because the *Interim Guidance* lacked precise definitions, they could not provide a reasonable critique. Commenters identified a number of terms that they believed would benefit from further definition and still other terms and phrases for which clarification was sought.

Response: In the *Draft Revised Investigation Guidance*, EPA provides more clarity and gives definition to many terms presented in the *Interim Guidance* by including examples within the text, as well as a glossary of terms as an attachment. However, the exact parameters of some terms, such as what constitutes a adverse impact, appropriate mitigation, and acceptable justification, will depend upon case-specific circumstances. EPA has also eliminated other terms that may have been confusing, ambiguous, or unnecessary.

Unfunded Mandates Reform Act

Some commenters felt that the *Interim Guidance* will impose an unfunded mandate on states if they must revise existing permitting processes to conform to the guidance.

Response: The Unfunded Mandates Reform Act of 1995 (UMRA) applies when an agency decides to take regulatory action through rulemaking.[204] OCR issued the *Interim Guidance* as a non-binding policy statement because the *Interim Guidance* (and the *Draft Revised Investigation Guidance*) merely provide a framework for the processing of Title VI administrative complaints. Neither document creates any new substantive rights nor establishes any binding legal requirements.

Moreover, even if OCR has issued the *Interim Guidance* as a rule, the scope of UMRA's coverage does not include the provisions of a proposed or final Federal regulation that establish or enforce nondiscrimination requirements, such as those in Title VI.[205] If one or more provisions of a Title VI-related rule fell outside this exception, the Agency would be required to assess the effects of these regulatory provisions on state, local, and tribal governments and the private sector, pursuant to Title II of UMRA.

The *Draft Recipient Guidance* was created to assist state and local governments in their efforts to address Title VI concerns. Both draft guidance documents were developed with significant input from state and local governments. EPA plans to assist state efforts by sharing methodologies and information pertaining to the adverse disparate impact assessment whenever practicable.

Brownfields and Clean-Ups

Several comments concerned the effect of the *Interim Guidance* on brownfields redevelopment, economic development, and clean-up activities.

Response: EPA does not believe that the *Interim Guidance* or the *Draft Revised Investigation Guidance* discourage brownfield redevelopment or encourage greenfield development. In fact, in a recent report analyzing the interaction between Title VI and brownfields, EPA found that "claims that EPA's Interim Title VI Guidance would hinder brownfields redevelopment are largely unfounded. * * * It is apparent from the interviews conducted for these case studies that while there are many potential issues that can forestall redevelopment at brownfields sites, Title VI is not high on the list of concerns." [206] Also, no Title VI complaints have been filed regarding EPA brownfields projects.

EPA believes that the implementation of civil rights and environmental laws is compatible and consistent with state and local recipients' efforts to achieve sustainable economic development. Addressing Title VI concerns in the permitting process does not prevent sustainable development, but rather ensures responsible development that protects the basic right of every citizen not to be discriminated against. EPA is firmly committed to continuing its work with community leaders, state and local governments, and businesses to facilitate economic development while ensuring strong protections of public health, the environment, and basic civil rights.

Both the *Interim Guidance* and the *Draft Revised Investigation Guidance* address Title VI issues related to environmental permitting decisions. EPA may, if appropriate, develop future guidance relating to Title VI and clean-up activities.

Issues Regarding the Overall Framework for Processing Complaints

Involvement of Additional Parties

Several commenters urged that additional parties be involved in the evaluation of complaints including the permit applicant, the affected

[199] See *Draft Revised Investigation Guidance*, Appendix A (defining "due weight").

[200] See *Draft Recipient Guidance*, section II.B.2. (discussing the circumstances under which OCR might accord a public participation process due weight).

[201] See *id.*, section II.B.2.

[202] See *id.*, section II.A.2.

[203] See *id.*, section II.A.3.

[204] Public Law 104–4, 109 Stat. 48 (1995) (codified at 2 U.S.C. 1501 *et seq.* (Supp. III 1998)).

[205] 2 U.S.C. 1503(2).

[206] Office of Solid Waste and Emergency Response, U.S. EPA, *Brownfields Title VI Case Studies: Summary Report 23* (1999).

community, the complainant, and the recipient of Federal assistance.

Response: Depending upon the specifics of each complaint, OCR expects to involve a variety of parties in its investigations of Title VI complaints. OCR plans to work closely with recipients to ensure that the Agency has a complete and accurate record, and a full understanding of the recipient's position.[207]

Once a complaint is accepted for investigation by OCR, complainants may play an important role in the administrative process; however, that role is determined by the nature and circumstances of the claims.[208] Complainants will likely be asked to allow OCR to conduct interviews and to collect a variety of documents during the course of the investigation. Also, complainants may play an important role in the informal resolution process. However, it is important to note that EPA does not represent the complainants, but rather the interests of the Federal government, in ensuring nondiscrimination by its recipients. Other members of the community could be involved in a similar manner.

The permittee may also be asked to provide information to assist in the investigation of the complaint. The recipient may wish to notify the permittee about the investigation, particularly if potential mitigation measures may involve the permittee. During several investigations, permit applicants have sent information to OCR that they believe is relevant. In those instances, OCR has reviewed the information and placed it in the investigatory file.

Submission of Information by Recipients and Complainants

Some comments raised questions about the points in the investigation process when recipients and complainants should provide or receive information.

Response: EPA's Title VI implementing regulations provide the recipient with several opportunities to respond to and/or to rebut both a complaint and OCR's findings. It is both up to the recipient and in the recipient's interest to provide a rebuttal as early as possible because it might help to quickly resolve the complaint. As the *Draft Revised Investigation Guidance* explains, the recipient may make a written submission responding to, rebutting, or denying the allegations raised in a complaint within 30 calendar days of receiving notification that a complaint has been accepted.[209] OCR will then attempt to resolve the complaint informally, during which time the recipient will have a second opportunity to state its position.

If OCR later makes a preliminary finding of noncompliance, the recipient may then submit a written response, within 50 calendar days of receiving the preliminary finding, demonstrating that the preliminary findings are incorrect or that compliance may be achieved through steps other than those recommended by OCR.[210] Finally, if OCR initiates procedures to deny, annul, suspend, or terminate EPA assistance, a recipient may request a hearing before an administrative law judge (ALJ).[211] If the ALJ's decision upholds OCR's finding of noncompliance, the recipient may then file exceptions with the Administrator.[212]

Once a complaint has been accepted for investigation by OCR, the complainants may play an important role in the investigative process, as well as in the informal resolution process; however, that role is determined by the nature and circumstances of the claims.[213] EPA's Title VI regulations and administrative investigations are not designed to create an adversarial relationship between the complainant and the recipient. Rather, the process should be viewed as EPA investigating allegations of improper use of EPA financial assistance.

Because the process is not adversarial, the complainants do not have the burden of proving that their allegations are true. Investigating allegations and determining compliance is EPA's job. However, complainants are encouraged to provide information that is helpful to the investigation and resolution of the complaint. It is important to note that EPA does not represent the complainants, but rather the interests of the Federal government in ensuring nondiscrimination by its recipients.

The complainants may provide documentary evidence in support of their allegations as attachments to the complaint. Recipients may include evidence to support their claims in their response to the allegations. In addition, during the course of the investigation, complainants and recipients may seek to submit additional relevant information that comes to their attention. OCR must balance the need for a thorough investigation with the need to complete the investigation in a timely manner. Therefore, at the conclusion of interviews with the complainants, recipients, or other witnesses, OCR expects to ask each to submit, within 14 calendar days of the interview, any additional information that they would like considered as OCR drafts its investigative report.

Ability for Complainants to Appeal

One commenter requested that EPA provide an administrative appeal process for complainants who believe their complaints have been inappropriately dismissed.

Response: The Title VI administrative process is not an adversarial one between the complainant and recipient. As a result, the complainants do not have the burden of presenting evidence to support their allegations or proving that their allegations are true. EPA, however, encourages complainants to provide as much information as possible to assist in the investigation. Investigating allegations and determining compliance is EPA's responsibility. EPA does not represent the complainants, but rather the interests of the Federal government in ensuring nondiscrimination by its recipient. As a result, there are no appeal rights for the complainant built into EPA's Title VI regulatory process. Complainants, however, may be able to challenge the recipient's action or EPA's ultimate finding in court.

Accepting and Rejecting Complaints

Several commenters suggested that EPA raise the threshold for accepting complaints.

Response: The criteria for accepting and rejecting complaints are described in EPA's Title VI regulations, which are based on DOJ's model regulations.[214] In addition, Executive Order 12250 requires that agencies' Title VI implementing directive "be consistent with the requirements prescribed by the Attorney General * * * and shall be subject to the approval of the Attorney General * * *." As a result, EPA's Title VI regulations are very similar to the criteria applied by other agencies for accepting and rejecting Title VI complaints.

OCR intends to accept and investigate a complaint if it: (1) Is written; (2) describes the alleged discriminatory act(s) of an EPA recipient that violates

[207] See *Draft Revised Investigation Guidance*, section II.B.1. (discussing when recipients can provide information to OCR).

[208] See *Draft Revised Investigation Guidance*, section II.B.2. (providing additional discussion about a complainant's role in OCR's investigation).

[209] See *Draft Revised Investigation Guidance*, section II.A.1. *See also* 40 CFR 7.120(d)(1).

[210] See *Draft Revised Investigation Guidance*, section II.A.4. *See also* 40 CFR 7.115(d).

[211] 40 CFR 7.130(b)(2).

[212] 40 CFR 7.130(b)(3).

[213] See *Draft Revised Investigation Guidance*, section II.B.2.

[214] 28 CFR 42.401–42.415.

EPA's Title VI regulations; (3) is filed within 180 calendar days of the alleged discriminatory act(s); and (4) is filed by a person or member of a specific class of people that was allegedly discriminated against in violation of EPA's Title VI regulations; or their authorized representative.[215]

EPA regulations define a recipient as "any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient." [216] As mentioned above, Title VI allows the Federal government to require compliance with Title VI as a condition of receiving financial assistance. Acceptance of EPA financial assistance creates an obligation on the recipient to comply with the regulations for the duration listed below:

- For assistance involving real property or structures on the property, the obligation attaches "during the period the real property or structures are used for the purpose for which EPA assistance is extended, or for another purpose in which similar services or benefits are provided." [217]
- For assistance in the form of personal property, the obligation attaches "for so long as [the recipient] continues to own or possess the property." [218]
- In all other cases, the obligation attaches "for as long as EPA assistance is extended." [219]

EPA's Title VI administrative complaint process is not designed to be an adversarial one between the complainant and the recipient. Rather, the complainant is providing EPA with information about potential violations of Title VI and EPA's implementing regulations, so that the Agency can investigate whether its funds are being spent in a discriminatory manner. Raising the threshold for accepting complaints for investigation would likely impose a burden of proof on Title VI complainants at EPA that is not imposed by other Federal agencies and would be inappropriate for the non-adversarial scheme established by EPA's Title VI regulations.

Use of Permit Appeal Processes

Other comments concerned the relationship between Title VI complaints filed with EPA and permit appeals filed with the permitting authority. Several commenters suggested Title VI complaints be handled through permitting processes.

Response: The *Interim Guidance* indicated EPA's support for complainants use of recipients' permit appeal process.[220] To encourage early resolution of Title VI issues, OCR expects to consider a complainant's pursuit of its Title VI concerns through the recipient's administrative appeals process when evaluating a request to waive the 180-day timeliness requirement for good cause.[221]

Similarly, the *Draft Revised Investigation Guidance* states that OCR will generally dismiss complaints without prejudice (*i.e.*, OCR may dismiss the complaint, but that dismissal would not prohibit the complainant from re-filing its complaint at a later date) if the issues raised in the complaint are the subject of either ongoing administrative permit appeals, or litigation in Federal or state court.[222] In such cases, OCR believes that it should await the results of the permit appeal or litigation by waiving the time limit, rather than conducting a simultaneous investigation on the basis of facts that may change due to the outcome of the administrative appeal or litigation. OCR expects to notify the complainant that it may re-file the complaint within a reasonable time, generally not more than 60 calendar days after the conclusion of the administrative appeal process. OCR would then likely make a determination, after considering factors relevant to the particular case, whether to waive the 180-day regulatory time frame.

If a complaint is premature, the *Draft Revised Investigation Guidance* states that OCR expects to notify the complainant that the complaint is premature and dismiss the complaint without prejudice. If the complainant is not satisfied that the Title VI nondiscrimination requirements have been met when the permit is issued, the complainant can re-file its complaint if and when the permit is issued. In addition, OCR will provide the recipient with the information contained in the complaint to facilitate the recipient's ability to appropriately address the concerns raised in the complaint during the permitting process.[223]

OCR encourages communities, recipients, and permittees to identify and address potential Title VI problems as early as possible. In most cases, that should occur before the permitting process begins. In other cases, it may occur during the permitting process. The *Draft Recipient Guidance* suggests that recipients develop approaches to deal with Title VI issues prior to or during implementation of their existing permitting procedures.[224] Such approaches could involve the modification of existing public participation processes in the recipient's permitting program, or the establishment of a plan to find and remedy potential disparate impacts. In some cases, however, even where such a plan is in place, if a complainant feels that a recipient has violated Title VI or EPA's implementing regulations, OCR may have to conduct an investigation independent of the current permitting process.

Imposing a requirement that complainants use all of the recipient's available permit appeal processes prior to filing a Title VI complaint would be inconsistent with the structure of Title VI. Courts have held that those who believe they have been discriminated against in violation of Title VI or EPA's implementing regulations may challenge a recipient's alleged discriminatory act in court without exhausting their Title VI administrative remedies with EPA.[225] In other words, Title VI does not require complainants to utilize the Federal administrative process, so it would seem inconsistent to require complainants to utilize state administrative processes. Nonetheless, as discussed above, OCR strongly encourages all parties to seek early resolution of their Title VI concerns.

180-Day Time Period for Filing Complaints: Start of Clock

Commenters also voiced opinions on when the 180-day period should begin to run and whether the *Interim Guidance*'s position on that issue was consistent with certain environmental permitting requirements.

Response: Title VI imposes obligations that are related to, but separate from, those imposed by environmental law. As a result, the 180-day period for filing complaints under EPA's Title VI regulations may be triggered by certain actions that do not necessarily match similar aspects of

[215] See *Draft Revised Investigation Guidance*, section III.A.

[216] 40 CFR 7.25.

[217] 40 CFR 7.80(a)(2)(i).

[218] 40 CFR 7.80(a)(2)(ii).

[219] 40 CFR 7.80(a)(2)(iii).

[220] See *Interim Guidance*, at 6–7.

[221] 40 CFR 7.120(b)(2); *Draft Revised Investigation Guidance*, section III.B.2.

[222] See *Draft Revised Investigation Guidance*, section III.B.3.

[223] See *Draft Revised Investigation Guidance*, section III.B.4.

[224] See *Draft Recipient Guidance*, section II.A.

[225] See *Powell* v. *Ridge*, 189 F.3d 387, 397–400 (3d Cir.), cert. denied, 120 S. Ct. 579 (1999) (finding that citizens have a private right of action under agency's regulations promulgated under section 602 of Civil Rights Act of 1964).

environmental laws (*i.e.*, as explained below, Title VI's 180-day period for filing a complaint begins when the permit is issued, but, for the purposes of the environmental law, the issuance of the permit might not have the same significance). Nonetheless, EPA expects that the two approaches will be compatible because neither the filing of nor the investigation of a complaint alleging a Title VI violation impacts the effectiveness of a permit. A permit is not automatically stayed as a result of the filing or acceptance for investigation of a Title VI complaint.

Complaints alleging discriminatory effects arising out of a permit should be filed within 180 calendar days of the issuance of the permit, while complaints alleging public participation issues should be filed within 180 calendar days of the alleged discriminatory act in the public participation process.[226] If a complaint is filed more than 180 calendar days after the alleged discriminatory act occurred, OCR will generally reject it as untimely. In general, as discussed above, OCR will dismiss complaints without prejudice[227] where there are ongoing administrative appeals or litigated issues in Federal or state courts regarding the same permit.

180-Day Time Period for Filing Complaints: Duration, Waivers and Effect on Permittees

A number of comments related to the length of the 180-day time period for filing. Some felt that it is too long, while others thought it is too short.

Response: DOJ is responsible for coordinating the implementation and enforcement by Executive agencies of Title VI.[228] In fulfilling its responsibilities, DOJ published regulations entitled, "Nondiscrimination in Federally Assisted Programs-Implementation of Title VI of the Civil Rights Act of 1964."[229] Among other things, these regulations discuss the way in which investigations should be conducted, and explain, regarding complaints, that: "A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee."[230] This regulation forms, in part, the basis for EPA's own regulations, which require a complaint to be filed within 180 days. As mentioned above, neither the filing nor the investigation of a complaint alleging a Title VI violation impacts the effectiveness of a permit.

Timing and Sequencing Issues

Issue: One commenter suggested that Title VI complaints should be filed as outlined in 40 CFR part 122, which concerns the issuance of permits under the National Pollutant Discharge Elimination System. Several commenters expressed concern about when recipients would be notified by EPA about complaints and how the time frame for voluntary compliance works. Some commenters were particularly concerned about the "initial finding of a disparate impact" described in the Interim Guidance.

Response: EPA's regulations, which are based on DOJ's model regulations,[231] are specifically intended to address the processing of Title VI complaints. Therefore, OCR cannot adopt the procedures described in other EPA regulations. The *Interim Guidance* did not mention all of the time frames for conducting complaint investigations and for attaining compliance set forth in EPA's Title VI regulations. To avoid confusion, the *Draft Revised Investigation Guidance* addresses all of the time frames specified in EPA's Title VI implementing regulations.[232] Accordingly, the *Draft Revised Investigation Guidance* states that OCR will notify the recipient of a complaint filed against it within five calendar days of OCR's receipt of the complaint.[233] The 10-day time frame for a recipient to come into voluntary compliance is also a requirement under EPA's Title VI regulations.[234] Recognizing that elimination of adverse disparate impacts within 10 days may not be achievable, OCR may postpone proceedings to deny, annul, suspend, or terminate EPA assistance, if the recipient has demonstrated a good faith effort (*e.g.*, signed a voluntary compliance agreement) to come into compliance.

Concerning the comment about the initial finding of disparate impact, the *Draft Revised Investigation Guidance* eliminates that part of the investigation process. OCR suggested the initial finding provision primarily to promote informal resolution before a preliminary finding of noncompliance, but found that the provision created confusion. Instead, EPA now encourages informal resolution throughout the process, but particularly early in the process.

Issue: One commenter suggested that EPA impose a time limit for conducting a disparate impact analysis.

Response: EPA's Title VI implementing regulations state that OCR will provide its preliminary findings on a complaint within 180 days from the start of the complaint investigation.[235] As OCR gains more experience with conducting the necessary analyses, we expect to reduce the time that it takes.

In addition, if the recipient takes steps to proactively address the Title VI concerns raised in a complaint, such as performing an analysis of the potential impacts, OCR may grant due weight to those analyses and the investigative process could be completed more quickly. The *Draft Revised Investigation Guidance* describes the factors OCR will use to evaluate the appropriateness and validity of a recipient's analysis and to assess the overall reasonableness of its conclusions.[236] The *Draft Revised Investigation Guidance* also explains that more weight will be given to analyses that are relevant to the Title VI concerns in the complaint under investigation and have sufficient depth, breadth, completeness, and accuracy. Where a recipient or complainant submits a relevant analysis, OCR may give the results of that study due weight and rely on it in determining whether the recipient is in compliance with EPA's Title VI regulations.

Issue: Some commenters indicated that under EPA's Title VI regulations, after the complainant files a valid Title VI claim, the recipient should be given an opportunity to justify its decision and thereafter the complainant may identify a less discriminatory alternative.

Response: Recipients are afforded several specific opportunities to provide information to OCR before and during an investigation. For example, upon receiving notification of OCR's receipt of the complaint, the recipient may make a written submission responding to, rebutting, or denying the allegations in the complaint within 30 calendar days.[237] In any of the recipient's submissions, it may provide a justification for its decision.

Title VI burdens of proof in litigation inform EPA of what information is

[226] See *Draft Revised Investigation Guidance*, section III.B.1.

[227] In other words, OCR may dismiss the complaint, but that dismissal would not prohibit the complaint from re-filing its complaint at a later date.

[228] See Executive Order 12250, 45 FR 72995 (1980) (section 1–2).

[229] See 28 CFR 42.101 *et seq.*

[230] 28 CFR 42.107(b).

[231] 28 CFR 42.408 (DOJ Complaint Procedures; 40 CFR 7.120 (EPA Complaint Investigation).

[232] See *Draft Revised Investigation Guidance*, sections II & III.

[233] See *id.*, section II.A.1; see also, 40 CFR 7.120(c).

[234] See 40 CFR 7.115(e); *Draft Revised Investigation Guidance*, section II.A.6.

[235] 40 CFR 7.115(c)(1).

[236] See *Draft Revised Investigation Guidance*, section V.B.

[237] 40 CFR 7.120(d)(1)(iii).

necessary to decide whether Title VI has been violated. In litigation, a plaintiff (*i.e.*, a person or persons who believe they have been discriminated against) must show that an alleged act has a disparate impact on an identifiable population defined by race, color, or national origin.[238] If the disparate impact is shown, the defendants (*i.e.*, recipients) must prove that the activity is justified by a substantial legitimate justification.[239] If the recipient's justification meets the test, the plaintiff may show that there is a less discriminatory alternative that meets the same objective.[240] The recipient may rebut this by showing that the alternatives do not meet its legitimate objectives.[241] If the recipient cannot rebut the plaintiff's showing, then there is a violation of Title VI.[242] OCR intends to apply a similar approach to its investigations.

The investigation of Title VI administrative complaints by OCR does not involve an adversarial process, as in litigation, between the complainant and the recipient. Rather, it should be viewed as EPA investigating allegations that EPA financial assistance is being used improperly. Consequently, the complainants do not have the burden of proving that their allegations are true and are not obligated to offer less discriminatory alternatives. Instead, EPA has the responsibility to determine whether a violation exists and, where appropriate, to uncover less discriminatory alternatives. Nonetheless, EPA encourages complainants to provide whatever relevant information they may have.

Filing of Complaints Issues

Issue: Some comments involved the question of who may file a Title VI administrative complaint.

Response: It is the general policy of OCR to investigate all administrative complaints concerning the conduct of a recipient of EPA financial assistance[243] that satisfy the jurisdictional criteria in EPA's implementing regulations.[244] EPA's regulations provide that complaints may only be filed by:

(a) A person who was allegedly discriminated against in violation of EPA's Title VI regulations;

(b) A person who is a member of a specific class of people allegedly discriminated against in violation of EPA's Title VI regulations; or

(c) A party that is authorized to represent a person or specific class of people allegedly discriminated against in violation of EPA's Title VI.

In some cases, a person or a class of people allegedly discriminated against may select a representative from another geographic area. The regulations allow complainants to take such action.[245]

Issue: One commenter stated that permitees should not be allowed to continue construction of a new facility while a complaint is being investigated.

Response: EPA's Title VI regulations do not provide for staying a permit during the pendency of an investigation. If the permit has been validly issued under the recipient's environmental program, then the facility may begin permitted activities. However, should discriminatory effects be found as a result of a Title VI investigation, mitigation measures by the recipient may be necessary. Because, as the *Draft Revised Investigation Guidance* states, EPA believes it will be a rare situation where the permit that triggered the complaint is the sole reason a discriminatory effect exists, denial of the permit at issue will not necessarily be an appropriate solution.[246] Often, Title VI concerns are raised where a number of sources are contributing to the adverse effects that communities believe they are suffering. Efforts that focus on all contributions to the disparate impact, not just the permit at issue, will likely yield the most effective long-term solutions.

Informal Resolution

One commenter argued that the Interim Guidance gave EPA too much flexibility with regard to the use of informal resolution.

Response: EPA's Title VI regulations call for OCR to pursue informal resolution of administrative complaints wherever practicable.[247] Therefore, OCR will endeavor to facilitate the use of informal resolution to resolve pending Title VI complaints and to reduce the likelihood of future Title VI complaints. OCR intends to encourage informal resolution particularly in the notification of receipt of a complaint and again with acceptance of a complaint for investigation. Informal resolution may follow either of the two approaches discussed below.[248]

The first approach would be to encourage recipients and complainants to try to resolve the issues between them. If the informal resolution results in withdrawal of the Title VI administrative complaint, EPA will dismiss the complaint, notify the recipients and complainants, and close the file. To the extent resources are available, EPA expects to provide support for such informal resolution efforts. The second approach would be for OCR and the recipient to reach an agreement on relief. In either case, other parties may be involved depending upon the facts and circumstances of the complaint.

In appropriate situations, EPA expects the use of alternative dispute resolution (ADR) techniques to informally resolve the complaint. ADR includes a variety of approaches including the use of a third party neutral acting as a mediator or the use of a structured process through which the parties can participate in shared learning and creative problem solving to reach a consensus. The recipient, as a result of its efforts to informally resolve a Title VI complaint with complainants or with OCR, may elect to submit a plan for mitigating a disparate impact.[249]

OCR will discuss offers by recipients to reach informal resolution at any point during the administrative process before filing a formal finding of noncompliance. However, it is OCR's responsibility to ensure nondiscrimination in the programs or activities of recipients to whom EPA provides financial assistance. Therefore, an investigation may be needed to determine the appropriate relief and/or corrective action.

Suspension of Federal Assistance

Some commenters asked EPA to explain EPA's authority to terminate funding and to specify which Federal funds could be affected by a finding of noncompliance with Title VI and how that process would proceed.

Response: Whenever possible, OCR will attempt to resolve complaints informally, as described above.[250] If this fails and OCR makes a formal determination of noncompliance and the recipient does not voluntarily comply, OCR must start proceedings to deny, annul, suspend, or terminate EPA assistance,[251] or "use any other means

[238] See *Coalition of Concerned Citizens Against I-670 v. Damian*, 608 F. Supp. 110, 127 (S.D. Ohio 1984).

[239] *Damian*, 608 F. Supp. at 127.

[240] *Id.*

[241] *Id.*

[242] *Id.*; see also *Sandoval v. L.N. Hagan*, 7 F. Supp. 2d 1234, 1298 (M.D. Ala. 1998) (plaintiffs prevailed in proving a Title VI violation by offering an effective less discriminatory alternative).

[243] See 40 CFR 7.15.

[244] See 40 CFR 7.120.

[245] See *Draft Revised Investigation Guidance*, section III.A. (describing criteria for accepting or rejecting complaints).

[246] *Id.*, sections I.C. and IV.B.

[247] 40 CFR 7.120(d)(2).

[248] See *Draft Revised Investigation Guidance*, section IV.A.

[249] See id., section IV.B.

[250] 40 CFR 7.120(d)(2). See *Draft Revised Investigation Guidance*, section IV.

[251] 40 CFR 7.115(e), 7.130(b).

authorized by law to get compliance, including a referral of the matter to the Department of Justice." [252]

Even if OCR decides to deny, annul, suspend, or terminate assistance, the recipient is entitled to a hearing on this decision before an EPA ALJ.[253] If the ALJ's determination is not favorable to the recipient, the recipient may appeal the ALJ's determination to the Administrator.[254] Thus, OCR's complaint resolution process is not one that immediately contemplates suspending EPA assistance, but one that resorts to suspending assistance when informal resolution and voluntary compliance efforts are not possible or have failed.

In the event OCR attempts to deny, annul, suspend, or terminate assistance, EPA's Title VI implementing regulations only concern EPA assistance.[255] The regulations do not give EPA authority to pursue denying, annulling, suspending, or terminating Federal financial assistance from sources outside EPA. Accordingly, both the *Interim Guidance* and the *Draft Revised Investigation Guidance* refer only to initiating procedures to deny, annul, suspend, or terminate EPA assistance.[256]

Title VI prohibits discrimination in "any program or activity receiving Federal financial assistance." [257] The Civil Rights Restoration Act of 1987 [258] amended Title VI and defined a "program" or "activity" to include, among other things, "all of the operations of * * * a department, agency, special purpose district, or other instrumentality of a State or of a local government * * * any part of which is extended Federal financial assistance." [259] Therefore, unless expressly exempted from Title VI by Federal statute, all programs and activities of a department or agency that receives EPA funds are subject to Title VI, including those programs and activities that are not EPA-funded. For example, the issuance of permits by EPA recipients under solid waste programs administered pursuant to Subtitle D of the Resource Conservation and Recovery Act, which historically have not been grant-funded by EPA, or the actions they take under programs that do not derive their authority from EPA statutes (*e.g.*, state environmental assessment requirements), are part of a program or activity covered by EPA's regulations if the recipient receives any funding from EPA.

EPA's regulations also limit the scope of the decision to deny, annul, suspend, or terminate assistance to "the particular applicant or recipient who was found to have discriminated, and shall be limited in its effect to the particular program or the part of it in which the discrimination was found." [260]

EPA has some discretion about how to enforce Title VI and EPA's implementing regulations, but not about whether to enforce. In July 1994, the Attorney General issued a memorandum to the heads of all Federal agencies with Title VI responsibilities stating that "[e]nforcement of the disparate impact provisions is an essential component of an effective civil rights compliance program." [261] The Attorney General directed the head of each Federal agency "to make certain that Title VI is not violated, [and] ensure that the disparate impact provisions in [the Title VI] regulations are fully utilized." [262]

Permit Renewals Issues

Issue: Some commenters asked whether EPA's approach to renewals is consistent with environmental permitting requirements.

Response: Although there may be some overlapping of legal principles and requirements, Title VI and EPA's Title VI regulations impose separate requirements on recipients from those of environmental statutes and their implementing regulations. Even if environmental laws mandate different treatment for new permits, permit renewals, and permit modifications, EPA's Title VI regulations do not require different review of these actions.

Under the *Draft Revised Investigation Guidance,* renewals and modifications, like new permits, would be available to form the basis for an initial investigation. Such an approach will assist recipients in achieving an equitable distribution of their efforts to meet Title VI's requirements. In addition, the inclusion of renewals and modifications improves the ability to consider existing adverse disparate impacts. However, where OCR is not likely to initiate an investigation where: (1) A complaint alleges discriminatory effects from emissions, including cumulative emissions, and the permit action that triggered the complaint significantly decreases overall emissions [263] at the facility or (2) where a complaint alleges discriminatory effects from emissions, including cumulative emissions, of pollutants or stressors of concern (pollutants of concern) named in the complaint, and the permit action that triggered the complaint significantly decreases all named pollutants of concern or all the pollutants OCR reasonably infers are the potential source of the alleged impact.

Regardless of the type of permit involved, if a complaint is filed with OCR alleging that a recipient violated Title VI or EPA's regulations, OCR's decision to accept or reject the complaint would be based on the standard jurisdictional criteria provided in EPA's Title VI regulations.[264] If a complaint is accepted, OCR expects to evaluate the impact of the permitting action. Permitting actions that reduce adverse impacts from the source are not likely to form the basis for a finding of noncompliance with Title VI. In addition, modifications, such as a facility name change or a change in a mailing address, that do not involve actions related to the stressors [265] identified in the complaint generally will not form the basis for a finding of noncompliance and will likely be dismissed.[266]

Issue: Other commenters argued that the application of Title VI to renewals should consider whether the demographics of the area in question have changed.

Response: EPA's Title VI regulations direct OCR to investigate actions by recipients allegedly involving intentional discrimination or resulting in discriminatory impacts, and to determine whether the actions violate the regulations. In the permitting context, OCR must analyze a Title VI complaint based on the facts and circumstances existing at the time the permitting decision at issue was made because those are the conditions that the complaint concerns. Therefore, the demographic composition of the area at the time that the permit was initially issued, perhaps a decade or more ago, may or may not be relevant for OCR's review of an allegation that discriminatory effects currently exist.

[252] 40 CFR 7.130(a).

[253] 40 CFR 7.130(b)(2).

[254] 40 CFR 7.130(b)(3)(i).

[255] 40 CFR 7.130(b) ("Procedure to deny, annual, suspend or terminate EPA assistance.").

[256] See *Interim Guidance* at 3; *Draft Revised Investigation Guidance,* section II.A.7.

[257] 42 U.S.C. 2000d.

[258] Public Law 100–259, 102 Stat. 28 (1988).

[259] 42 U.S.C. 2000d–4a.

[260] 40 CFR 7.130(b)(4).

[261] See Memorandum from Attorney General supra note 7, at 1.

[262] *Id.*

[263] Assessing a significant overall decrease would entail taking into account factors such as total quantity and relative toxicity of the emissions reductions.

[264] See 40 CFR 7.120 (stating the criteria for accepting a complaint); Draft Revised Investigation Guidance, sections III.A. and VI.B.1.a.

[265] See *Draft Revised Investigation Guidance,* Glossary.

[266] See *id.*, section VI.B.1.a.

Issue: A commenter suggested that in order to avoid conducting a disparate impact analysis for each permit renewal for facilities with multiple permits, an initial disparate impact analysis covering all permits for the facility, not merely the permit up for renewal, should be conducted. Assuming any Title VI concerns were resolved, further claims regarding renewals related to permits at the facility would be dismissed.

Response: The *Draft Revised Investigation Guidance* indicates that EPA intends, in some cases, to consider the cumulative impacts of pollution from a wide range of sources. OCR may investigate cases in which the permitted activity is one of several activities, which together present a cumulative impact.[267] This may include evaluating multiple activities at a single facility. In some rare instances, EPA may need to determine whether the impacts of a single permit, standing alone, may be considered to support a disparate impact claim. EPA intends to let the circumstances of each complaint dictate which approach is appropriate.

Furthermore, the *Draft Revised Investigation Guidance* and the *Draft Recipient Guidance* also encourage recipients to identify geographic areas where adverse disparate impacts may exist and to enter into agreements (area-specific agreements) with the affected communities and stakeholders to reduce pollution impacts in those geographic areas over time.[268] The results of such efforts may be granted due weight in appropriate circumstances[269] and reduce the likelihood that additional complaints would be filed in those areas. Moreover, if OCR had previously determined that actions taken pursuant to an area-wide agreement would eliminate discriminatory effects, OCR would generally rely upon that earlier finding and dismiss later-filed allegations relating to permit actions covered by the agreement.

Takings

Some commenters raised questions about "takings" of property without compensation and opportunities for permittees to achieve compliance.

Response: As a general rule, permits are not compensable property rights. They are treated as conferring privileges rather than rights, because they may be revocable at the will of the government, they are generally nontransferable, and they are often issued for a limited term. On the other hand, permits sometimes *are* treated as property for due process purposes, requiring notice and hearing before they can be revoked.

As the *Draft Revised Investigation Guidance* states when discussing measures that might be required as a result of a finding of noncompliance with Title VI, EPA believes it will be a rare situation where the permit that triggered the complaint is the sole reason a discriminatory effect exists. Therefore, denial of the permit at issue will not necessarily be an appropriate solution. Also, in order to establish a compensable taking, the governmental action generally must deny all economically viable use of the property in question. It is highly unlikely that a permit modification would deny all economically viable use of the property.

As part of a voluntary compliance agreement, recipients may agree to mitigate the adverse impacts through permit modifications. If informal resolution and attempts at reaching voluntary compliance fail, the primary authority for an administrative remedy in EPA's Title VI implementing regulations and corresponding provisions in the *Draft Revised Investigation Guidance* concerns the denial, annulment, suspension, or termination of EPA assistance.[270] Because this remedy would be imposed on a recipient of EPA assistance, the permittee would not be directly affected. Clearly, the recipient's programs and activities may relate to the permittee, but even if a recipient is found to be in violation of EPA's Title VI regulations, EPA's primary authority for an administrative remedy is directed toward the recipient. The regulations do not require EPA to seek a denial or revocation of the permittee's permit.

OCR may also explore other solutions authorized by law, such as referring a matter to DOJ for enforcement in court.[271] If a court ordered remedy involved the initiation of a permitting action, EPA expects that the recipient would follow the procedures outlined in the relevant environmental law, thereby providing sufficient due process.

Other Issues

Issue: One commenter requested that EPA develop a Title VI complaint process flowchart. Another commenter requested clarification as to who would be responsible for implementing the *Interim Guidance.*

Response: A flowchart that outlines the steps in the process described by EPA's Title VI regulations has been included as an appendix to the *Draft Revised Investigation Guidance.*

OCR has the responsibility within EPA to process and review Title VI administrative complaints, and both the *Interim Guidance* and the *Draft Revised Investigation Guidance* are mainly directed at EPA staff in that office. However, OCR typically involves staff with appropriate expertise from other EPA offices and regions to assist in its investigations. The guidance also provides direction to these staff persons as they assist OCR in the investigation.

Impacts and the Disparate Impact Analysis

Substantial Impairment

One commenter requested clarification as to what constitutes a "significant" disparate impact, citing EPA's regulations that require a "substantial impairment" of program objectives to establish a disparate impact.

Response: OCR has provided more detail and clarity in the *Draft Revised Investigation Guidance* about the process for determining whether an adverse disparate impact exists.[272] However, given the infinite number of possible permutations of facts, allegations, and circumstances, defining an across-the-board standard of what level of harm or disparity constitutes "significant" is infeasible. Instead, the *Draft Revised Investigation Guidance* explains more clearly how OCR will determine whether it exists. The *Draft Revised Investigation Guidance* describes how EPA will use environmental statutes, regulations, policy, and science as measures for determining thresholds for what is adverse.[273]

EPA's Title VI regulations include a variety of prohibitions, only one of which uses the term "substantial impairment."[274] For example, the regulations prohibit recipients from using "criteria or methods of administering its programs which have the effect of subjecting individuals to discrimination because of their race, color, [or] national origin."[275] It is this

[267] See *id.*, section VI.B.1.a.

[268] *Id.*, section V.B.2.; *Draft Recipient Guidance* sections II.A.2. and 3.

[269] See *Draft Revised Investigation Guidance*, section V.B.2.

[270] 40 CFR 7.130(b); *Draft Revised Investigation Guidance*, section II.A.6.

[271] 40 CFR 7.130(a); *Draft Revised Investigation Guidance*, section II.A.6.

[272] See *Draft Revised Investigation Guidance*, section VI.

[273] *Id.*, section VI.B.4.

[274] 40 CFR 7.35(b) ("A recipient shall not use criteria or methods of administering its programs which * * * have the effect of defeating or *substantially impairing* accomplishment of the objectives of the program with respect to individuals of a particular race, color, [or] national origin." (emphasis added).

[275] *Id.*

discriminatory effects regulation that is the focus of the *Interim Guidance* and the *Draft Revised Investigation Guidance*.

Scope and Extent of Adverse Impact Analysis Issues

Issue: Commenters were divided regarding both the degree to which adverse impacts must be "significant" before they can be considered under the *Interim Guidance* and whether the risk of adverse health impacts should be considered actionable.

Response: To determine whether the impacts alleged in the complaint are sufficiently "adverse" to be cognizable under Title VI, OCR expects to focus its efforts on addressing adverse impacts that are "significant" rather than on those that may be considered inconsequential. The *Draft Revised Investigation Guidance* provides more specificity about what constitutes a "significant" impact. Depending upon the facts and circumstances of the complaint, OCR will apply relevant tests to determine whether the alleged impact is significant.[276] In fact, the *Draft Revised Investigation Guidance* specifically includes consideration of health impacts in terms of risk.[277]

Issue: One commenter said that any guidance that is developed regarding disparate impact should be subjected to a peer reviewed process.

Response: As part of its identification and development of methods for conducting impact assessments, OCR submitted several example assessment tools for review by the EPA Science Advisory Board.[278] These included approaches concerning the estimation of the magnitude and distribution of impacts and the identification of affected populations.

Identifying the Affected Population

Many commenters asked EPA to provide more guidance related to identifying the affected population.

Response: The *Draft Revised Investigation Guidance* provides significantly more information about the process proposed to identify and determine the characteristics of the affected population than the *Interim Guidance* provided.[279] The affected population, as defined in the Glossary, is the population that is determined to bear an adverse impact from the source(s) at issue. In section VI.B., and especially in subsection 5, of the *Draft Revised Investigation Guidance*, OCR describes the analysis it expects to use to define the affected population in investigations. Section VI also describes the process of conducting an analysis to determine whether a disparity exists between the affected population and an appropriate comparison population, and discusses comparison methods and criteria used in assessing the significance of any disparities identified.

Determining the Demographics of Populations

Some comments concerned the manner in which EPA would determine the demographics of certain populations.

Response: Title VI and EPA's implementing regulations prohibit discrimination on the basis of race, color, or national origin. Racial classifications described in the regulations include: (1) American Indian or Alaskan native; (2) Asian or Pacific Islander; (3) Black and not of Hispanic origin; (4) Hispanic; and (5) White, not of Hispanic origin.[280] Additional subcategories based on national origin or primary language spoken may be used when appropriate.[281]

OCR intends to use the most accurate data readily available when determining the characteristics of the affected and comparison populations. In most cases, residential census data are expected to be the most accurate and relevant available demographic data, but other data sources will be used as needed. Generally, OCR expects to use residential census data in combination with geographic information systems and mathematical models to identify and characterize affected populations.[282]

Cumulative Impacts

EPA received a number of comments concerning the role of cumulative impacts in the *Interim Guidance*. Some expressed support for considering cumulative impacts in determining whether an adverse disparate impact exists and others requested additional information. Some opposed considering cumulative impacts because they were concerned about how cumulative impacts could be quantified.

Response: The *Draft Revised Investigation Guidance* provides more clarity about the process of identifying the scope of an adverse disparate impact analysis that OCR may conduct as part of an investigation. Rather than attempting to summarize that lengthy process here, readers should refer to the *Draft Revised Investigation Guidance* for an explanation of how OCR expects to evaluate allegations concerning cumulative impacts.[283]

Commenter's Suggested Alternative Approach to Adverse Disparate Impact Analysis

One commenter provided EPA with an alternative approach to simplify OCR's analysis of Title VI complaints. The primary elements of the proposal include: (1) Defining the affected area as a circle of radius one-half to one mile from the facility; (2) assessing the public health status of the affected population based on mortality, cancer, infant mortality and low birth weight rates; and (3) determining the health rate to be substandard when it deviates by 10 to 20 percent from the "standard" (comparison population) rate. Permits to build or operate a new facility in any area with substandard health rates would be prohibited. The commenter asks whether this proposal could be adopted by OCR.

Response: Both Title VI and EPA's implementing regulations prohibit discrimination on the basis of race, color, or national origin in the programs and activities of EPA financial assistance recipients. As a result, a finding of non-compliance with the statute or regulations requires a finding that the programs or activities of a recipient involved intentional discrimination or caused a discriminatory effect.

The proposal does not appear to require any link between the adverse health effects and the programs or activities of a recipient. In addition, it does not consider any disparity on the basis of race, color, or national origin. While the proposal may warrant consideration as a way of identifying public health "hot spots," it would not be an appropriate basis for OCR to make a finding of non-compliance with Title VI or EPA's implementing regulations.

[276] *Draft Revised Investigation Guidance*, section VI.B.4.

[277] See *Draft Revised Investigatian Guidance*, section VI.B.3.

[278] The findings were presented in the December 1998 report, *An SAB Report: Review af Dispraportionate Impact Methodalagies; A Review by the Integrated Human Expasure Cammittee (IHEC) of the Science Advisary Board (SAB).* The repart is avaialble at the Office af Civil Rights Web site at: *http://www.epa.gov/civilrights/investig.htm.*

[279] See *Draft Revised Investigatian Guidance*, section VI.B.5.

[280] 40 CFR 7.25.

[281] *Id.* at n.1.

[282] See *Draft Revised Investigatian Guidance*, section VI.B.5.

[283] See *Draft Revised Investigatian Guidance*, sections VI.B.2. and 3.

Clarifications Regarding Disparity of Impact

A number of commenters requested additional details regarding the disparate impact analysis. For instance, commenters requested that EPA provide additional details regarding the statistical analysis that will be conducted, the backgrounds of the experts that will be conducting the analysis, and what comparisons would be appropriate within the affected population.

Response: OCR provided more specificity about the disparate impact analysis in the *Draft Revised Investigation Guidance,* including additional details about what constitutes disparity and options for selecting comparison populations.[284] OCR intends to select an appropriate statistical or mathematical analysis based upon various factors, including the allegations and available data. That analysis will be performed or reviewed by those with the relevant professional training and expertise. The *Draft Revised Investigation Guidance* is not intended to comprehensively address every scenario that may arise in the interaction between Title VI, EPA's Title VI regulations, and environmental permitting. Given the infinite number of possible permutations of facts, allegations, and circumstances, such an approach is infeasible. Instead, the *Draft Revised Investigation Guidance* provides a framework explaining how EPA intends to implement its responsibilities under Title VI as a general matter. OCR then expects to apply the guidance's framework according to the specific facts and circumstances of each complaint.

In terms of the appropriate comparison populations, the zoning or land use designation of an area has been offered as a possible basis on which to compare impacts and demographics. OCR does not expect to use those factors when evaluating an affected population against a comparison population. Consideration of zoning would place an inappropriate focus on the siting of facilities. The *Interim Guidance* and the *Draft Revised Investigation Guidance* focus on permitting. The impacts addressed by the guidance documents do not necessarily stay within areas that are zoned "industrial"; they may affect "residential" areas, "commercial" areas, and areas with other designations. In addition, many impacts are felt in areas designated for "mixed-use," but that fact alone should not lead to reduced protections for the local residents. Therefore, an arbitrary comparison of populations with similar zoning would be inappropriate, as well as impractical.

Resolving Complaints and Justification

Remedial Measures/Mitigation

Issue: Several commenters requested clarification on the process of mitigation as described in the Interim Guidance.

Response: EPA's Title VI regulations call for OCR to pursue informal resolution of administrative complaints wherever practicable.[285] The Agency expects that measures that reduce or eliminate alleged disparate impacts will be an important focus of the informal resolution process. Section IV of the *Draft Revised Investigation Guidance* contains a more detailed discussion of such measures, drawn heavily from the Title VI Implementation Advisory Committee report,[286] than the *Interim Guidance.* Moreover, the *Draft Recipient Guidance* also discusses measures to reduce adverse disparate impacts in section II.B.6.

Often, Title VI concerns are raised where a number of sources are contributing to the adverse effects communities believe they are suffering. For those communities, filing a Title VI complaint about a permit for a new facility or about the most recent modification to an existing one, is a way to focus attention on the cumulative impacts of a number of the recipient's permitting decisions. As the *Draft Revised Investigation Guidance* states, EPA believes it will be a rare situation where the permit that triggered the complaint is the sole reason a discriminatory effect exists; therefore, denial of the permit at issue will not necessarily be an appropriate solution. Efforts that focus on all contributions to the adverse disparate impact, not just the permit at issue, will likely yield the most effective long-term solutions.[287]

For example, the *Draft Revised Investigation Guidance* and the *Draft Recipient Guidance* encourage recipients to identify geographic areas where adverse disparate impacts may exist and to enter into enforceable agreements (area-specific agreements) with the affected communities and stakeholders to reduce pollution impacts in those geographic areas over time.[288]

Efforts to reduce impacts could include measures that are narrowly tailored toward contributing sources, including the permit at issue, using the recipient's existing permitting authorities. Such measures include changes in policies or procedures, additional pollution control, pollution prevention, offsets; and emergency planning and response. More broadly focused efforts might deal with the combined impacts of several contributing sources, taking into account both the approximate contributions and the degree to which the sources may be covered by various authorities available to the recipient.[289]

Issue: Several commenters questioned the legal basis for requiring mitigation.

Response: As mentioned above, EPA's Title VI regulations call for OCR to pursue the informal resolution of administrative complaints wherever practicable.[290] The term "informal resolution" refers to any settlement reached by the parties before a finding of noncompliance is issued. OCR expects to encourage measures to reduce and eliminate impacts in the course of achieving informal resolution.[291] EPA hopes that the parties will be able to work together at an early stage because they will have more flexibility in this informal context to develop innovative solutions than later when remedial measures are required after a finding of noncompliance has been made. Measures developed by the recipient, local community, and other interested parties are likely to be the most direct way to resolve potential Title VI concerns. Both the *Draft Revised Investigation Guidance* and the *Draft Recipient Guidance* discuss measures to reduce or eliminate impacts.[292]

If OCR makes a finding of noncompliance with EPA's Title VI regulations, two potential remedies exist in EPA's administrative process—voluntary compliance or fund termination. Another option for EPA to ensure compliance is referring the matter to DOJ for litigation.[293] Settlement after a formal determination of noncompliance is called "voluntary compliance." [294] Measures to reduce or eliminate impacts will be included as conditions in a voluntary compliance agreement. Recipients can either agree to the voluntary compliance conditions or risk losing EPA financial assistance.

Justification Issues

Issue: Some commenters requested that EPA provide more detail as to what would constitute an adequate

[284] *Draft Revised Investigation Guidance* sections VI.B.5. and 6.

[285] 40 CFR 7.120(d)(2).

[286] See *Report of the Title VI Implementation Advisory Committee: Next Steps for EPA, State, and Local Environmental Justice Programs,* at 82-90 and appendix D (April 1999).

[287] See *Draft Revised Investigation Guidance,* sections I.C. and IV.B.

[288] *Draft Revised Investigation Guidance,* section V.B.2.; Draft Recipient Guidance, section II.A.2.

[289] *Draft Revised Investigation Guidance,* section IV.

[290] See 40 CFR 7.120(d)(2).

[291] See *Draft Revised Investigation Guidance,* section IV; *Draft Recipient Guidance,* section II.B.6.

[292] *Id.*

[293] 40 CFR 7.130(a).

[294] 40 CFR 7.115(e) (indicating that recipient may voluntarily comply after formal determination of noncompliance).

justification and a less discriminatory alternative.

Response: The *Draft Revised Investigation Guidance* clarifies and provides more detail about justification and less discriminatory alternatives.[295] Determining what constitutes a legitimate justification will necessarily turn on the facts in the case at hand. Generally, the recipient would attempt to show that the challenged activity is reasonably necessary to meet a goal that is legitimate, important, and integral to the recipient's institutional mission.

Because investigations conducted under the *Draft Revised Investigation Guidance* are about permitting decisions by environmental agencies, OCR expects to consider provision of public health or environmental benefits (*e.g.*, waste water treatment plant) to the affected population to be an acceptable justification because such benefits are generally legitimate, important, and integral to the recipient's mission. The *Draft Revised Investigation Guidance* indicates that OCR will likely consider broader interests, such as economic development, from the permitting action to be an acceptable justification, if the benefits are delivered directly to the affected population and if the broader interest is legitimate, important, and integral to the recipient's mission. Also, in its evaluation of the offered justification, OCR will generally consider not only the recipient's perspective, but the views of the affected community in its assessment of whether the permitted facility, in fact, will provide direct, economic benefits to the community.

A justification generally will not be accepted if it is shown that a less discriminatory alternative exists. A less discriminatory alternative is a comparably effective practice that causes less of a disparate impact than the challenged practice.[296] Mitigation measures including, in some cases, additional permit conditions that would lessen or eliminate the demonstrated adverse disparate impacts, could be part of a less discriminatory alternative. Pollution prevention may be either used by the recipient as a mitigation measure, or raised by EPA or complainants as a less discriminatory alternative. OCR will likely consider cost and technical feasibility in its assessment of the practicability potential alternatives.

Issue: Other commenters asserted that a recipient should be allowed to justify an action before undergoing a mitigation analysis.

Response: The *Interim Guidance* did not require the creation of mitigation plans before a finding. It merely suggested that recipients could consider establishing a plan to reduce the likelihood of a finding of a Title VI violation. The *Draft Revised Investigation Guidance* clarifies the process.[297] Recipients are expected to have an opportunity to propose mitigation measures to address the problem, but those measures would not be required unless a finding of violation occurs. In that case, OCR would describe the measures that the recipient should take to come into voluntary compliance.

EPA's Title VI regulations provide recipients with several opportunities to submit information.[298] Nothing precludes recipients from including information about justification or mitigation measures in their written submissions. The recipient may offer a justification before mitigation measures are considered. However, the justification would not be considered acceptable if a less discriminatory alternative exists.

Issue: Other comments concerned EPA's role in identifying less discriminatory alternatives and approving justifications.

Response: EPA must evaluate the sufficiency of proffered justifications, and the existence and validity of less discriminatory alternatives, because EPA determines whether a violation of EPA's Title VI regulations has occurred.

Nonetheless, EPA may consult with complainants and other parties, as appropriate.

Dated: June 15, 2000.

Ann E. Goode,

Director, Office of Civil Rights.

[FR Doc. 00–15673 Filed 6–26–00; 8:45 am]

BILLING CODE 6560–50–P

[295] See *Draft Revised Investigation Guidance*, section VII.A.

[296] See *Elston* v. *Talladega County Bd. of Educ.*, 997 F.2d 1394, 1407 (11th Cir. 1993), citing *Georgia State Conference of Branches of NAACP* v. *Georgia*, 775 F.2d 1403, 1417 (11th Cir. 1985).

[297] See *Draft Revised Investigation Guidance*, section IV.

[298] See *Draft Revised Investigation Guidance*, sections II.B. and V.A.

Federal Register

Tuesday,
June 27, 2000

Part III

Department of Defense

48 CFR Parts 201, 202, 203, et al.
Various Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

48 CFR Parts 201, 202, 203, 204, 206, 209, 212, 213, 217, 219, 225, 231, 232, 235, 236, 242, 249, 250, 252, and 253, and Appendices A and G to Chapter 2

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement is making technical amendments to the Defense Federal Acquisition Regulation Supplement to update organization names, position titles, addresses, telephone numbers, office symbols, and references; to delete obsolete or duplicative text; and to renumber and relocate text for consistency with corresponding Federal Acquisition Regulation text.

EFFECTIVE DATE: June 27, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 6012ndash;0311; telefax (703) 602–0350.

List of Subjects in 48 CFR Parts 201, 202, 203, 204, 206, 209, 212, 213, 217, 219, 225, 231, 232, 235, 236, 242, 249, 250, 252, and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 201, 202, 203, 204, 206, 209, 212, 213, 217, 219, 225, 231, 232, 235, 236, 242, 249, 250, 252, and 253, and Appendices A and G to Chapter 2 are amended as follows:

1. The authority citation for 48 CFR Parts 201, 202, 203, 204, 206, 209, 212, 213, 217, 219, 225, 231, 232, 235, 236, 242, 249, 250, 252, and 253, and Appendices A and G to subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

201.107 [Amended]

2. Section 201.107 is amended in paragraph (2) by removing the parenthetical "(Acquisition and Technology)" and adding in its place "(Acquisition, Technology, and Logistics)".

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

3. Section 202.101 is amended as follows:

a. In the definition of "Head of the agency" in the first sentence by removing the first comma and by adding a comma after "means"; and in the second sentence by removing the parenthetical "(Acquisition & Technology)" and adding in its place "(Acquisition, Technology, and Logistics)"; and

b. In the definition of "Senior procurement executive", in the introductory text by removing the comma after "executive" and by adding a comma after "means"; and in the first and last paragraphs by removing the parenthetical "(Acquisition & Technology)" and adding in its place "(Acquisition, Technology, and Logistics)".

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

203.570–3 [Amended]

4. Section 203.570–3 is amended in paragraph (b) by removing the parenthetical "(Acquisition)" and adding in its place "(Acquisition, Technology, and Logistics)".

203.703 [Amended]

5. Section 203.703 is amended in the last sentence by removing the parenthetical "(Acquisition & Technology)" and adding in its place "(Acquisition, Technology, and Logistics)".

PART 204—ADMINISTRATIVE MATTERS

204.7003 [Amended]

6. Section 204.7003 is amended in paragraph (a)(3)(viii) by removing the phrase "basic purchasing" and adding in its place "blanket purchase".

PART 206—COMPETITION REQUIREMENTS

206.302–5 [Amended]

7. Section 206.302–5 is amended in paragraph (c)(i)(B) in the last sentence by removing the parenthetical "(Acquisition & Technology)" and adding in its place "(Acquisition, Technology, and Logistics)".

206.304 [Amended]

8. Section 206.304 is amended in paragraph (a)(4) introductory text by removing the parenthetical "(Acquisition & Technology)" and adding in its place "(Acquisition, Technology, and Logistics)".

PART 209—CONTRACTOR QUALIFICATIONS

209.103 [Amended]

9. Section 209.103 is amended in paragraph (a)(i)(C) by removing the parenthetical "(Acquisition & Technology)" and adding in its place "(Acquisition, Technology, and Logistics)".

209.104–1 [Amended]

10. Section 209.104–1 is amended in paragraph (g)(ii)(C) introductory text, in the third sentence, by removing the parenthetical "(Acquisition & Technology)" and adding in its place "(Acquisition, Technology, and Logistics)".

209.104–70 [Amended]

11. Section 209.104–70 is amended in paragraph (a) in the last sentence by removing the phrase "Director, Defense Procurement, ATTN: OUSD (A&T) DP/FC" and adding in its place "Director of Defense Procurement, ATTN: OUSD (AT&L) DP/FC".

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.504 [Amended]

12. Section 212.504 is amended by removing paragraph (a)(xxv) and redesignating paragraph (a)(xxvi) as paragraph (a)(xxv).

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

213.302–5 [Amended]

13. Section 213.302–5 is amended as follows:

a. In paragraph (d)(i) by removing "225.109(d)" and adding in its place "225.1101(2)"; and

b. In paragraph (d)(ii) by removing "225.408(a)(vi)" and adding in its place "225.1101(13)".

PART 217—SPECIAL CONTRACTING METHODS

217.172 [Amended]

14. Section 217.172 is amended in paragraph (d) in the last sentence by removing "Acquisition and Technology) (OUSD (A&T) DP)" and adding in its place "(Acquisition, Technology, and Logistics) (OUSD (AT&L) DP)".

217.173 [Amended]

15. Section 217.173 is amended in paragraph (b)(5)(iv) by removing the

parenthetical "(A&T)" and adding in its place "(AT&L)".

16. Section 217.7001 is amended by revising the introductory text and paragraph (b) to read as follows:

217.7001 Definitions.

As used in this subpart—

* * * * *

(b) *Property* means items that fall within one of the generic categories listed in DoD 4140.1–R, DoD Materiel Management Regulation, Chapter 6.2, Exchange or Sale of Nonexcess Personal Property.

17. Section 217.7002 is amended by revising paragraph (b) to read as follows:

217.7002 Policy.

* * * * *

(b) DoD 4140.1–R, Chapter 6.2.

217.7003 [Amended]

18. Section 217.7003 is amended in paragraph (a) by removing "DoDI 4140.51" and adding in its place "DoD 4140.1–R, Chapter 6.2".

217.7502 [Amended]

19. Section 217.7502 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

PART 219—SMALL BUSINESS PROGRAMS

219.201 [Amended]

20. Section 219.201 is amended in paragraph (f) in the last sentence by removing the parenthetical "(Acquisition and Technology)" and adding in its place "(Acquisition, Technology, and Logistics)".

219.800 [Amended]

21. Section 219.800 is amended in paragraph (a) in the first sentence by removing the phrase "for Acquisition and Technology" and adding in its place the parenthetical "(Acquisition, Technology, and Logistics)".

219.1006 [Removed]

22. Section 219.1006 is removed.

23. Section 219.1007 is added to read as follows:

219.1007 Procedures.

(b)(1) The Director, Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD(AT&L)), will determine whether reinstatement of small business set-asides is necessary to meet the agency goal and will recommend reinstatement to the Director of Defense Procurement (OUSD(AT&L)). Military departments and defense agencies shall not reinstate small business set-asides unless directed by the Director of Defense Procurement.

(d) Reporting requirements are at 204.670–2.

PART 225—FOREIGN ACQUISITION

225.103 [Amended]

24. Section 225.103 is amended in paragraph (b)(ii) introductory text by removing "(b)(2)(i)" and adding in its place "(b)(3)".

225.770–4 [Amended]

25. Section 225.770–4 is amended in the last sentence by removing "(OUSD(A&T)DP" and adding in its place "Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics)".

225.871–7 [Amended]

26. Section 225.871–7 is amended in paragraph (a)(1) by removing "USD(A&T)DP" and adding in its place "the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics),".

225.872–2 [Amended]

27. Section 225.872–2 is amended in paragraph (a)(2)(ii) by removing the word "Assistant" and adding in its place the word "Under".

225.872–3 [Amended]

28. Section 225.872–3 is amended in paragraph (f)(4) by removing the parenthetical "(Acquisition & Technology)" and adding in its place "(Acquisition, Technology, and Logistics)".

225.872–4 [Amended]

29. Section 225.872–4 is amended in paragraph (b) by removing "225.105 and 225.303" and adding in its place "225.304 and 225.502".

225.7002–2 [Amended]

30. Section 225.70002–2 is amended in paragraph (j)(2)(ii) introductory text by removing the parenthetical "(Acquisition and Technology)" and adding in its place "(Acquisition, Technology, and Logistics)".

225.7005 [Amended]

31. Section 225.7005 is amended in paragraph (a)(1)(i) introductory text and in paragraph (b) introductory text by removing the parenthetical "(Acquisition and Technology)" and adding in its place "(Acquisition, Technology, and Logistics)".

225.7018–2 [Amended]

32. Section 225.7018–2 is amended in the introductory text by removing the parenthetical "(Acquisition & Technology)" and adding in its place "(Acquisition, Technology, and Logistics)".

225.7019–3 [Amended]

33. Section 224.7019–3 is amended in paragraph (b)(1) introductory text and paragraph (b)(5) introductory text by removing the parenthetical "(Acquisition and Technology)" and adding in its place "(Acquisition, Technology, and Logistics)".

225.7202 [Amended]

34. Section 225.7202 is amended in the first sentence by removing the parenthetical "(A&T)" and adding in its place "(AT&L)".

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

231.205–70 [Amended]

35. Section 231.205–70 is amended as follows:

a. In paragraph (c)(1)(iv)(A), paragraph (c)(1)(iv)(B) introductory text, and paragraph (c)(1)(iv)(C) introductory text by removing the parenthetical "(Acquisition & Technology)" and adding in its place "(Acquisition, Technology, and Logistics)";

b. In paragraph (d)(9) by removing the parenthetical "(Acquisition & Technology)" and adding in its place "(Acquisition, Technology, and Logistics)", and by removing the parenthetical "(A&T)" and adding in its place "(AT&L)"; and

c. In paragraph (d)(10) by removing the parenthetical "(Acquisition & Technology)" and adding in its place "(Acquisition, Technology, and Logistics)".

PART 232—CONTRACT FINANCING

232.006–5 [Amended]

36. Section 232.006–5 is amended as follows:

a. By removing the parenthetical "(Acquisition and Technology)" and adding in its place "(Acquisition, Technology, and Logistics)"; and

b. By removing "DD–ACQ" and adding in its place "DD–AT&L".

232.070 [Amended]

37. Section 323.070 is amended as follows:

a. In paragraph (a) in the first sentence by removing "(Acquisition and Technology) (OUSD(A&T)DP)" and adding in its place "(Acquisition,

Technology, and Logistics) (OUSD(AT&L)DP)";

b. In paragraph (a) in the last sentence by removing the parenthetical "(A&T)" and adding in its place "(AT&L)"; and

c. In paragraph (b) in the last sentence by removing the parenthetical "(A&T)" and adding in its place "(AT&L)".

232.071 [Amended]

38. Section 232.071 is amended in paragraphs (a)(1), (b)(1), and (b)(3) by removing the parenthetical "(A&T)" and adding in its place "(AT&L)".

232.501–2 [Amended]

39. Section 232.501–2 is amended as follows:

a. In the first sentence by removing "USD(A&T)DP" and adding in its place "Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD(AT&L)DP" and

b. In the last sentence by removing "the USD(A&T)DP" and adding in its place "(OUSD(AT&L)DP)"

232.617 [Amended]

40. Section 232.617 is amended in paragraph (a) by removing "USD(A&T)DP" and adding in its place "Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD(AT&L)DP".

232.803 [Amended]

41. Section 232.803 is amended in paragraph (d) in the first sentence by removing the phrase "for Acquisition and Technology" and adding in its place the parenthetical "(Acquisition, Technology, and Logistics)"

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

235.006 [Amended]

42. Section 235.006 is amended as follows:

a. In paragraph (b)(i)(C)*(1)* introductory text by removing "(Acquisition and Technology) (USD(A&T))" and adding in its place "(Acquisition, Technology, and Logistics) (USD(AT&L))";

b. In paragraph (b)(ii) introductory text by removing the parenthetical "(A&T)" both places it appears and adding in its place "(AT&L)"; and

c. In paragraph (b)(iii) by removing the parenthetical "(A&T)" and adding in its place "(AT&L)".

PART 236—CONSTRUCTION AND ARCHITECT—ENGINEER CONTRACTS

43. Sections 236.213 and 236.213–70 are added to read as follows:

236.213 Special procedures for sealed bidding in construction contracting.

236.213–70 Additive or deductive items.

(a) If it appears that sufficient funds may not be available for all the desired construction features, consider using a bid schedule with—

(1) A first or base bid item covering the work generally as specified; and

(2) A list of priorities that contains one or more additive or deductive bid items that progressively add or omit specified features of the work in a stated order of priority. (Normally, do not mix additive and deductive bid items in the same solicitation.)

(b) Before opening the bids, record in the contract file the amount of funds available for the project.

(c) Determine the low bidder and the bid items to be awarded as follows:

(1) Use the recorded amount of available funds to determine the low bidder, which will be the bidder that—

(i) Is otherwise eligible for award; and

(ii) Offers the lowest aggregate amount for the first or base bid item, plus or minus (in order of listed priority), those additive or deductive bid items that provide the most features within the funds available.

(2) Evaluate all bids on the basis of the same additive or deductive bid items.

(i) If adding another item from the bid schedule list of priorities would make the award exceed the available funds, skip that item and go to the next item from the list of priorities.

(ii) Add the next item if an award can be made that includes the item and is still within the available funds.

(3) Use the list of priorities only to determine the low bidder. After determining the low bidder, an award may be made on any contribution if—

(i) It is in the best interests of the Government;

(ii) Funds are available at time of award; and

(iii) The low bidder's price for the combination is less than the price offered by any other responsive, responsible bidder.

Subpart 236.3—[Removed]

44. Subpart 236.3 is removed

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

242.771–3 [Amended]

45. Section 242.771–3 is amended as follows:

a. In paragraph (c) by removing the parenthetical "(USD (A&T) DP)" and adding in its place ", Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics (OUSD (AT&L))),"; and

b. In paragraph (d) introductory text by removing the parenthetical "(USD (A&T) DDR&E)" and adding in its place "(OUSD (AT&L) DDR&E)".

242.1203 [Amended]

46. Section 242.1203 is amended in paragraph (b)(2)(A) by removing the parenthetical "(c)" and adding in its place "(e)"

PART 249—TERMINATION OF CONTRACTS

249.105–1 [Amended]

47. Section 249.105–1 is amended in the introductory text by removing "DD–A&T" and adding in its place "DD–AT&L".

48. Section 249.7000 is amended by revising paragraphs (a)(3) and (b)(2) and the first two sentences of paragraph (d) to read as follows:

249.7000 Terminated contracts with Canadian Commercial Corporation.

(a) * * *

(3) The Procedures Manual on Termination of Contracts, Public Works and Government Services Canada.

(b) * * *

(2) That the Contract Claims Resolution Board of the Public Works and Government Services Canada has approved settlements with Canadian subcontractors when the Procedures Manual on Termination of Contracts requires such approval.

* * * * *

(d) The Canadian Commercial Corporation should send all termination settlement proposals submitted by U.S. subcontractors and suppliers to the TCO of the cognizant contract administration office of the Defense Contract Management Agency for settlement. The TCO will inform the Canadian Commercial Corporation of the amount of the net settlement of U.S. subcontractors and suppliers so that this amount can be included in the Canadian Commercial Corporation termination proposal. * * *

249.7001 [Amended]

49. Section 249.7001 is amended in paragraph (f) by removing "DD–A&T" and adding in its place "DD–AT&L".

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

250.201–70 [Amended]

50. Section 250.201–70 is amended as follows:

a. In paragraph (b)(1) by removing "(Acquisition & Technology)

(USDA&T))" and adding in its place "(Acquisition, Technology, and Logistics) (USD (AT&L))"; and

b. In paragraph (b)(2) by removing the parenthetical "(A&T)" and adding in its place "(AT&L)"

252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7026 [Amended]

51. Section 252.225–7026 is amended as follows:

a. By revising the clause date to read "(JUN 2000)"; and

b. In paragraph (b)(3) by removing the parenthetical "(A&T)" and adding in its place "(AT&L)".

PART 253—FORMS

253.213–70 [Amended]

52. Section 253.213–70 is amended in paragraph (e), under the heading "17 Accounting and Appropriation Data/ Local Use—" by removing "204.7108" and adding in its place "204.7107".

53. The note at the end of Part 253 is amended as follows:

a. In the entry "253.303–1391" by removing "FY 19__" and adding in its place "FY ____" and

b. By adding, after the entry "253.303–1391", the entry "253.303–1391c FY ____ Military Construction Project Data (continuation).".

Appendix A—Armed Services Board of Contract Appeals

PART 2—[AMENDED]

54. Appendix A to Chapter 2 is amended in Part 2 in the Preface, under the heading "II. Location and Organization of the Board", in paragraph (a) as follows:

a. By adding "–3217" after "22041";

b. By removing "(202) 756–8500" and adding in its place "(703) 681–8500"; and

c. By removing "756–8502" and adding in its place "(703) 681–8502".

Appendix G—Activity Address Numbers

G–102 [Amended]

55. Appendix G to Chapter 2 is amended in Section G–102 in paragraph (b)(2) by removing the parenthetical "(A&T)" and adding in its place "(AT&L)".

56. Appendix G, Part 3, is amended by revising the entry "N00030"; and by adding, in alpha-numerical order, two new entries to read as follows:

PART 3—NAVY ACTIVITY ADDRESS NUMBERS

* * * * *

N00030 Strategic Systems Programs
EK* 3801 Nebraska Avenue
EKO–9 Washington, DC 20393–5446

* * * * *

N46450 Officer-In-Charge
L50–9 Fleet and Industrial Supply Center, Jacksonville Detachment, 930 USS Hunley Avenue, Room 214, Kings Bay, GA 31547–2617

* * * * *

N68836 Commanding Officer
J9 Fleet and Industrial Supply Center, 110 Yorktown Avenue, Jacksonville, FL 32212–0097

* * * * *

57. Appendix G, Part 4, is amended by removing the entry "M67355"; and by adding, in alpha-numerical order, two new entries to read as follows:

PART 4—MARINE CORPS ACTIVITY ADDRESS NUMBERS

* * * * *

M20001 Contracting Office
MUN Headquarters and Service Company
(MAJ00027) Marine Forces Atlantic, Building CA–486, Room 203, 1468 Ingram Street, Norfolk, VA 23551–2596

* * * * *

M29000 Contingency Contracting Office
MSZ 3D Force Service Support Group
(MAJ00027) Marine Forces Pacific, Unit 38404, FPO AP 96604–8404

* * * * *

58. Appendix G, Part 5, is amended as follows:

a. By revising the entry "F04605"; and

b. In the entry "F30602" by removing the abbreviation "AFRL/IFK" and adding in its place "AFRL/IFOJ". The revised text reads as follows:

PART 5—AIR FORCE ACTIVITY ADDRESS NUMBERS

* * * * *

F04605 452 LSS/LGC
5H 1940 Graeber Street, Building 449, March ARB, CA 92518–1650

* * * * *

[FR Doc. 00–15818 Filed 6–26–00; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 204 and 253

[DFARS Case 2000–D001]

Defense Federal Acquisition Regulation Supplement; Reporting Requirements Update

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 provide DoD contract action reporting requirements for fiscal year 2001. The rule makes changes to the individual contracting action report and the monthly summary of contracting actions.

EFFECTIVE DATE: October 1, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; telefax (703) 602–0350. Please cite DFARS Case 2000–D001.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule contains fiscal year 2001 requirements for completion of DD Form 350, Individual Contracting Action Report, and DD Form 1057, Monthly Summary of Contracting Actions. DoD uses these forms to collect statistical data on its contracting actions. This rule contains reporting changes related to bundled contracts, North American Industry Classification System codes, performance-based service contracts, multiple award contracts, and veteran-owned small business concerns.

DD Forms 350 and 1057, and other forms prescribed by the DFARS, are not included in the Code of Federal Regulations. The forms are available electronically via the Internet at http://web1.whs.osd.mil/icdhome/forms.htm.

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

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2000-D001.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 204 and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 204 and 253 are amended as follows:

1. The authority citation for 48 CFR Parts 204 and 253 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Sections 204.600 through 204.602 are revised to read as follows:

204.600 Scope of subpart.

The Defense Contract Action Data System (DCADS) (see 204.670) is the DoD reporting system that supports the uniform reporting requirements for—

(1) DD Form 350, Individual Contracting Action Report; and

(2) DD Form 1057, Monthly Summary of Contracting Actions.

204.601 Record requirements.

(a) The DCADS meets FAR Subpart 4.6 record retention requirements.

(d) The Directorate for Information, Operation, and Reports (DIOR), of the Washington Headquarters Services (WHS) transmits required DoD information to the Federal Procurement Data System.

204.602 Federal Procurement Data System.

(c) DoD uses the DD Form 350, Individual Contracting Action Report, instead of the SF 279, Federal Procurement Data System (FPDS) Individual Contract Action Report. DoD uses the DD Form 1057, Monthly Summary of Contracting Actions, instead of the SF 281, FPDS Summary Contract Action Report ($25,000 or Less).

3. Section 204.670–1 is amended by revising paragraphs (b) and (c) to read as follows:

204.670–1 Definitions.

(b) *Contracting action* means any action obligating or deobligating funds in connection with the purchasing, renting, or leasing of supplies, services, or construction. The term does not include grants or cooperative agreements. The term includes, but is not limited to, the following:

(1) Definitive contracts, including notices of award.

(2) Letter contracts.

(3) Purchase orders.

(4) Purchases made using the Governmentwide commercial purchase card.

(5) Actions for purchase of land or rental or lease of real property.

(6) Orders under existing contracts or agreements, *e.g.*—

(i) Orders against basic ordering agreements, including service orders issued on DD Form 1164, Service Order for Personal Property, by installation transportation offices;

(ii) Calls against blanket purchase agreements;

(iii) Job orders;

(iv) Task orders;

(v) Delivery orders;

(vi) Communication services authorizations; and

(vii) Notices of termination or cancellation.

(7) Contract modifications, *e.g.*—

(i) Change orders;

(ii) Supplemental agreements;

(iii) Funding actions; and

(iv) Option exercises.

(c) *Departmental data collection points* means—

(1) For the Army (including Corps of Engineers Civil Works): Department of the Army, ATTN: SAAL-PA, 5109 Leesburg Pike, Suite 302, Falls Church, VA 22041–3201.

(2) For the Navy: Fleet Industrial Supply Center, Norfolk Detachment Washington, DC, ATTN: PMRS, Code 02W4.A, 1014 N Street SE, Suite 400, Washington Navy Yard, Washington, DC 20374–5014.

(3) For the Air Force: SAF/AQCI, 1060 Air Force Pentagon, Washington, DC 20330–1060.

(4) For the Defense Logistics Agency: Headquarters, Defense Logistics Agency, ATTN: Procurement Management Directorate (Acquisition Programs Team), 8725 John J. Kingman Road, Suite 3147, Fort Belvoir, VA 22060–6221.

(5) For other DoD contracting activities: Department of the Army, ATTN: SAAL-PA, 5109 Leesburg Pike, Suite 302, Falls Church, VA 22041–3201.

* * * * *

4. Section 204.670–2 is amended by revising paragraphs (a) and (b)(2)(ii) to read as follows:

204.670–2 Reportable contracting actions.

(a) Except as provided in paragraph (c) of this subsection, complete a DD Form 350 for the following types of contracting actions in accordance with the instructions in 253.204–70:

(1) Actions that obligate or deobligate more than $25,000, except actions summarized on DD Form 1057 in accordance with paragraph (b)(2) of this subsection.

(2) Actions that obligate or deobligate $25,000 or less and are—

(i) Under a very small business set-aside (see FAR Subpart 19.9);

(ii) Requirements that DoD is processing for a non-DoD Federal agency; or

(iii) In a designated industry group under the Small Business Competitiveness Demonstration Program (see FAR Subpart 19.10), except for—

(A) Foreign military sales;

(B) Orders or modifications under Federal schedules;

(C) Actions with government agencies;

(D) Actions with non-U.S. business firms; and

(E) Actions where the place of performance is other than the United States and its outlying areas.

(b) * * *

(2) * * *

(ii) A humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(8).

* * * * *

5. Sections 204.670–3 through 204.670–7 are revised to read as follows:

204.670–3 Contracting office responsibilities.

(a) For DD Form 350, contracting offices—

(1) Prepare the appropriate type of DD Form 350 (see 204.670–6) in accordance with the instructions in 253.204–70, for all reportable contracting actions (see 204.670–2(a)), including actions accomplished by contract administration offices on behalf of the contracting office.

(2) Complete the DD Form 350 when funds are obligated or deobligated. For actions accomplished by a contract administration office, complete the DD Form 350 upon receipt of the contractual instrument annotated "DD FORM 350 REPORTING COPY."

(3) Submit all DD Forms 350 for the calendar month to the departmental data collection point (see 204.670–1(c)) in accordance with departmental or agency procedures.

(4) Prepare and submit a corrected or canceling DD Form 350 as required in accordance with departmental data collection point instructions.

(5) Establish a control system for assigning report numbers to DD Forms 350 (Line A2 of the DD Form 350). The number must have six positions and may be any combination of alpha or numeric characters. If more than one activity within a contracting office uses the same reporting office code, the

contracting office must assign separate blocks of numbers to each activity to prevent duplication of report numbers.

(6) Maintain the DD Form 350 in the contract file in any medium, in accordance with departmental or agency procedures.

(b) For DD Form 1057, contracting offices—

(1) Prepare a DD Form 1057, in accordance with the instructions in 253.204–71, covering reportable contracting actions (see 204.670–2(b)), including actions accomplished by contract administration offices on behalf of the contracting office. An installation, base, or other activity may have more than one contracting office code to separate the various types of acquisitions, such as base and central contracting, or RDT&E and non-RDT&E acquisition. Each contracting office with a separate code must submit its own DD Form 1057.

(2) Complete the DD Form 1057 within three working days after the cutoff of the reporting month. Contracting offices may not cut off the reporting month before the 25th calendar day. The cutoff date for September is September 30. Submit the DD Form 1057 to the departmental data collection point in accordance with departmental or agency procedures.

(3) Unless otherwise instructed by the departmental data collection point, do not submit revised DD Form 1057 reports. Include any required corrections or adjustments in following month's report.

204.670–4 Contract administration office responsibilities.

Contract administration offices executing actions subject to DD Form 350 or DD Form 1057 reporting must submit an annotated copy of the contractual instrument to the contracting office so that the contracting office can submit the required report.

(a) For DD Form 350, annotate in the heading of the contractual instrument in large block letters "DD FORM 350 REPORTING COPY." Send the annotated copy to the contracting office within one working day after the action date.

(b) For DD Form 1057, annotate in the heading of the contractual instrument in large block letters "DD FORM 1057 REPORTING COPY." Send the annotated copy with the normal distribution.

204.670–5 Departmental data collection point responsibilities.

Departmental data collection points—

(a) Collect DD Forms 350 and 1057 data provided by their contracting activities;

(b) Electronically record the data in accordance with the instructions for recording and editing developed by WHS–DIOR with the majority agreement of the departments and agencies and prescribed by the Director of Defense Procurement; and

(c) Submit monthly reports (noncumulative) to Washington Headquarters Services, ATTN: DIOR, within 18 days after the close of the reporting period, except the due date for September may be extended for no more than ten days. Report Control Symbol DD–AT&L(M)1014 applies to reports for DD Form 350 actions, and Report Control Symbol DD–AT&L(M)1015 applies to reports for DD Form 1057 actions.

204.670–6 Types of DD Form 350 reports.

There are three types of reports—single, consolidated, and multiple.

(a) A single report is one DD Form 350 report per contracting action.

(b) A consolidated report combines several contracting actions.

(1) Prepare consolidated reports for—

(i) Military Sealift Command awards of indefinite-delivery contracts for ocean transportation. The Command reports at the beginning of each fiscal year the estimated value of the orders for that fiscal year on one DD Form 350.

(ii) Defense Energy Support Center or Defense Supply Center, Richmond, indefinite-delivery contracts for petroleum or petroleum supplies. The Centers, at the time of award, report the estimated value of the orders to be placed against the contract on one DD Form 350.

(iii) Orders placed by the Defense Commissary Agency (DeCA) for resale items over $25,000. DeCA consolidates the orders monthly and reports the cumulative dollar amounts and actions on one DD Form 350 in accordance with agency procedures.

(iv) Vouchers processed by the U.S. Army Contracting Command, Europe (USACCE), for the purchase of utilities from municipalities (*e.g.*, gas, electricity, water, sewage, steam, snow removal, and garbage collection). USACCE consolidates these transactions monthly and reports the cumulative dollar amount on one DD Form 350 in accordance with departmental procedures.

(2) Consolidated reports may be prepared in accordance with departmental or agency procedures for orders under communications service agreements for local dial tone services.

(c) A multiple report is more than one DD Form 350 per contracting action. Prepare multiple reports if—

(1) The contracting action includes foreign military sales (FMS) requirements in addition to non-FMS requirements (Line B9 on the DD Form 350). Submit one DD Form 350 report for the FMS requirements and another DD Form 350 report for the non-FMS requirements, except if either of the portions is $25,000 or less, report the $25,000 or less portion on a DD Form 1057 instead of a DD Form 350.

(2) The contracting action includes more than one type of contract (Line C5 on the DD Form 350) and the type with the least dollar value exceeds $500,000. Prepare a separate DD Form 350 for each contract type.

(3) The contracting action includes non-DoD Federal agency requirements and DoD requirements. Submit one DD Form 350 for the non-DoD requirements and another DD Form 350 for the DoD requirements. If the DoD portion is $25,000 or less, report the DoD portion on a DD Form 1057 instead of a DD Form 350.

204.670–7 Security classification.

Submit DD Forms 350 as unclassified documents. Classified contracts are not exempt from reporting solely because the contract is classified. Contact the appropriate departmental data collection points for special instructions if it is necessary for security reasons to modify coding of any information on the DD Form 350. If contact cannot be made for security reasons, obtain instructions from the Director of Security, Office of the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence), (703) 614–0578, or DSN 224–0578.

204.670–8 [Removed]

6. Section 204.670–8 is removed.

PART 253—FORMS

7. Sections 253.204–70 and 253.204–71 are revised to read as follows:

253.204–70 DD Form 350, Individual Contracting Action Report.

Policy on use of a DD Form 350 is in 204.670–2. This subsection contains instructions for completion of the DD Form 350.

(a) *Part A of the DD Form 350.* Part A identifies the report and the reporting activity. Complete all four lines.

(1) LINE A1, TYPE OF REPORT. Enter one of the following codes:

(i) *Code 0—Original.* Enter code 0 unless code 1 or code 2 applies.

(ii) *Code 1—Canceling.* A canceling action cancels an existing DD Form 350 in accordance with departmental data collection point instructions.

(iii) *Code 2—Correcting.* A correcting action corrects an existing DD Form 350 action in accordance with departmental data collection point instructions.

(2) LINE A2, REPORT NUMBER. Enter the six-position local control number (see 204.670–3(a)(5)). If Line A1 is coded 1 or 2, use the prior report number rather than a new one.

(3) LINE A3, CONTRACTING OFFICE

(i) LINE A3A, REPORTING AGENCY FIPS 95 CODE. Enter the four-position code from Federal Information Processing Standards Publication (FIPS PUB) 95, Codes for the Identification of Federal and Federally Assisted Organizations, that identifies the reporting agency.

(ii) LINE A3B, CONTRACTING OFFICE CODE. Enter the code assigned by the departmental data collection point in 204.670–1(c).

(4) LINE A4, NAME OF CONTRACTING OFFICE. Enter sufficient detail to establish the identity of the contracting office.

(b) *Part B of the DD Form 350.* Part B identifies the transaction.

(1) LINE B1, CONTRACT IDENTIFICATION INFORMATION. Do not leave any parts of Line B1 blank.

(i) LINE B1A, CONTRACT NUMBER.

(A) Enter—

(1) The DoD contract number; or

(2) For orders under contracts awarded by other Federal agencies, the contract number of that Federal agency as it appears in the contractual instrument.

(B) Do not leave spaces between characters, and do not enter dashes, slants, or any other punctuation marks.

(C) The DoD contract number is the basic (13 alphanumeric character) procurement instrument identification number (PIIN) that was assigned in accordance with 204.7003 or constructed under an exception permitted by 204.7000. Do not enter any supplementary procurement instrument identification numbers as part of the contract number (these go on Line B2).

(ii) LINE B1B, ORIGIN OF CONTRACT. Enter the code that indicates the agency that assigned the contract number.

(A) *Code A—DoD.*

(B) *Code B—NASA.*

(C) *Code C—Other Non-DoD Agency.*

(iii) LINE B1C, BUNDLED CONTRACT. Enter one of the following codes:

(A) *Code Y—Yes.* Enter code Y when the contract meets the definition of "bundled contract" at FAR 2.101 and the contract value exceeds $5 million.

(B) *Code N—No.* Enter code N when code Y does not apply.

(iv) LINE B1D, PERFORMANCE-BASED SERVICE CONTRACT. Enter one of the following codes:

(A) *Code Y—Yes.* Enter code Y when—

(1) The contract value exceeds $100,000; and

(2) At least 80 percent of the contract value is for work that is performance based (see FAR subpart 37.6).

(B) *Code N—No.* Enter code N when code Y does not apply.

(v) LINE B1E—Reserved.

(2) LINE B2, MODIFICATION, ORDER, OR OTHER ID NUMBER. Enter the supplementary procurement instrument identification number (if there is one) that was assigned in accordance with 204.7004 or as permitted by 204.7000. It can be up to 19 characters. Usually calls and orders have a four-position number (see 204.7004(d)); modifications to contracts and agreements have a six-position modification number (see 204.7004(c)); and modifications to calls and orders have a two-position modification number (see 204.7004(e)). When reporting modifications to calls and orders, enter both the call or order number and the modification number.

(3) LINE B3, ACTION DATE.

(i) Enter the year, month, and day of the effective date for fiscal obligation purposes.

(ii) Enter four digits for the year, two digits for the month, and two digits for the day. Use 01 through 12 for January through December. For example, enter January 2, 2003, as 20030102.

(4) LINE B4, COMPLETION DATE.

(i) Enter the year, month, and day of the last contract delivery date or the end of the performance period. If the contract is incrementally funded, report the completion date for the entire contract. Report the completion date associated with an option quantity when the option is exercised.

(ii) Enter four digits for the year, two digits for the month, and two digits for the day. Use 01 through 12 for January through December. For example, enter January 2, 2003, as 20030102.

(5) LINE B5, CONTRACTOR IDENTIFICATION INFORMATION.

(i) Use data that relates to the contractor whose name and address appear in the contract document (Block 7 of the SF 26, Award/Contract; Block 8 of the SF 30, Amendment of Solicitation/Modification of Contract; Block 15A of the SF 33, Solicitation, Offer and Award; or Block 9 of the DD Form 1155, Order for Supplies or Services), except—

(A) For contracts placed with the Small Business Administration under Section 8(a) of the Small Business Act, use data that relates to the company that will be performing the work;

(B) For Federal schedule orders, use data that applies to the contractor whose name appears on the schedule (not the data for the agent to whom orders may be sent); and

(C) For contracts with the Canadian Commercial Corporation (CCC), use data for the appropriate CCC office.

(ii) Some of the parts of Line B5 may not apply to the action being reported. Follow the instructions for each part.

(A) LINE B5A, CONTRACTOR IDENTIFICATION NUMBER (DUNS).

(1) Enter the contractor's 9-position Data Universal Numbering System (DUNS) number (see FAR 4.602(d) and 4.603 and DFARS subpart 204.73).

(2) For all actions with Federal Prison Industries (UNICOR), use DUNS number 62–662–7459.

(3) For U.S. Army Contracting Command, Europe, consolidated reporting of vouchers for utilities from municipalities, use DUNS number 15–390–6193 (see 204.670–6(b)(1)).

(B) LINE B5B, GOVERNMENT AGENCY. Enter one of the following codes:

(1) Code Y—Yes. Enter code Y when the contractor is a Federal, State, or local government agency of the United States and outlying areas (see 204.670–1(d)). Do not use code Y when the government agency is an educational institution.

(2) Code N—No. Enter code N when code Y does not apply.

(C) LINE B5C, CAGE CODE. Enter the 5-position Commercial and Government Entity (CAGE) code that identifies the contractor plant or establishment. If the CAGE code is not already available in the contracting office and the apparent awardee does not respond to the provision at 252.204–7001, Commercial and Government Entity (CAGE) Code Reporting, use the procedures at 204.7202–1 to obtain one.

(D) LINE B5D, CONTRACTOR NAME AND DIVISION NAME. Enter the contractor's name as stated in the offer and resultant contract. Include its division name.

(E) LINE B5E, CONTRACTOR ADDRESS. Enter the contractor's address as stated in the offer and resultant contract. Include street address or P.O. Box, city or town, state or country, and ZIP code, if applicable. Do not enter foreign postal codes.

(F) LINE B5F, TAXPAYER IDENTIFICATION NUMBER. Enter the contractor's taxpayer identification number (TIN) (see FAR Subpart 4.9). Leave Line B5F blank if the contractor is—

(1) Registered in the Central Contractor Registration database (see Subpart 204.73);

(2) A nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the trade or business in the United States; and does not have an office or place of business or a fiscal paying agent in the United States;

(3) An agency or instrumentality of a foreign government; or

(4) An agency or instrumentality of the Federal Government.

(G) LINE B5G, PARENT TAXPAYER IDENTIFICATION NUMBER. Enter the contractor's parent company (common parent) TIN (see FAR subpart 4.9 and 52.204–3). If the contractor does not have a parent company or the parent company meets the exemption for Line B5F, leave Line B5G blank.

(H) LINE B5H, PARENT NAME. If a parent company TIN is entered on Line B5G, enter the name of the parent company (common parent) on Line B5H. Leave Line B5H blank if there is no parent company or the parent company is exempted from the requirement to have a TIN.

(6) LINE B6, PRINCIPAL PLACE OF PERFORMANCE.

(i) The place, or places, where the contract will be performed may be specified by the Government or listed by the contractor in response to the solicitation provision at FAR 52.214–14, Place of Performance'Sealed Bidding, or FAR 52.215–6, Place of Performance. Use data for the contractor's principal place of performance, which is generally the—

(A) Final assembly point for items manufactured under supply contracts;

(B) Location from where shipments from stock are made under supply contracts;

(C) Actual construction site for construction contracts;

(D) Planned construction site for architect-engineer contracts;

(E) Place of mining for mined supplies; or

(F) Place (including military installations) where a service is performed for service contracts.

(ii) When there is more than one location for any of paragraphs (b)(6)(i)(A) through (F) of this subsection (*e.g.*, more than one construction site), use the location involving the largest dollar amount of the acquisition. Do not show more than one location on Line B6.

(iii) If places of performance are too varied or not known, enter the contractor's home office location. However, if the contractor is a domestic concern and the entire contract will be performed outside the United States, enter the most frequent place of performance.

(iv) Follow the instructions for each part of Line B6 that applies to the action being reported.

(A) LINE B6A, CITY OR PLACE CODE.

(1) For places in the United States and outlying areas, enter the numeric place code from FIPS PUB 55, Guideline: Codes for Named Populated Places, Primary Country Divisions, and Other Locational Entities of the United States and Outlying Areas. Leave Line B6A blank for places outside the United States and outlying areas.

(2) If the city or locality is not listed, look in FIPS PUB 55 for the county code of the principal place of performance. Enter that code on Line B6A. Use 50000 for Washington, DC, with a State code of 11.

(3) Paragraph 5.2, Entry Selection With the Aid of the Class Code, of FIPS PUB 55 will help in selecting the correct code. Sometimes, a class code should be used in addition to a place code to accurately identify the place of performance. Do not use place codes when the first position of the class code is X or Z.

(B) LINE B6B, STATE OR COUNTRY CODE.

(1) For places in the United States and outlying areas, enter the numeric State code from FIPS PUB 55 or FIPS PUB 5, Codes for the Identification of the States, the District of Columbia and the Outlying Areas of the United States and Associated Areas.

(2) For places outside the United States and outlying areas, enter the alpha country code from FIPS PUB 10, Countries, Dependencies, Areas of Special Sovereignty, and Their Principal Administrative Divisions.

(C) LINE B6C, CITY OR PLACE AND STATE OR COUNTRY NAME. Enter the name of the principal place of performance. Do not leave Line B6C blank.

(7) LINE B7, TYPE OBLIGATION. Enter one of the following codes:

(i) *Code 1—Obligation.* Enter code 1 if the contracting action obligates funds.

(ii) *Code 2—Deobligation.* Enter code 2 if the contracting action deobligates funds.

(8) LINE B8, TOTAL DOLLARS. Enter the net amount of funds (whole dollars only) obligated or deobligated by the contracting action. Do not leave Line B8 blank.

(9) LINE B9, FOREIGN MILITARY SALE. Enter one of the following codes. If only part of the contracting action is a foreign military sale, separately report the parts (see 204.670–6(c)).

(i) *Code Y—Yes.* Enter code Y when the contracting action is under a foreign military sales arrangement, or under any other arrangement when a foreign country or international organization is bearing the cost of the acquisition.

(ii) *Code N—No.* Enter code N when code Y does not apply.

(10) LINE B10, MULTIYEAR CONTRACT. Enter one of the following codes:

(i) *Code Y—Yes.* Enter code Y when the contracting action is a multiyear contract as defined at FAR 17.103. Do not report contracts containing options as multiyear unless the definition at FAR 17.103 applies to the contract.

(ii) *Code N—No.* Enter code N when code Y does not apply.

(11) LINE B11, TOTAL MULTIYEAR VALUE. Enter the total estimated multiyear contract value (in whole dollars) only at the time of initial obligation of multiyear funds for a new letter contract or a new definitive contract (Line B13A is coded 1 or 3 and Line B13D is blank). For all other codes on Line B13A, enter a zero on Line B11.

(12) LINE B12, PRINCIPAL PRODUCT OR SERVICE. Line B12 has five parts. Do not leave any parts of Line B12 blank.

(i) LINE B12A, FEDERAL SUPPLY CLASS OR SERVICE CODE. Enter the 4-character Federal supply class (FSC) or service code that describes the contract effort. To find the code, look in Section I of the Department of Defense (DoD) Procurement Coding Manual (MN02). There are three categories of codes to choose from. In some cases, use a 4-character code from a list of 4-character codes; in other cases, construct a code using the instructions in the Manual. If more than one category or code applies to the contracting action, enter the one that best identifies the product or service representing the largest dollar value.

(A) *Supplies.* If the contracting action is for the purchase (not lease or rental) of supplies, enter an FSC code on Line B12A. FSC codes are all numeric. Look in Section I, Part C, of the DoD Procurement Coding Manual (MN02). The Department of Defense Federal Supply Classification Cataloging Handbook (H2) may also help with the correct 4-digit code.

(B) *Services.* If the contracting action is for services (except research, development, test, and evaluation), construction, equipment lease or rental, or facilities lease or rental, enter a service code on Line B12A. Service codes are listed in Section I, Part B, of the DoD Procurement Coding Manual (MN02).

(C) *Research, Development, Test, and Evaluation (RDT&E).* If the contracting action is for RDT&E (as defined in FAR 35.001 and 235.001), enter an RDT&E code on Line B12A. Look in Section I, Part A, of the DoD Procurement Coding Manual (MN02). All RDT&E codes should begin with the letter "A." Do not use an RDT&E code for—

(*1*) Purchase, lease, or rental of equipment, supplies, or services separately purchased in support of RDT&E work, even if RDT&E funds are cited. Instead, use an FSC or Service code under the instructions in paragraph (b)(12)(i)(A) or (B) of this subsection; or

(*2*) Orders under Federal schedule contracts. Instead, use an FSC or Service code under the instructions in paragraph (b)(12)(i)(A) or (B) of this subsection.

(ii) LINE B12B, DOD CLAIMANT PROGRAM CODE. Enter a code that identifies the commodity described on Line B12E. These codes are in Section III of the DoD Procurement Coding Manual (MN02). If more than one code applies to the contracting action, enter the one that best identifies the product or service representing the largest dollar value. If the description on Line B12E is for'

(A) Research and development (R&D), enter the code that best represents the objective of the R&D. For example, if the objective of the R&D is a guided missile, enter code A20. If the R&D cannot be identified to any particular objective, enter code S10;

(B) Ship repair, inspect and repair as necessary (IRAN), modification of aircraft, overhaul of engines, or similar maintenance, repair, or modification services, enter the code that best identifies the program;

(C) Equipment rental (including rental of automatic data processing equipment), enter code S10;

(D) Utility services, enter code S10;

(E) Services that cannot be identified to any listed program, enter code S10; or

(F) Supplies or equipment that cannot be identified to any listed program, enter code C9E.

(iii) LINE B12C, PROGRAM, SYSTEM, OR EQUIPMENT CODE.

(A) Enter a code that describes the program, weapons system, or equipment. These codes are in Section II of the DoD Procurement Coding Manual (MN02). If there is no code that applies to the contracting action, enter three zeros. If more than one code applies to the action, enter the one that best identifies the product or service representing the largest dollar value.

(B) If the contracting action is funded by the Ballistic Missile Defense Organization, enter code CAA.

(C) If the contracting action supports environmental cleanup programs, enter one of the codes listed in Section II of the DoD Procurement Coding Manual (MN02) under the heading "Description and Use of Program Codes—Environmental Cleanup Programs."

(D) Defense Logistics Agency activities must use the code assigned by the sponsoring military department.

(iv) LINE B12D, NAICS CODE. Enter the North American Industry Classification System (NAICS) code for the acquisition. Use the NAICS code in effect at the time of award. These codes are in the 1997 U.S. NAICS Manual (http://www.census.gov/pub/epcd/www/naics.html). If more than one code applies to the contracting action, enter the code that best identifies the product or service representing the largest dollar value.

(v) LINE B12E, NAME OR DESCRIPTION. Enter the name or a brief description of the commodity or service. If the description is classified, enter only the word "Classified." Do not use "Classified" when a code name (e.g., Minuteman, Polaris, Trident, Pershing) or an identifying program number (e.g., WS–107A) can be used.

(13) LINE B13, KIND OF CONTRACTING ACTION. Some of the parts of Line B13 may not apply to the action being reported. Follow instructions for each part. When the contracting action is a modification, complete Lines B13A and B13D.

(i) LINE B13A, CONTRACT OR ORDER. Enter one of the following codes:

(A) *Code 1—Letter Contract.* Enter code 1 when the contracting action is a letter contract or a modification to a letter contract that has not been definitized.

(B) *Code 3—Definitive Contract.*

(1) Enter code 3 when the contracting action is the award or modification of a definitive contract or a modification that definitizes a contract. Code 3 includes the following:

(i) Definitive contract awards under the Small Business Administration 8(a) program.

(ii) Notices of award.

(iii) Lease agreements.

(iv) Indefinite-delivery-definite-quantity contracts (FAR 52.216–20).

(v) Indefinite-delivery-indefinite-quantity contracts (FAR 52.216–22) when funds are obligated by the contract itself.

(2) Code 3 excludes orders from the Procurement List (see codes 6 and 8).

(C) *Code 4—Order under an Agreement.* Enter code 4 when the contracting action is an order or definitization of an order under an agreement other than a blanket purchase agreement. Examples include an order exceeding $25,000 under a basic ordering agreement or a master ship repair agreement and a job order when the contract is created by issuing the order. A call under a blanket purchase agreement associated with a Federal schedule (see FAR 8.404(b)(4)) is coded 6. A call under other blanket purchase agreements, pursuant to FAR 13.303, is coded 9. When the contracting action is a modification to an order described in code 4 instructions, enter code 4 on Line B13A.

(D) *Code 5—Order under Indefinite-Delivery Contract.* Enter code 5 when the contracting action is an order, including a task or delivery order, under an indefinite-delivery contract awarded by a Federal agency. For example, enter code 5 for an order under a GSA indefinite-delivery contract, such as a GSA area-wide contract for utility services, that is not a Federal schedule. When the contracting action is a modification to an order described in code 5 instructions, enter code 5 on Line B13A.

(E) *Code 6—Order or Call under Federal Schedule.* Enter code 6 if the contracting action is an order under a GSA or VA Federal Supply Schedule, or a call against a blanket purchase agreement established under a GSA or VA Federal Supply Schedule (see FAR 8.404). Code 6 includes orders under Federal Supply Schedules for items on the Procurement List. When the contracting action is a modification to an order or call described in code 6 instructions, enter code 6 on Line B13A.

(F) *Code 8—Order from Procurement List.* Enter code 8 if the contracting action is an action placed with Federal Prison Industries (UNICOR) or a JWOD Participating Nonprofit Agency in accordance with FAR subpart 8.6 or 8.7. Use code 6 for orders from the Procurement List under Federal schedules. When the contracting action is a modification to an action described in code 8 instructions, enter code 8 on Line B13A.

(G) *Code 9—Purchase Order or Call.* Enter code 9 if the contracting action, including an action in a designated industry group under the Small Business Competitiveness Demonstration Program (see FAR subpart 19.10), is an award pursuant to FAR part 13, except when the contracting action is a blanket purchase agreement call pursuant to FAR 8.404(b)(4) (see code 6). When the contracting action is a modification to a purchase order or call described in code

9 instructions, enter code 9 on Line B13A.

(ii) LINE B13B, TYPE OF INDEFINITE-DELIVERY CONTRACT. If Line B13A is coded 3 and the ninth position of B1A is coded D, complete Line B13B. If Line B13A is coded 5, complete Line B13B. Otherwise, leave Line B13B blank.

(A) *Code A—Requirements Contract (FAR 52.216–21).*

(B) *Code B—Indefinite-Quantity Contract (FAR 52.216–22).*

(C) *Code C—Definite-Quantity Contract (FAR 52.216–20).*

(iii) LINE B13C, MULTIPLE OR SINGLE AWARD INDEFINITE-DELIVERY CONTRACT. If Line B13B is coded A, B, or C, complete Line B13C. Otherwise, leave Line B13C blank.

(A) *Code M—Multiple Award.* Enter code M if the contracting action is a task or delivery order under a multiple award indefinite-delivery contract.

(B) *Code S—Single Award.* Enter code S if the contracting action is a task or delivery order under a single award indefinite-delivery contract.

(iv) LINE B13D, MODIFICATION. If the contracting action is a modification, enter one of the following codes. Otherwise, leave Line B13D blank.

(A) *Code A—Additional Work (new agreement).* Enter code A when the contracting action is a bilateral supplemental agreement that obligates funds for additional work requiring a justification and approval (J&A).

(B) *Code B—Additional Work (other).* Enter code B when the contracting action is a modification of an existing contract (including a letter contract) that is not covered by code A or by codes C through H (see code H for exercise of an option). Code B includes actions that—

(1) Initiate an incremental yearly buy under a multiyear contract;

(2) Amend a letter or other contract to add work that does not require a J&A; or

(3) Order under a priced exhibit or production list.

(C) *Code C—Funding Action.* Enter code C when the contracting action is a modification (to a letter or other contract) for the sole purpose of obligating or deobligating funds. This includes—

(1) Incremental funding (other than incremental yearly buys under multiyear contracts, which are coded B);

(2) Changes to the estimated cost on cost-reimbursement contracts;

(3) Repricing actions covering incentive price revisions;

(4) Economic price adjustments; and

(5) Initial citation and obligation of funds for a contract awarded in one fiscal year but not effective until a subsequent fiscal year.

(D) *Code D—Change Order.* Enter code D if the contracting action is a change order issued under the "Changes," "Differing Site Conditions," or similar clauses in existing contracts.

(E) *Code E—Termination for Default.* Enter code E if the contracting action is a modification that terminates all or part of the contract for default.

(F) *Code F—Termination for Convenience.* Enter code F if the contracting action is a modification that terminates all or part of the contract for convenience.

(G) *Code G—Cancellation.* Enter code G if the contracting action is a modification that cancels the contract. Do not use code G to cancel a prior DD Form 350 (see Line A1).

(H) *Code H—Exercise of an Option.* Enter code H if the contracting action is an exercise of an option.

(I) *Code J—Definitization of a Letter Contract.* Enter code J if the contracting action is the definitization of a letter contract, and enter code 3 on Line B13A.

(14) LINE B14, CICA APPLICABILITY. Enter one of the following codes:

(i) *Code A—Pre-CICA.* Enter code A if the action resulted from a solicitation issued before April 1, 1985. Modifications within the original scope of work of such awards and orders under pre-CICA indefinite-delivery type contracts also are coded A.

(ii) *Code B—CICA Applicable.* Enter code B if—

(A) The action resulted from a solicitation issued on or after April 1, 1985, or is a modification coded A on Line B13D issued on or after April 1, 1985; and

(B) Neither code C nor code D applies.

(iii) *Code C—Simplified Acquisition Procedures Other than FAR Subpart 13.5.* Enter code C if the action resulted from use of the procedures in FAR part 13, other than those in subpart 13.5.

(iv) *Code D—Simplified Acquisition Procedures Pursuant to FAR Subpart 13.5.* Enter code D if the action resulted from use of the procedures in FAR subpart 13.5.

(c) *Part C of the DD Form 350.*

(1) Part C gathers data concerning contracting procedures, use of competition, financing, and statutory requirements other than socioeconomic (which are in Part D).

(2) Do not complete Part C if the contracting action is an action with a government agency, i.e., Line B5B (Government Agency) is coded Y (Yes). If Line B13A is coded 6, do not complete any lines in Part C except Line C3, and Lines C13A and C13B when they apply.

(3) In completing Part C, use codes that describe either the current contracting action or the original contract, depending on the codes reported on Lines B13A and B13D.

(i)(A) If Line B13A is coded 1, 3, 4, 6, or 9 and Line B13D is coded A or is blank, code the lines in Part C to describe the current action.

(B) If Line B13A is coded 5 and the current action is an order under a multiple award contract (Line B13C is coded M), code Lines C6 and C7 to describe the order and code the rest of Part C to describe the original contract.

(C) Otherwise, code the lines in Part C to describe the original contract.

(ii) If there are no codes for the original contract because a DD Form 350 was not required at the time, the original action is no longer available, the definition of the original code has changed, or a data element has been added to the system after the original contract report, use codes that best describe the original contracting action.

(4) Complete Part C as follows:

(i) LINE C1, SYNOPSIS. Enter one of the following codes:

(A) *Code A—Synopsis Only.* Enter code A if only a synopsis of the proposed action was prepared and transmitted to the Commerce Business Daily in accordance with FAR subpart 5.2.

(B) *Code B—Combined Synopsis/Solicitation.* Enter code B if a combined synopsis/solicitation of the proposed action was prepared and transmitted to the Commerce Business Daily in accordance with FAR subpart 5.2 and 12.603.

(C) *Code N—Not Synopsized.* Enter code N if a synopsis was not prepared.

(ii) LINE C2, REASON NOT SYNOPSIZED. Enter one of the following codes if Line C1 is coded N. Otherwise, leave Line C2 blank.

(A) *Code A—Urgency.* Enter code A if the action was not synopsized due to urgency (see FAR 6.302–2).

(B) *Code B—Single, Governmentwide Point of Entry.* Enter code B if the action was not synopsized because the acquisition was made through FACNET or another means that provided access to the notice of proposed action through the single, Governmentwide point of entry (see FAR 5.202(a)(13)).

(C) *Code Z—Other Reason.* Enter code Z if the action was not synopsized due to some other reason.

(iii) LINE C3, EXTENT COMPETED. Enter one of the following codes:

(A) *Code A—Competed Action.* Enter code A when—

(1) The contracting action is an action under a Federal schedule contract (Line B13A is coded 6);

(2) Competitive procedures were used to fulfill the requirement for full and open competition (see FAR Subpart 6.1);

(3) Full and open competition procedures after exclusion of sources were used in order to establish or maintain alternative sources, to set aside an acquisition for small business or HUBZone small business, or to compete Section 8(a) awards (see FAR subpart 6.2);

(4) Statutory authorities for other than full and open competition were used (see FAR subpart 6.3) and more than one offer was received (if only one offer was received, use code D);

(5) The contracting action resulted from a contract awarded prior to the Competition in Contracting Act that used two-step sealed bidding or other sealed bidding, or that was negotiated competitively; or

(6) Simplified acquisition procedures were used and competition was obtained.

(B) *Code B—Not Available for Competition.* Enter code B for—

(1) Awards for utilities or utility systems, excluding long distance telecommunications services, when only one supplier can furnish the service (see FAR 6.302–1(b)(3));

(2) Brand name commercial products for authorized resale;

(3) Acquisitions authorized or required by statute to be awarded to a specific source pursuant to FAR 6.302–5(b)(2) or (4), *e.g.,* qualified nonprofit agencies employing people who are blind or severely disabled (see FAR subpart 8.7) or 8(a) program (see FAR subpart 19.8);

(4) International agreements and Foreign Military Sales when the acquisition is to be reimbursed by a foreign country that requires that the product or services be obtained from a particular firm as specified in official written direction such as a Letter of Offer and Acceptance; and

(5) Other contract actions when the Director of Defense Procurement has determined that there is no opportunity for competition.

Note: Even though Part C is not completed for actions with a government agency, the database will automatically include these actions in the category of not available for competition.

(C)*Code C—Follow-On to Competed Action.* Enter code C when the action pertains to an acquisition placed with a particular contractor to continue or augment a specific competed program, if such placement was necessitated by prior acquisition decisions.

(D) *Code D—Not Competed.* Enter code D when codes A, B, and C do not apply.

(iv) LINE C4, SEA TRANSPORTATION. Enter one of the following codes when Line B1B is coded A, Line B5B is coded N, and Line B13A is coded other than 9. Otherwise, leave Line C4 blank.

(A) *Code Y—Yes—Positive Response to DFARS 252.247–7022 or 252.212–7000(c)(2).* Enter code Y when the contractor's response to the provision at 252.247–7022, Representation of Extent of Transportation by Sea, or 252.212–7000(c)(2), Offeror Representations and Certifications—Commercial Items, indicates that the contractor anticipates that some of the supplies being provided may be transported by sea.

(B) *Code N—No—Negative Response to DFARS 252.247–7022 or 252.212–7000(c)(2).* Enter code N when the contractor's response to the provision at 252.247–7022 or 252.212–7000(c)(2) indicates that the contractor anticipates that none of the supplies being provided will be transported by sea.

(C) *Code U—Unknown—No Response or Provision Not Included in Solicitation.* Enter code U when the contractor did not complete the representation at 252.247–7022 or 252.212–7000(c)(2) or the solicitation did not include either provision.

(v) LINE C5, TYPE OF CONTRACT.

(A) If the action is a letter contract, including modifications and amendments to letter contracts, enter the code that describes the anticipated type of contract the letter contract will become when it is definitized.

(B) If there is more than one type of contract involved in the contracting action, enter the code that matches the type with the most dollars. If the type with the least dollars exceeds $500,000, fill out separate DD Forms 350 (with different report numbers) for each type.

(C) Enter one of the following codes:

(1) Code A—Fixed-Price Redetermination.

(2) Code J—Firm-Fixed-Price.

(3) Code K—Fixed-Price Economic Price Adjustment.

(4) Code L—Fixed-Price Incentive.

(5) Code M—Fixed-Price-Award-Fee.

(6) Code R—Cost-Plus-Award-Fee.

(7) Code S—Cost Contract.

(8) Code T—Cost-Sharing.

(9) Code U—Cost-Plus-Fixed-Fee.

(10) Code V—Cost-Plus-Incentive-Fee.

(11) Code Y—Time-and-Materials.

(12) Code Z—Labor-Hour.

(vi) LINE C6, NUMBER OF OFFERORS SOLICITED.

(A) Leave Line C6 blank if—

(1) The original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act);

(2) Line B1B is coded B or C and Line B13A is coded 5; or

(3) Line B13A is coded 6.

(B) Otherwise, enter—

(1) Code 1—One. Enter code 1 if only one offeror was solicited; or

(2) Code 2—More than One. Enter code 2 if more than one offeror was solicited.

(vii) LINE C7, NUMBER OF OFFERS RECEIVED.

(A) Leave Line C7 blank if

(1) The original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act); or

(2) Line B13A is coded 6, Order or Call under Federal Schedule.

(B) Otherwise, enter the specific number of offers received (001–999).

(viii) LINE C8, SOLICITATION PROCEDURES.

(A) Leave Line C8 blank if—

(1) The original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act);

(2) The action is pursuant to simplified acquisition procedures (Line B13A is coded 9); or

(3) The action is an order or call under a Federal schedule (Line B13A is coded 6).

(B) Otherwise, enter one of the following codes:

(1) Code A—Full and Open Competition—Sealed Bid. Enter code A if the action resulted from an award pursuant to FAR 6.102(a).

(2) Code B—Full and Open Competition—Competitive Proposal. Enter code B if the action resulted from an award pursuant to FAR 6.102(b).

(3) Code C—Full and Open Competition—Combination. Enter code C if the action resulted from an award using a combination of competitive procedures (e.g., two-step sealed bidding) pursuant to FAR 6.102(c).

(4) Code D—Architect—Engineer. Enter code D if the action resulted from selection of sources for architect-engineer contracts pursuant to FAR 6.102(d)(1).

(5) Code E—Basic Research. Enter code E if the action resulted from competitive selection of basic research proposals pursuant to FAR 6.102(d)(2).

(6) Code F—Multiple Award Schedule. Enter code F if the action is an award of a multiple award schedule pursuant to FAR 6.102(d)(3) or an order against such a schedule.

(7) Code G—Alternative Sources. Enter code G if the action resulted from use of competitive procedures but excluded a particular source pursuant to FAR 6.202(a).

(8) Code K—Set-Aside. Enter code K if the action resulted from any—

(i) Set-aside for small business concerns (see FAR Subpart 19.5),

including small business innovation research (SBIR) actions;

(ii) Set-aside for small disadvantaged business concerns;

(iii) Set-aside for HUBZone small business concerns (see FAR 19.1305);

(iv) Set-aside for very small business concerns (see FAR 19.904);

(v) Set-aside (including portions of broad agency announcements) for historically black colleges and universities or minority institutions (see 226.7003 and 235.016);

(vi) Set-aside for emerging small business concerns (see FAR 19.1006(c)); or

(vii) Competition among Section 8(a) firms under FAR 19.805 (report noncompetitive 8(a) awards as code N).

(9) Code N—Other than Full and Open Competition. Enter code N if the action resulted from use of other than full and open competition pursuant to FAR subpart 6.3. This includes awards to qualified nonprofit agencies employing people who are blind or severely disabled (see FAR subpart 8.7) or noncompetitive awards to the Small Business Administration under Section 8(a) of the Small Business Act (see FAR 6.302–5(b)).

(ix) LINE C9, AUTHORITY FOR OTHER THAN FULL AND OPEN COMPETITION.

(A) Leave Line C9 blank if the original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act).

(B) Enter one of the following codes if Line C8 is coded N. Otherwise, leave Line C9 blank.

(1) Code 1A—Unique Source. Enter code 1A if the action was justified pursuant to FAR 6.302–1(b)(1).

(2) Code 1B—Follow-On Contract. Enter code 1B if the action was justified pursuant to FAR 6.302–1(a)(2)(ii) or (iii).

(3) Code 1C—Unsolicited Research Proposal. Enter code 1C if the action was justified pursuant to FAR 6.302–1(a)(2)(i).

(4) Code 1D " Patent or Data Rights. Enter code 1D if the action was justified pursuant to FAR 6.302–1(b)(2).

(5) Code 1E—Utilities. Enter code 1E if the action was justified pursuant to FAR 6.302–1(b)(3).

(6) Code 1F—Standardization. Enter code 1F if the action was justified pursuant to FAR 6.302–1(b)(4).

(7) Code 1G—Only One Source—Other. Enter code 1G if the action was justified pursuant to FAR 6.302–1 in a situation other than the examples cited in codes 1A through 1F.

(8) Code 2A—Urgency. Enter code 2A if the action was justified pursuant to FAR 6.302–2.

(9) Code 3A—Particular Sources. Enter code 3A if the action was justified pursuant to FAR 6.302–3(a)(2).

(10) Code 4A—International Agreement. Enter code 4A if the action was justified pursuant to FAR 6.302–4.

(11) Code 5A—Authorized by Statute. Enter code 5A if the action was justified pursuant to FAR 6.302–5(a)(2)(i).

(12) Code 5B—Authorized Resale. Enter code 5B if the action was justified pursuant to FAR 6.302–5(a)(2)(ii).

(13) Code 6A—National Security. Enter code 6A if the action was justified pursuant to FAR 6.302–6.

(14) Code 7A—Public Interest. Enter code 7A if the action was taken pursuant to FAR 6.302–7.

(x) LINE C10, SUBJECT TO LABOR STANDARDS STATUTES. Enter one of the following codes. When Line B13A is coded 6, leave Line C10 blank.

(A) *Code A—Walsh-Healey Act.* Enter code A when the contracting action is subject to the provisions of FAR subpart 22.6.

(B) *Code C—Service Contract Act.* Enter code C when the contracting action is subject to the provisions of the Service Contract Act (see FAR part 37).

(C) *Code D—Davis-Bacon Act.* Enter code D when the contracting action is subject to the Davis-Bacon Act (see FAR 22.403–1).

(D) *Code Z—Not Applicable.* Enter code Z when codes A, C, and D do not apply.

(xi) LINE C11, COST OR PRICING DATA. Enter one of the following codes when Line B1B is coded A. Otherwise, leave Line C11 blank.

(A) *Code Y—Yes—Obtained.* Enter code Y when cost or pricing data were obtained (see FAR 15.403–4) and certified in accordance with FAR 15.406–2.

(B) *Code N—No—Not Obtained.* Enter code N when neither code Y nor code W applies.

(C) *Code W—Not Obtained—Waived.* Enter code W when cost or pricing data were not obtained because the head of the contracting activity waived the requirement (see FAR 15.403–1(c)(4)).

(xii) LINE C12, CONTRACT FINANCING. Enter one of the following codes identifying whether or not progress payments, advance payments, or other financing methods were used.

(A) *Code A—FAR 52.232–16.* Enter code A if the contract contains the clause at FAR 52.232–16, Progress Payments.

(B) *Code C—Percentage of Completion Progress Payments.* Enter code C if the contract provides for progress payments based on percentage or stage of completion, which is only permitted on contracts for construction, for shipbuilding, or for ship conversion, alteration, or repair (see 232.102(e)(2)).

(C) *Code D—Unusual Progress Payments or Advance Payments.* Enter code D if the contract provides unusual progress payments or advance payments (see FAR subpart 32.4 and 32.501–2).

(D) *Code E—Commercial Financing.* Enter code E if the contract provides for commercial financing payments (see FAR subpart 32.2).

(E) *Code F—Performance-Based Financing.* Enter code F if the contract provides for performance-based financing payments (see FAR subpart 32.10).

(F) *Code Z—Not Applicable.* Enter code Z when codes A through F do not apply.

(xiii) LINE C13, FOREIGN TRADE DATA.

(A) The term "United States (U.S.)," as used on Line C13, excludes the Trust Territory of Palau (see 204.670–1 for definition of United States and outlying areas).

(B) LINE C13A, PLACE OF MANUFACTURE. Complete Line C13A only if the contracting action is for a foreign end product or a service provided by a foreign concern. Otherwise, leave Line C13A blank.

(1) Code A—U.S. Enter code A if the contracting action is for—

(i) A foreign end product that is manufactured in the United States but still determined to be foreign because 50 percent or more of the cost of its components is not mined, produced, or manufactured inside the United States or inside qualifying countries; or

(ii) Services performed in the United States by a foreign concern.

(2) Code B—Foreign. Enter code B if the contracting action is for—

(i) Any other foreign end product; or

(ii) Services performed outside the United States by a foreign concern.

(C) LINE C13B, COUNTRY OF ORIGIN CODE.

(1) Complete Line C13B only if Line C13A is coded A or B. Otherwise, leave Line C13B blank.

(2) Enter the code from FIPS PUB 10, Countries, Dependencies, Areas of Special Sovereignty, and Their Principal Administrative Divisions, that identifies the country where the foreign product is coming from or where the foreign company providing the services is located. If more than one foreign country is involved, enter the code of the foreign country with the largest dollar value of work under the contract.

(xiv) LINE C14, COMMERCIAL ITEMS. Enter one of the following codes:

(A) *Code Y—Yes—FAR 52.212–4 Included.* Enter code Y if the contract

contains the clause at FAR 52.212–4, Contract Terms and Conditions—Commercial Items.

(B) *Code N—No—FAR 52.212–4 Not Included.* Enter code N if code Y does not apply.

(d) Part D of the DD Form 350.

(1) Do NOT complete Part D if the contracting action is—

(i) With a government agency, *i.e.*, Line B5B is coded Y; or

(ii) An order or call under a Federal schedule.

(2) Use the codes on Lines B13A and B13D to determine whether the codes in Part D will describe the current contracting action or the original contract.

(i) Code Part D to describe the current contracting action when—

(A) Line B13A is coded 1, 3, 4, or 9 and Line B13D is coded A or is blank; or

(B) Line B5B is coded N, Line B13A is coded 8, and Line B13D is coded A or is blank.

(ii) Otherwise, code Part D to describe the original contract. If there are no codes for the original contract because a DD Form 350 was not required at the time, the original action is no longer available, the definition of the original code has changed, or a data element has been added to the system after the original contract report, use codes that best describe the original contracting action.

(3) Determine the status of the concern (*e.g.*, size and ownership) in accordance with FAR part 19 and DFARS part 219.

(4) Complete Part D as follows:

(i) LINE D1, TYPE OF CONTRACTOR.

(A) LINE D1A, TYPE OF ENTITY. Enter one of the following codes:

(1) Code A—Small Disadvantaged Business (SDB) Performing in U.S. Enter code A if the contractor is a small disadvantaged business concern as defined in 219.001 and the place of performance is within the United States and outlying areas.

(2) Code B—Other Small Business (SB) Performing in U.S. Enter code B if the contractor is a small business concern as defined in FAR 19.001, other than a small disadvantaged business concern, and the place of performance is within the United States and outlying areas.

(3) Code C—Large Business Performing in U.S. Enter code C if the contractor is a domestic large business concern and the place of performance is within the United States and outlying areas.

(4) Code D—JWOD Participating Nonprofit Agency. Enter code D if the contractor is a qualified nonprofit agency employing people who are blind or severely disabled (see FAR 8.701) and the place of performance is within the United States and outlying areas.

(5) Code F—Hospital. Enter code F if the contractor is a hospital and the place of performance is within the United States and outlying areas.

(6) Code L—Foreign Concern or Entity. Enter code L if the contractor is a foreign concern, the Canadian Commercial Corporation, or a non-U.S.-chartered nonprofit institution.

(7) Code M—Domestic Firm Performing Outside U.S. Enter code M if the contractor is a domestic concern or a domestic nonprofit institution and the place of performance is outside the United States and outlying areas.

(8) Code T—Historically Black College or University (HBCU). Enter code T if the contractor is an HBCU as defined at 252.226–7000 and the place of performance is within the United States and outlying areas.

(9) Code U—Minority Institution (MI). Enter code U if the contractor is an MI as defined at 252.226–7000 and the place of performance is within the United States and outlying areas.

(10) Code V—Other Educational. Enter code V if the contractor is an educational institution that does not qualify as an HBCU or MI and the place of performance is within the United States and outlying areas.

(11) Code Z—Other Nonprofit. Enter code Z if the contractor is a nonprofit organization (as defined in FAR 31.701) that does not meet any of the criteria in codes D, F, T, U, or V and the place of performance is within the United States and outlying areas.

(B) LINE D1B, WOMEN-OWNED BUSINESS. Enter one of the following codes:

(1) Code Y—Yes. Enter code Y if the contractor's response to FAR 52.204–5, 52.212–3(c), or 52.219–1(b) indicates that it is a women-owned business.

(2) Code N—No. Enter code N if the contractor's response to FAR 52.204–5, 52.212–3(c), or 52.219–1(b) indicates that it is not a women-owned business.

(3) Code U—Uncertified. Enter code U if the information is not available because the contractor did not complete the representation in FAR 52.204–5, 52.212–3(c), or 52.219–1(b).

(C) LINE D1C, HUBZONE REPRESENTATION. Enter one of the following codes when Line D1A is coded A or B. Otherwise, leave Line D1C blank.

(1) Code Y—Yes. Enter code Y if the contractor represented that it is a HUBZone small business concern (see FAR 19.1303).

(2) Code N—No. Enter code N if code Y does not apply.

(D) LINE D1D, ETHNIC GROUP.

(1) Complete Line D1D if the action is with a small disadvantaged business. Otherwise, leave Line D1D blank.

(2) Enter the code from the following list that corresponds to the ethnic group that the contractor marked in the solicitation provision at FAR 52.219–1, Small Business Program Representations, or FAR 52.212–3(c).

(i) Code A—Asian–Indian American.

(ii) Code B—Asian–Pacific American.

(iii) Code C—Black American.

(iv) Code D—Hispanic American.

(v) Code E—Native American.

(vi) Code F—Other SDB Certified or Determined by SBA.

(vii) Code Z—No Representation.

(E) LINE D1E, VETERAN-OWNED SMALL BUSINESS. Enter one of the following codes if the contractor is a veteran-owned small business. Otherwise, leave Line D1E blank.

(1) Code A—Service-Disabled Veteran. Enter code A if the contractor represented that it is a service-disabled veteran-owned small business.

(2) Code B—Other Veteran. Enter code B if the contractor represented that it is a veteran-owned small business, other than a service-disabled veteran-owned small business.

(ii) LINE D2, REASON NOT AWARDED TO SDB. Enter one of the following codes when Line D1A is coded B or C. Otherwise, leave Line D2 blank.

(A) *Code A—No Known SDB Source.*

(B) *Code B—SDB Not Solicited.* Enter code B when there was a known SDB source, but it was not solicited.

(C) *Code C—SDB Solicited and No Offer Received.* Enter code C when an SDB was solicited but it did not submit an offer, or its offer was not sufficient to cover the total quantity requirement so it received a separate award for the quantity offered.

(D) *Code D—SDB Solicited and Offer Was Not Low.* Enter code D when an SDB offer was not the low or most advantageous offer or an SDB was not willing to accept award of a partial small business set-aside portion of an action at the price offered by the Government.

(E) *Code Z—Other Reason.* Enter code Z when an SDB did not receive the award for any other reason or when Line B1B is coded B or C and Line B13A is coded 5.

(iii) LINE D3, REASON NOT AWARDED TO SB. Enter one of the following codes when Line D1A is coded C. Otherwise, leave Line D3 blank. (The term "small business" includes all categories of small businesses.)

(A) *Code A—No Known SB Source.*

(B) *Code B—SB Not Solicited.* Enter code B when there was a known small business source, but it was not solicited.

(C) *Code C—SB Solicited and No Offer Received.* Enter code C when a small business concern was solicited but it did not submit an offer, or its offer was not sufficient to cover the total quantity requirement so it received a separate award for the quantity offered.

(D) *Code D—SB Solicited and Offer Was Not Low.* Enter code D when a small business offer was not the low or most advantageous offer or a small business concern was not willing to accept award of a set-aside portion of an action at the price offered by the Government.

(E) *Code Z—Other Reason.* Enter code Z when a small business did not receive the award for any other reason or when Line B1B is coded B or C and Line B13A is coded 5.

(iv) LINE D4, SET-ASIDE OR PREFERENCE PROGRAM.

(A) LINE D4A, TYPE OF SET-ASIDE. Enter one of the following codes:

(1) Code A—None. Enter code A if there was no set-aside (i.e., codes B through L do not apply).

(2) Code B—Total SB Set-Aside. Enter code B if the action was a total set-aside for small business (see FAR 19.502–2), including actions reserved exclusively for small business concerns pursuant to FAR 13.003(b)(1), or if the action resulted from the Small Business Innovation Research Program.

(3) Code C—Partial SB Set-Aside. Enter code C if the action was a partial set-aside for small business (see FAR 19.502–3).

(4) Code D—Section 8(a) Set-Aside or Sole Source. Enter code D if the contract was awarded to—

(i) The Small Business Administration under Section 8(a) of the Small Business Act (see FAR subpart 19.8); or

(ii) An 8(a) contractor under the direct award procedures at 219.811.

(5) Code E—Total SDB Set-Aside. Enter code E if the action was a total set-aside for small disadvantaged businesses.

(6) Code F—HBCU or MI—Total Set-Aside. Enter code F if the action was a total set-aside for HBCU or MI (see 226.7003).

(7) Code G—HBCU or MI—Partial Set-Aside. Enter code G if the action was a partial set-aside for HBCU or MI under a broad agency announcement (see 235.016).

(8) Code H—Very Small Business Set-Aside. Enter code H if the action was a set-aside for very small businesses (see FAR subpart 19.9).

(9) Code J—Emerging Small Business Set-Aside. Enter code J if the action was an emerging small business set-aside within a designated industry group under the Small Business Competitiveness Demonstration Program (see FAR subpart 19.10).

(10) Code K—HUBZone Set-Aside or Sole Source. Enter code K if the action was—

(i) A set-aside for HUBZone small business concerns (see FAR 19.1305); or

(ii) A sole source award to a HUBZone small business concern (see FAR 19.1306).

(11) Code L—Combination HUBZone and 8(a). Enter code L if action was a combination HUBZone set-aside and 8(a) award.

(B) LINE D4B, TYPE OF PREFERENCE. Enter one of the following codes, even if Line D4A is coded E:

(1) Code A—None. Enter code A if no preference was given.

(2) Code B—SDB Price Evaluation Adjustment—Unrestricted. Enter code B if the action was unrestricted but an SDB received an award as a result of a price evaluation adjustment (see FAR subpart 19.11).

(3) Code C—SDB Preferential Consideration—Partial SB Set-Aside. Enter code C if the action was a partial set-aside for small business and preferential consideration resulted in an award to an SDB.

(4) Code D—HUBZone Price Evaluation Preference. Enter code D if the contractor received the award as a result of a HUBZone price evaluation preference (see FAR 19.1307).

(5) Code E—HUBZone Price Evaluation Preference and SDB Price Evaluation Adjustment. Enter code E if the contractor received the award as a result of both a HUBZone price evaluation preference and an SDB price evaluation adjustment (see FAR 19.1307).

(C) LINE D4C, PREMIUM PERCENT.

(1) Complete Line D4C if Line B1B is coded A, and—

(i) Line D4A is coded E, F, or G; or

(ii) Line D4B is coded B, C, D or E.

(2) Otherwise, leave Line D4C blank.

(3) Calculate the premium percentage per 219.202–5 and enter it as a three-digit number rounded to the nearest tenth, e.g., enter 7.55% as 076. If no premium was paid, enter three zeros (000).

(v) LINES D5–D6. Reserved.

(vi) LINE D7, SMALL BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM. Enter one of the following codes. When Line B1B is coded B or C and Line B13A is coded 5, leave Line D7 blank.

(A) *Code A—Not a SBIR Program Phase I, II, or III.* Enter code A if the action is not in support of a Phase I, II, or III SBIR Program.

(B) *Code B—SBIR Program Phase I Action.* Enter code B if the action is related to a Phase I contract in support of the SBIR Program.

(C) *Code C—SBIR Program Phase II Action.* Enter code C if the action is related to a Phase II contract in support of the SBIR Program.

(D) *Code D—SBIR Program Phase III Action.* Enter code D if the action is related to a Phase III contract in support of the SBIR Program.

(vii) LINE D8, SUBCONTRACTING PLAN—SB, SDB, HBCU, OR MI. Enter one of the following codes:

(A) *Code A—Plan Not Included—No Subcontracting Possibilities.* Enter code A if a subcontracting plan was not included in the contract because subcontracting possibilities do not exist (see FAR 19.705–2(c)).

(B) *Code B—Plan Not Required.* Enter code B if no subcontracting plan was required (e.g., because the action did not meet the dollar thresholds in FAR 19.702(a)).

(C) *Code C—Plan Required—Incentive Not Included.* Enter code C if the action includes a subcontracting plan, but does not include additional incentives (see FAR 19.708(c)).

(D) *Code D—Plan Required—Incentive Included.* Enter code D if the action includes a subcontracting plan and also includes additional incentives (see FAR 19.708(c) and 219.708(c)).

(viii) LINE D9, SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM. When Line B13A is coded 5 or Line B13D is coded B, C, D, E, F, or G and the original action was awarded before the demonstration program began, enter code N on Line D9. When Line B1B is coded B or C and Line B13A is coded 5, enter code N on Line D9. Otherwise, code Line D9 as follows:

(A) *Code Y—Yes.* Enter code Y if this is an action with a U.S. business concern, in either the four designated industry groups or the ten targeted industry categories under the Small Business Competitiveness Demonstration Program (see FAR subpart 19.10 and DFARS subpart 219.10), where the principal place of performance is in the United States or outlying areas.

(B) *Code N—No.* Enter code N if code Y does not apply.

(ix) LINE D10, SIZE OF SMALL BUSINESS.

(A) Complete Line D10 only when Line D9 is coded Y and the contractor is a small business (Line D1A is coded A or B). Otherwise, leave Line D10 blank.

(B) Enter one of the following codes for the size of the business (number of employees or average annual gross revenue) as represented by the contractor in the solicitation provision at FAR 52.219–19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program:

(1) Code A—50 or fewer employees.
(2) Code B—51–100 employees.
(3) Code C—101–250 employees.
(4) Code D—251–500 employees.
(5) Code E—501–750 employees.
(6) Code F—751–1,000 employees.
(7) Code G—Over 1,000 employees.
(8) Code M—$1,000,000 or less.
(9) Code N—$1,000,001—$2,000,000.
(10) Code P—$2,000,001—$3,500,000.
(11) Code R—$3,500,001—$5,000,000.
(12) Code S—$5,000,001—$10,000,000.
(13) Code T—$10,000,001—$17,000,000.
(14) Code U—Over $17,000,000.

(x) LINE D11, EMERGING SMALL BUSINESS.

(A) Complete this line only if Line D9 is coded Y and the contracting action is in one of the four designated industry groups, not one of the targeted industry categories. Otherwise, leave Line D11 blank.

(B) Enter one of the following codes:

(1) Code Y—Yes. Enter code Y if the contractor represents in the provision at FAR 52.219–19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program, that it is an emerging small business concern.

(2) Code N—No. Enter code N if code Y does not apply.

(e) *Part E of the DD Form 350.* Part E gathers data on specialized items that may not become permanent reporting elements.

(1) LINE E1, CONTINGENCY, HUMANITARIAN, OR PEACEKEEPING OPERATION.

(i) Enter code Y on Line E1 if the contracting action exceeds $200,000 and is in support of—

(A) A contingency operation as defined in 10 U.S.C. 101(a)(13); or

(B) A humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(8).

(ii) Otherwise, leave Line E1 blank.

(2) LINE E2, COST ACCOUNTING STANDARDS CLAUSE. Enter code Y on Line E2 if the contract includes a Cost Accounting Standards clause (see FAR part 30). Otherwise, leave Line E2 blank.

(3) LINE E3, NON-DOD REQUESTING AGENCY CODE (FIPS 95). If making a purchase on behalf of a non-DoD agency, enter the four-position code from FIPS PUB 95 that identifies the non-DoD agency. Otherwise, leave Line E3 blank.

(4) LINE E4, NON-DOD REQUESTING OFFICE CODE. If making a purchase on behalf of a non-DoD agency, enter the non-DoD agency's office code. Otherwise, leave Line E4 blank.

(5) LINES E5–E7. Reserved.

(6) LINE E8, NUMBER OF CONTRACTING ACTIONS. If submitting a consolidated DD Form 350, enter the number of contracting actions included in the consolidated report (see 204.670–6(b)). Otherwise, leave Line E8 blank.

(f) *Part F of the DD Form 350.* Part F identifies the reporting official.

(1) LINE F1, NAME OF CONTRACTING OFFICER OR REPRESENTATIVE. Enter the name (Last, First, Middle Initial) of the contracting officer or representative.

(2) LINE F2, SIGNATURE. The person identified on Line F1 must sign.

(3) LINE F3, TELEPHONE NUMBER. Enter the telephone number (with area code) for the individual on Line F1. Installations with Defense Switched Network (DSN) must enter the DSN number.

(4) LINE F4, DATE. Enter the date that the DD Form 350 Report is submitted. Enter four digits for the year, two digits for the month, and two digits for the day. Use 01 through 12 for January through December. For example, enter January 2, 2003, as 20030102.

253.204–71 DD Form 1057, Monthly Summary of Contracting Actions.

(a) *Scope of subsection.* Policy on use of a DD Form 1057 is in 204.670. This subsection contains instructions on completion of the DD Form 1057.

(1) Report actions in the month they are awarded, issued, executed, or placed, except—

(i) When the price of an order or call cannot be determined when it is placed, count the action and its dollars when it is paid.

(ii) Count the following actions when the voucher is paid (count each voucher as one action):

(A) Meals and lodging.

(B) Automatic deliveries, e.g., bread, milk, and ice cream.

(iii) The Navy Facilities Engineering Command will report vouchers it processes on Naval shore establishment contracts for electricity and gas in accordance with departmental procedures.

(2) Enter all dollar amounts in whole dollars only. Do not enter cents. If the net amount is a decrease, enter a minus sign (−) immediately preceding the amount to indicate a credit entry. Do not enter parentheses.

(3) Report actions of $25,000 or less 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), in accordance with the instructions in paragraphs (c) through (j) of this subsection. Report actions exceeding $25,000 but not exceeding $200,000 in support of a contingency operation, or a humanitarian or peacekeeping operation, on the monthly DD Form 1057 as follows:

(i) Section B; the applicable lines are 5 through 5e and 8 through 8e.

(ii) Section C; the applicable lines are 1 and 1c, 2 and 2c, and 3 and 3c.

(iii) Sections D, E, and F are not applicable.

(iv) Section G; complete fully.

(b) *Definitions.* For purposes of this subsection' "All Other Orders" means orders, and modifications of such orders, under basic ordering agreements or indefinite-delivery contracts.

GSA Schedule Orders means only orders or calls, and modifications of such orders or calls, under Federal schedules awarded by GSA.

Other Contracting Actions means all actions that do not meet the definitions, in this paragraph (b), of an order.

Other Federal Schedule Orders means only orders, and modifications of such orders, under Federal schedules awarded by an agency other than GSA, *e.g.*, awarded by VA or OPM.

Simplified Acquisition Procedures means purchase orders, calls under blanket purchase agreements (BPAs) (except BPAs written under Federal schedules), and modifications to those actions.

(c) *Section A, General Information.*

(1) LINE A1, REPORT FOR MONTH ENDING. Enter the last day of the month in which the report is submitted. Enter four digits for the year, two digits for the month, and two digits for the day. Use 01 through 12 for January through December. For example, enter January 31, 2003, as 20030131.

(2) LINE A2, NAME OF CONTRACTING OFFICE. Enter sufficient detail to establish the identity of the contracting office submitting the report on Lines 2a and b.

(3) LINE A3, CONTRACTING OFFICE CODES.

(i) LINE A3A, REPORTING AGENCY FIPS 95 CODE. Enter the four-position code from Federal Information Processing Standards Publication (FIPS PUB) 95, Codes for the Identification of Federal and Federally Assisted Organizations, that identifies the reporting agency.

(ii) LINE A3B, CONTRACTING OFFICE CODE. Enter the code assigned

by the departmental data collection point in 204.670–1(c).

(d) *Section B, Contracting Actions.*

(1) LINE B1, TARIFF OR REGULATED ACQUISITIONS. Enter the number and dollar value of contracting actions (including modifications that will also be reported on Line B9) with tariff or regulated industries (industries with sole source and service rates that are fixed or adjusted by a Federal, State, or other public regulatory body).

(2) LINE B2, FOREIGN OR INTERAGENCY.

(i) Enter the total number and dollar value of contracting actions (including modifications that will also be reported on Line B9)—

(A) For foreign military sales (FMS) or other arrangement where the foreign government or international organization is paying all or part of the cost of the action.

(B) Placed directly with foreign governments under the terms of an international agreement, *e.g.*, base maintenance performed with the foreign government acting as the contractor (any other actions directly with foreign governments go on Line B5).

(C) With another Federal agency or Government corporation, *e.g.*, Federal Prison Industries (UNICOR).

(ii) Enter the subtotals for the number and dollar value of contracting actions (including modifications that will also be reported on Line B9) for—

(A) Line B2a, FMS or International Agreements. Enter subtotals for paragraphs (d)(2)(i)(A) and (B) of this subsection.

(B) Line B2b, Actions with UNICOR. Enter subtotal for contracting actions with UNICOR.

(C) Line B2c, Actions with Other Government Agencies. Enter subtotal for actions with government agencies other than UNICOR.

(3) LINE B3, SMALL BUSINESS.

(i) Enter the total number and dollar value of contracting actions (including modifications that will also be reported on Line B9) where the—

(A) Contractor is a small business concern; and

(B) Place of performance is in the United States and outlying areas (see 204.670–1).

(ii) Enter the subtotals for the number and dollar value of contracting actions (including modifications that will also be reported on Line B9) for—

(A) Line B3a, Simplified Acquisition Procedures;

(B) Line B3b, GSA Schedule Orders;

(C) Line B3c, Other Federal Schedule Orders;

(D) Line B3d, All Other Orders; and

(E) Line B3e, Other Contracting Actions.

(4) LINE B4, LARGE BUSINESS.

(i) Enter the total number and dollar value of contracting actions (including modifications that will also be reported on Line B9) where the—

(A) Contractor is a large business concern; and

(B) Place of performance is in the United States and outlying areas.

(ii) Enter the subtotals for the number and dollar value of contracting actions (including modifications that will also be reported on Line B9) for—

(A) Line B4a, Simplified Acquisition Procedures;

(B) Line B4b, GSA Schedule Orders;

(C) Line B4c, Other Federal Schedule Orders;

(D) Line B4d, All Other Orders; and

(E) Line B4e, Other Contracting Actions.

(5) LINE B5, DOMESTIC OR FOREIGN ENTITIES PERFORMING OUTSIDE THE UNITED STATES.

(i) Enter the total number and dollar value of contracting actions (including modifications that will also be reported on Line B9) where the place of performance is outside the United States and outlying areas (see 204.670–1(c)). This includes actions placed directly with a foreign government that are not under international agreements (see paragraph (d)(2)(i)(B) of this subsection). It does not matter whether the contractor is domestic or foreign.

(ii) Enter the subtotals for the number and dollar value of contracting actions (including modifications that will also be reported on Line B9) for—

(A) Line B5a, Simplified Acquisition Procedures;

(B) Line B5b, GSA Schedule Orders;

(C) Line B5c, Other Federal Schedule Orders;

(D) Line B5d, All Other Orders; and

(E) Line B5e, Other Contracting Actions.

(6) LINE B6, EDUCATIONAL.

(i) Enter the total number and dollar value of contracting actions with educational institutions (including modifications that will also be reported on Line B9).

(ii) Enter the subtotals for the number and dollar value of contracting actions (including modifications that will also be reported on Line B9) for—

(A) Line B6a, Simplified Acquisition Procedures;

(B) Line B6b, GSA Schedule Orders;

(C) Line B6c, Other Federal Schedule Orders;

(D) Line B6d, All Other Orders; and

(E) Line B6e, Other Contracting Actions.

(7) LINE B7, NONPROFIT AND OTHER.

(i) Enter the total number and dollar value of contracting actions (including modifications that will also be reported on Line B9) with—

(A) Nonprofit organizations as defined in FAR 31.701;

(B) Qualified nonprofit agencies employing people who are blind or severely disabled; and

(C) Any other entities not listed on Lines B1 through B6.

(ii) Enter the subtotals for the number and dollar value of contracting actions (including modifications that will also be reported on Line B9) for—

(A) Line B7a, Simplified Acquisition Procedures;

(B) Line B7b, GSA Schedule Orders;

(C) Line B7c, Other Federal Schedule Orders;

(D) Line B7d, All Other Orders; and

(E) Line B7e, Other Contracting Actions.

(8) LINE B8, TOTAL CONTRACTING ACTIONS.

(i) Add the amounts on Lines B1 through B7 and enter the totals on Line B8.

(ii) If directed by data collection point procedures, also enter the subtotals for the number and dollar value of contracting actions for—

(A) Line B8a, Simplified Acquisition Procedures, sum of Lines 3a + 4a + 5a + 6a + 7a.

(B) Line B8b, GSA Schedule Orders, sum of Lines 3b + 4b + 5b + 6b + 7b.

(C) Line B8c, Other Federal Schedule Orders, sum of Lines 3c + 4c + 5c + 6c + 7c.

(D) Line B8d, All Other Orders, sum of Lines 3d + 4d + 5d + 6d + 7d.

(E) Line B8e, Other Contracting Actions, sum of Lines 3e + 4e + 5e + 6e + 7e.

(9) LINE B9, TOTAL MODIFICATIONS EXCLUDING SIMPLIFIED ACQUISITION PROCEDURES. Enter the total number and dollar value of modification actions, excluding simplified acquisition procedures.

(e) *Section C, Extent Competed.*

(1) LINE C1, COMPETED.

(i) Enter the total number and dollar value of contracting actions that were competed.

(A) Include on Line C1—

(1) Actions not subject to Competition in Contracting Act (CICA) (see FAR 6.001) when at least two quotations or offers were received;

(2) Actions when competitive procedures were used to fulfill the requirement for full and open competition (see FAR Subpart 6.1);

(3) Actions when full and open competition was provided for after exclusion of sources, to establish or maintain alternative sources or to set aside an acquisition exceeding the

micro-purchase threshold for small business (see FAR subpart 6.2);

(4) Actions when statutory authorities for other than full and open competition (see FAR subpart 6.3) were used and more than one offer was received, except as provided in paragraphs (e)(1)(i)(B)*(2)* and *(3)* of this subsection;

(5) Actions resulting from a contract awarded competitively before CICA (including two-step formal advertising);

(6) Orders, calls, and modifications under a Federal schedule; and

(7) Section 8(a) awards competed under FAR 6.204.

(B) Do not include—

(1) Actions that meet the criteria for Section C, Line C2;

(2) Actions awarded under the authority of FAR 6.302–5(b)(2) or (4), authorized or required by statute (report these in Section C, Line C2); or

(3) Actions reported in Section B, Lines B1 and B2, including actions with the Federal Prison Industries (UNICOR). These actions are treated as not available for competition in published competition reports.

(ii) Enter the subtotals for the number and dollar value of contracting actions for—

(A) Line C1a, Small Business Concerns;

(B) Line C1b, Large Business Concerns;

(C) Line C1c, Domestic or Foreign Entities Performing Outside the United States;

(D) Line C1d, Educational; and

(E) Line C1e, Nonprofit and Other.

(2) LINE C2, NOT AVAILABLE FOR COMPETITION.

(i) Enter the total number and dollar value of contracting actions that were not available for competition.

(A) Include on Line C2—

(1) Actions for brand name commercial products for authorized resale;

(2) Actions authorized or required by statute to be awarded to a specific source or through another agency in accordance with FAR 6.302–5(b)(2) or (4); *e.g.*, actions with qualified nonprofit agencies employing people who are blind or severely disabled, and noncompetitive 8(a) actions;

(3) Actions (including modifications) at or below the micro-purchase threshold at FAR 2.101; and

(4) Other contract actions when the Director of Defense Procurement has determined that there is no opportunity for competition.

(B) Do not include any actions reported in Section B, Line B1 or B2 (*e.g.*, actions with regulated monopolies, actions under foreign military sales or international agreements, and actions with another Federal agency or Government corporation). These actions are treated as not available for competition in published competition reports.

(ii) Enter the subtotals for the number and dollar value of contracting actions for—

(A) Line C2a, Small Business Concerns;

(B) Line C2b, Large Business Concerns;

(C) Line C2c, Domestic or Foreign Entities Performing Outside the United States;

(D) Line C2d, Educational; and

(E) Line C2e, Nonprofit and Other.

(3) LINE C3, NOT COMPETED.

(i) Enter the total number and dollar value of contracting actions that were not competed, *i.e.*, any actions not reported on Line B1 or B2. Do not include actions reported in Section B, Line B1 or B2. These actions are treated as not available for competition in published competition reports.

(ii) Enter the subtotals for the number and dollar value of contracting actions for—

(A) Line C3a, Small Business Concerns;

(B) Line C3b, Large Business Concerns;

(C) Line C3c, Domestic or Foreign Entities Performing Outside the United States;

(D) Line C3d, Educational; and

(E) Line C3e, Nonprofit and Other.

(f) *Section D, RDT&E Actions.* Do not include actions for supplies or services in support of research, development, test, and evaluation (RDT&E) work that do not require the contractor to perform RDT&E.

(1) LINE D1, SMALL BUSINESS. Enter the total number and dollar values of RDT&E actions with small business concerns.

(2) LINE D2, LARGE BUSINESS. Enter the total number and dollar value of RDT&E actions with large business concerns.

(3) LINE D3, DOMESTIC OR FOREIGN ENTITIES PERFORMING OUTSIDE THE UNITED STATES. Enter the total number and dollar value of RDT&E actions where the principal place of performance is outside the United States and outlying areas (see 204.670–1).

(4) LINE D4, HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU). Enter the total number and dollar value of RDT&E actions with HBCUs.

(5) LINE D5, MINORITY INSTITUTIONS (MI). Enter the total number and dollar value of RDT&E actions with MIs.

(6) LINE D6, OTHER EDUCATIONAL. Enter the total number and dollar value of RDT&E actions with educational institutions other than HBCUs or MIs.

(7) LINE D7, OTHER ENTITIES. Enter the total number and dollar value of RDT&E actions that were not reported on Lines D1 through D6.

(g) *Section E, Selected Socioeconomic Statistics.*

(1) LINE E1, SMALL BUSINESS (SB) SET-ASIDE.

(i) Enter the total number and dollar value of contracting actions that were small business set-aside actions, including awards to SDBs reported on Lines E2c and E2d. Do not include orders under Federal schedules that are reported on Line E3 or E5.

(ii) If the action is an emerging small business set-aside (see FAR 19.1006(c)), use the most appropriate line.

(iii) Enter the subtotals for the number and dollar value of contracting actions for—

(A) Line E1a, SB Set-Aside Using Simplified Acquisition Procedures. Enter actions pursuant to FAR 13.003(b)(1).

(B) Line E1b, SB Set-Aside. Enter actions pursuant to FAR 19.502.

(2) LINE E2, SMALL DISADVANTAGED BUSINESS (SDB) ACTIONS.

(i) Enter the total number and dollar value of contracting actions that were SDB actions. Do not include orders under Federal schedules that are reported on Line E3 or E5.

(ii) Enter the subtotals for the number and dollar value of contracting actions for—

(A) Line E2a, Through SBA—Section 8(a). Enter actions with the Small Business Administration pursuant to Section 8(a) of the Small Business Act (see FAR subpart 19.8) or under the 8(a) direct award procedures at 219.811.

(B) Line E2b, SDB Set-Aside, SDB Preference, or SDB Evaluation Adjustment. Enter actions resulting from—

(1) A set-aside for SDB concerns;

(2) Application of an SDB price preference or evaluation adjustment (see FAR subpart 19.11); or

(3) SDB preferential consideration.

(C) Line E2c, SB Set-Aside Using Simplified Acquisition Procedures. Enter actions pursuant to FAR 13.003(b)(1) when award is to an SDB, but a preference or evaluation adjustment was not applied.

(D) Line E2d, SB Set-Aside. Enter actions under FAR 19.502 when award is to an SDB, but a preference or evaluation adjustment was not applied nor was preferential consideration given.

(E) Line E2e, Other. Enter awards to SDB concerns that are not reported on Lines E2a through E2d.

(3) LINE E3, SDB FEDERAL SCHEDULE ORDERS. Enter the total number and dollar value of contracting actions that were orders under Federal schedules with SDBs.

(4) LINE E4, WOMEN-OWNED SMALL BUSINESS. Enter the total number and dollar value of contracting actions with women-owned small businesses (see FAR 19.001). Do not include orders under Federal schedules that are reported on Line E5.

(5) LINE E5, WOMEN-OWNED SMALL BUSINESS FEDERAL SCHEDULE ORDERS. Enter the total number and dollar value of contracting actions that were orders under Federal schedules with women-owned small businesses.

(6) LINE E6, HBCU. Enter the total number and dollar value of contracting actions with HBCUs pursuant to subpart 226.70.

(7) LINE E7, MI. Enter the total number and dollar value of contracting actions with MIs pursuant to subpart 226.70.

(8) LINE E8, JWOD PARTICIPATING NONPROFIT AGENCIES. Enter the total number and dollar value of contracting actions with qualified nonprofit agencies employing people who are blind or severely disabled for supplies or services from the Procurement List pursuant to FAR subpart 8.7.

(9) LINE E9, EXEMPT FROM SMALL BUSINESS ACT REQUIREMENTS. Enter the total number and dollar value of contracting actions exempt from the set-aside requirements of the Small Business Act (see FAR 19.502–1).

(10) LINE E10, HUBZONE.

(i) Enter the total number and dollar value of contracting actions that were awarded to HUBZone small business concerns.

(ii) Enter the subtotals for the number and dollar value of contracting actions for—

(A) Line E10a, HUBZone Set-Aside;

(B) Line E10b, HUBZone Price Evaluation Preference;

(C) Line E10c, HUBZone Sole Source; and

(D) Line E10d, HUBZone Concern—Other. Use this category when the award is to a HUBZone small business concern and Lines E10a, E10b, and E10c do not apply.

(11) LINE E11, SERVICE-RELATED DISABLED VETERAN-OWNED SMALL BUSINESS. Enter the total number and dollar value of contracting actions that were awarded to service-disabled veteran-owned small business concerns.

(12) LINE E12, OTHER VETERAN-OWNED SMALL BUSINESS. Enter the total number and dollar value of contracting actions that were awarded to veteran-owned small business concerns, other than those reported on Line E11.

(h) *Section F, Simplified Acquisition Procedures—Ranges.* Enter in each of the dollar ranges the total number and dollar value of contracting actions that used simplified acquisition procedures (FAR part 13). The total of Section F is normally the sum of Lines B3a, B4a, B5a, B6a, and B7a.

(i) *Section G, Contingency Actions.* LINE G1, TOTAL ACTIONS.

(1) Enter the total number and dollar value of contracting actions that were awarded 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). The numbers entered here are a breakout of the numbers already entered in Sections B and C.

(2) Enter the subtotals based on the instructions for completion of Section C for the number and dollar value of contracting actions for—

(i) Line G1a, Competed;

(ii) Line G1b, Not Available for Competition; and

(iii) Line G1c, Not Competed.

(j) *Section H, Remarks and Authentication.*

(1) LINE H1, REMARKS. Enter any remarks applicable to this report.

(2) LINE H2, CONTRACTING OFFICER.

(i) Line H2a, Name. Enter the name (last, first, middle initial) of the contracting officer or representative.

(ii) Line H2b, Signature. The person identified on Line H2a must sign.

(iii) Line H2c, Telephone Number. Enter the telephone number (with area code) of the person identified on Line H2a. Installations with Defense Switched Network (DSN) must enter their DSN number.

(3) LINE H3, DATE REPORT SUBMITTED. Enter the date that the DD Form 1057 is submitted. Enter four digits for the year, two digits for the month, and two digits for the day. Use 01 through 12 for January through December. For example, enter January 2, 2003, as 20030102.

8. The note at the end of Part 253 is amended by revising the entry "253.303–1057 Monthly Contracting Summary of Actions $25,000 or Less." to read "253.303–1057 Monthly Summary of Contracting Actions.".

[FR Doc. 00–15819 Filed 6–26–00; 8:45 am]
BILLING CODE 5000–04–P

DEPARTMENT OF DEFENSE

48 CFR Part 215

[DFARS Case 2000–D013]

Defense Federal Acquisition Regulation Supplement; Uncompensated Overtime Source Selection Factor

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 text pertaining to the evaluation of uncompensated overtime hours in proposals for service contracts. The DFARS text duplicates text found in the Federal Acquisition Regulation (FAR).

EFFECTIVE DATE: June 27, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Fenk, Defense Acquisition Regulations Council, OUSD (AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0296; telefax (703) 602–0350. Please cite DFARS Case 2000–D013.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule removes the text at DFARS 215.305(a)(1) pertaining to the evaluation of uncompensated overtime hours in proposals for service contracts. The DFARS text duplicates the text found at FAR 37.115–2(c).

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

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2000–D013.

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 215

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 215 is amended as follows:

1. The authority citation for 48 CFR Part 215 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

215.305 [Amended]

2. Section 215.305 is amended by removing paragraph (a)(1).

[FR Doc. 00–15816 Filed 6–26–00; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 232

[DFARS Case 2000–D009]

Defense Federal Acquisition Regulation Supplement; Progress Payments for Foreign Military Sales Contracts

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify that DoD applies progress payments to contracts containing foreign military sales (FMS) requirements in the same manner that it applies progress payments to contracts containing DoD requirements.

EFFECTIVE DATE: June 27, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0289; telefax (703) 602–0350. Please cite DFARS Case 2000–D009.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS Subpart 232.5, Progress Payments Based on Costs, to clarify that the application of customary progress payments is the same for both DoD and FMS contract requirements. The rule also makes editorial changes to update and simplify the text.

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

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2000–D009.

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 232

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 232 is amended as follows:

1. The authority citation for 48 CFR Part 232 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 232—CONTRACT FINANCING

2. Sections 232.501—1 and 232.501–2 are revised to read as follows:

232.501–1 Customary progress payment rates.

(a) The customary uniform progress payment rates for DoD contracts, including contracts that contain foreign military sales (FMS) requirements, are 75 percent for large businesses, 90 percent for small businesses, and 95 percent for small disadvantaged businesses.

232.501–2 Unusual progress payemnts.

(a) Unusual progress payment arrangmeents require the advance approval of the Director of Defense Procurment, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD (AT&L) DP). Contracting officers must submit all unusual progress payment requests to the department or agency contract financing office for approval, coordination with the Contract Finance Committee (see 232.071), and submission to OUSD (AT&L) DP.

232.501–3 [Amended]

3. Section 232.501–3 is amended in paragraph (b) introductory text in the second sentence by removing the word "shall" and adding in its place the word "must".

232.502–1–70 [Removed]

4. Section 232.502–1–70 is removed.

5. Section 232.502–4–70 is amended by revising paragraph (a) to read as follows:

232.502–4–70 Additional clauses.

(a) Use the clause at 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions, in solicitations and contracts that—

(i) Contain FMS requirements; and

(ii) Provide for progress payments.

* * * * *

232.503–6 [Amended]

6. Section 232.503–6 is amended in paragraph (g)(i) by removing the word "shall" and adding in its place the word "must".

[FR Doc. 00–15817 Filed 6–26–00; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 242 and 253

[DFARS Case 99–D026]

Defense Federal Acquisition Regulation Supplement; Production Surveillance and Reporting

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 revise the criteria for determining the degree of production surveillance needed for DoD contracts and to delete obsolete forms. The rule requires contract administration offices to conduct a risk assessment of each contractor to determine the degree of production surveillance needed for contracts awarded to that contractor.

EFFECTIVE DATE: June 27, 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 99–D026.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule makes the following changes to the DFARS:

1. Revises the production surveillance requirements at 242.1104, to require

contract administration offices to conduct a risk assessment of each contractor to determine the degree of production surveillance needed for contracts awarded to that contractor.

2. Deletes an obsolete reference to cost/schedule control system requirements at 242.1106(a).

3. Deletes the following obsolete forms: DD Form 375, Production Progress Report; DD Form 375c, Production Progress Report (Continuation); and DD Form 375–2, Delay in Delivery.

DoD published a proposed rule on January 13, 2000 (65 FR 2109). 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 DFARS changes in this rule primarily affect the allocation of Government resources to production surveillance functions.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 242 and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 242 and 253 are amended as follows:

1. The authority citation for 48 CFR Parts 242 and 253 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

2. Section 242.1104 is revised to read as follows:

242.1104 Surveillance requirements.

(a) The cognizant contract administration office (CAO) must—

(i) Conduct a periodic risk assessment of each contractor to determine the degree of production surveillance needed for contracts awarded to that contractor. The risk assessment must consider information provided by the contractor and the contracting officer;

(ii) Develop a production surveillance plan based on the risk level determined during the risk assessment;

(iii) Modify the production surveillance plan to incorporate any special surveillance requirements for individual contracts, including any requirements identified by the contracting officer; and

(iv) Monitor contract progress and identify potential contract delinquencies in accordance with the production surveillance plan.

3. Section 242.1106 is revised to read as follows:

242.1106 Reporting requirements.

(a) See DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs.

(b)(i) Within four working days after receipt of the contractor's report, the CAO must provide the report and any required comments to the contracting officer and, unless otherwise specified in the contract, the inventory control manager.

(ii) If the contractor's report indicates that the contract is on schedule and the CAO agrees, the CAO does not need to add further comments. In all other cases, the CAO must add comments and recommend a course of action.

PART 253—FORMS

4. The note at the end of Part 253 is amended by removing the following entries:

"253.303–375 Production Progress Report.

"253.303–375c Production Progress Report (Continuation).

"253.303–375–2 Delay in Delivery."

[FR Doc. 00–15815 Filed 6–26–00; 8:45 am]

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Federal Register

Tuesday,
June 27, 2000

Part IV

Federal Emergency Management Agency

44 CFR Parts 59 and 61
National Flood Insurance Program (NFIP); Inspection of Insured Structures by Communities; Final Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59 and 61

RIN 3067–AC79

National Flood Insurance Program (NFIP); Inspection of Insured Structures by Communities

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule establishes an inspection procedure under the National Flood Insurance Program (NFIP) to help verify that structures comply with the community's floodplain management ordinance and to ensure that property owners pay flood insurance premiums commensurate with their flood risk. The inspection procedure requires owners of insured buildings to obtain an inspection from community floodplain management officials as a condition of renewing the Standard Flood Insurance Policy (SFIP) on the building. We, FEMA, will undertake the inspection procedure on a pilot basis in two communities, Monroe County, Florida, and the Village of Islamorada located in Monroe County. We will make any decision to implement the inspection procedure in other NFIP communities outside Monroe County, Florida only after completing the pilot inspection procedure within the selected communities and after an evaluation to determine the procedure's effectiveness.

EFFECTIVE DATE: July 27, 2000.

FOR FURTHER INFORMATION CONTACT: Donald Beaton, Federal Emergency Management Agency, Federal Insurance Administration, 202–646–3442, (facsimile) 202–646–4327, (email) *donald.beaton@fema.gov*, or Lois Forster, Federal Emergency Management Agency, Mitigation Directorate, 202–646–2720, (facsimile) 202–646–2577, (email) *lois.forster@fema.gov*. Mailing address: 500 C Street, SW., Washington, DC 20472.

SUPPLEMENTARY INFORMATION: Throughout the preamble and the rule we use the terms "we", "our" and "us" to mean and refer to FEMA. The term "you" refers to the reader.

Scope of Public Participation

We received over 65 letters and e-mail messages about the proposed rule, (64 FR 24256, May 5, 1999), many of which contained multiple comments. A number of these comments arrived after the closing date for comments, but because these comments were specific to the inspection procedure, we included them as part of the official record. Most of the letters represented local interests from Monroe County and the Village of Islamorada. Those submitting formal comments on the proposed rule included: one member of the Florida State House of Representatives, community officials and representatives of local governments within Monroe County, Florida and from communities outside of Florida, Florida State and regional agencies, a State of Louisiana agency, private citizens, representatives from local businesses and business associations, and representatives from lending institutions and associations and insurance companies.

Eight individuals participated in a meeting at FEMA Headquarters on August 31, 1999, including three representatives from the Village of Islamorada, Florida, a representative from the State of Florida, a private citizen, and three congressional staff members. We recorded oral comments at this meeting and included them as part of the official record.

Nine individuals participated in a meeting at FEMA Headquarters on September 10, 1999, including four representatives from Monroe County, Florida, two representatives from the Key West Chamber of Commerce, and three congressional staff members. We also recorded oral comments at this meeting and included them as part of the official record.

Introduction

We selected Monroe County and the Village of Islamorada for this inspection procedure due to the unique circumstances in the communities. Almost the entire County, including the Village of Islamorada, could be inundated by the 100-year flood (a flood having a one-percent chance of being equaled or exceeded in any given year). A number of factors make the conditions in Monroe County and Islamorada unique, including:

- The nature of the flood hazard,
- The number of possible violations (an estimated 2,000–4,000 illegally built enclosures in the communities),
- The exposure of these buildings to flood damages,
- The potential for loss of life in the event of a flood,
- The factors that have limited the community's ability to determine whether a building with an enclosure complies with the local floodplain management ordinance as documented in the proposed rule, and
- The communities' willingness to participate in this procedure.

We are providing the inspection procedure to these communities as a tool for addressing their unique situation.

Risk of Flooding

Comments on the Flood Risk

We received ten comments questioning the need for the inspection procedure on the basis that there is infrequent flooding and a low flood risk in the Florida Keys compared to other areas of the United States. Several people questioned FEMA's determination of the flood risk in the Florida Keys. One person specifically stated that FEMA is unfairly applying the rules that are used to determine the flood elevations along the Mississippi River to the Florida Keys. This person added that the Florida Keys will flood only a mile or two near the eyewall of a storm on the onshore quadrant and that floodwaters will rise and fall gently as the storm moves across similar to Hurricane Andrew in the Kings Bay and Saga Bay area where water was only a few feet high in homes.

Several people commented that most storm-induced damages to buildings in the Florida Keys would be due to wind loads and not from flooding or waves hitting the building since waves occur only near the coast. In similar comments, several people stated that there is no basis for the FEMA enclosure requirement since there was little, if any, evidence from Hurricane Mitch and Hurricane Georges that these enclosures were damaged or that they damaged the main portion of the building or nearby buildings.

Some stated that FEMA's reasoning for the inspection procedure is flawed in reference to our statements in the proposed rule that people living in lower level enclosures may not be aware of the danger of hurricanes and that there will be costly outlays for flood fighting. As an example, one commenter stated that people are aware of hurricanes because the Florida Keys are surrounded by water. This person remarked that people living in lower level enclosures are aware of the danger of a hurricane approaching and will evacuate and be protected since they will have advance warning.

Response

We identify and map flood hazard areas in communities nationwide by conducting a Flood Insurance Study (FIS) and publishing maps referred to as Flood Insurance Rate Maps (FIRMs). We do this in close coordination with the

community that we are studying. We base these flood hazard areas, which we refer to as Special Flood Hazard Areas (SFHAs), on a flood that would have a 1-percent chance of being equaled or exceeded in any given year, also referred to as the 100-year flood or base flood. The NFIP adopted the 1-percent annual chance flood after considering various alternatives. The 1-percent annual chance flood is the standard for floodplain management in all of the approximately 19,000 participating communities in the NFIP. Federal agencies and most State agencies use the 1-percent chance flood as their standard for floodplain management. The standard is a reasonable compromise between the need for establishing building regulations to minimize potential loss of life and property and the economic benefits to be derived from floodplain development. A 1-percent annual chance flood has a 26-percent (or 1 in 4) chance of occurring over the life of a 30-year mortgage.

We determine the 1-percent annual chance flood, shown on the FIRMs as A Zones or V Zones, from information that we obtain through consultation with the community, floodplain topographic surveys, detailed hydrologic and hydraulic analyses, and historic records. We (and our contractors) use commonly accepted computer models that estimate hydrologic and hydraulic conditions to determine the 1% annual chance flood event, to determine Base Flood Elevations, and to designate flood risk zones. The procedures and models that we use to map the SFHA and determine Base Flood Elevations along the coast are very different from the procedures and models that we use for rivers and small lakes. In both cases, we use industry-accepted practices.

Along *rivers, streams, and lakes* within the United States, we compute flood elevations using computer models, statistical techniques, or both. These elevations are a function of the amount of water expected to enter a particular system by means of precipitation and runoff. The SFHAs in riverine environments are primarily identified as A Zones on the FIRM.

Along the *coast,* we determine SFHAs by an analysis of storm surge, wind direction and speed, wave heights, and other factors. We designate these areas along the coast as both V Zones and A Zones on the FIRM. V Zones are the more hazardous coastal flood zones because they are subject to high velocity wave action. We apply the V Zone designation to those areas along the coast where water depth and other conditions would support at least a 3-foot wave height. We also consider other factors in identifying V Zones, such as wave run-up. We usually designate A Zones in coastal areas landward of the V Zone. Coastal flood hazard areas mapped as A zones can be subject to storm surge and damaging waves; however, the waves are less than 3 feet in height.

Monroe County and the Village of Islamorada, Florida have a serious flood risk that includes storm surges, wave action, and high velocity flows. As stated in the proposed rule, we have designated almost the entire area of Monroe County, including the Village of Islamorada, as an SFHA. We have identified velocity zones (V Zones) along the coastline of Monroe County and the Village of Islamorada and designated the remaining portion of the SFHAs as coastal A Zones. Only a small area of Key Largo, Cotton Key, and Upper Matecumbe Key have areas with ground elevations high enough to be outside of the SFHA. You can find details regarding storm surge and wave height analyses used to delineate the SFHAs and to determine Base Flood Elevations in the Flood Insurance Study, March 1997, for Monroe County and incorporated areas including the Village of Islamorada.

Overwash flooding and wave action from Hurricane Georges and Tropical Storm Mitch were very limited, well below the elevation of the 1-percent annual chance flood. The National Hurricane Forecast Center categorized Hurricane Mitch as a Tropical Storm by the time it reached the Florida Keys with sustained winds estimated near 45 MPH. Hurricane Georges was a Category 2 storm when it passed the Florida Keys. When Hurricane Georges passed the Florida Keys, the highest measured sustained wind reported was 91-mph with peak gusts to 107-mph at Sombrero Key. Cudjoe and Big Pine Key sustained higher gusts. In the Florida Keys, the storm surge elevations from Hurricane Georges ranged from 3 feet to 6 feet above Mean Sea Level (MSL) [National Weather Service, 1998], well below the elevation of the 1-percent annual chance flood, with a total rainfall amount of 8.5 inches in Key West (NWS, 1998).

Although the storm surge and wave action from Hurricane Georges were not severe, we paid approximately 3,500 flood-related claims of over $40 million dollars in the Florida Keys as a result of this storm. In some areas of the County, flooding of several inches to several feet remained at building sites from 12 to 20 hours after the storm event. Approximately 80% of the claims were for pre-FIRM buildings. In Monroe County and the Village of Islamorada buildings are considered pre-FIRM if the starting date of construction or substantial improvements of buildings occurred on or before December 31, 1974.

The remaining 20 percent of the claims were for post-FIRM construction. By statute we consider all new construction in Monroe County and the Village of Islamorada built after December 31, 1974, and substantial improvements to pre-FIRM buildings to be post-FIRM. Under the NFIP, these post-FIRM buildings must meet the requirements of the community's floodplain management ordinance to protect them from flood damages. We would expect that most of the flood-related damage and flood claims would be to pre-FIRM buildings, which have not been protected to the minimum floodplain management requirements of the NFIP.

However, in reviewing a number of post-FIRM claims from Hurricane George in Monroe County, we found several post-FIRM buildings with ground level enclosures below the lowest floor of the elevated building that sustained flood-related damages from a few hundred dollars to several thousand dollars. We could not determine precisely whether these enclosures were built to the minimum requirements of the NFIP or were completely built with finished living space. The flood-related damages to these enclosures and the contents are, for the most part, not covered under the Standard Flood Insurance Policy (see section below on *Flood Insurance*).

The residents of Monroe County have been fortunate that a major hurricane with an associated 1-percent annual chance flood has not made landfall in recent years, but that does not mean that one will not occur. The State of Florida is one of the most hurricane-prone states in the United States (U.S.). According to the National Weather Service, from 1900–1994, Florida experienced over 297 direct and indirect landfalls from hurricanes, the most of any mainland area of the U.S. From 1900–1996, Florida has experienced 57 direct hurricane hits and of these over 24 were major hits (Category 3, 4, or 5 on the Saffir/Simpson scale). Florida also has the highest incidence rate of Category 3 or greater landfalls. Within the State of Florida from 1900–1996, southwestern Florida and southeastern Florida have experienced 18 and 26 direct hurricane hits respectively (NOAA). Several of these storms had fairly sizable storm tide levels causing extensive flooding. For example, Hurricane Donna, 1960, had tide levels just south of the Village of Islamorada in Upper Matecumbe Key measured at 13.45 feet above MSL (FIS,

1997). In 1935, a Labor Day Hurricane caused tide levels of 14 feet to 18 feet above MSL in the Tavernier-Islamorada area (FIS, 1997).

We agree that people living in Monroe County are generally aware that the Monroe County is prone to hurricanes. However, property owners with finished ground level enclosures or tenants who live in these enclosures may not be aware of the potential dangers and the damaging effects of storm surges commonly associated with coastal storms and hurricanes. Although adequate warning time may be given, property owners or tenants may undertake extensive efforts to protect the finished ground level enclosure and their contents. These flood-fighting efforts could add significant delays in evacuating from the Florida Keys in the event of an approaching hurricane. As a result, an orderly and timely evacuation process may be hindered, which could potentially lead to residents trapped in the Florida Keys as the hurricane's rising waters and increasing winds approach. Consequently, there is potential for loss of life for those who are unable to evacuate during the critical evacuation period. We would expect that a 100-year flood event in Monroe County would result in significant flood damages from storm surge and wave action to pre-FIRM buildings and to post-FIRM buildings that have not been properly elevated or have illegally-built ground level enclosures below elevated buildings.

NFIP Floodplain Management Requirements

Comments on the NFIP Floodplain Management Requirements for Enclosures

We received eighteen comments on the NFIP Floodplain Management requirements that ranged from general questions of why we regulate enclosures to specific comments concerning the appropriateness of the NFIP construction and building use requirements for enclosures located below the Base Flood Elevation.

One person suggested that instead of being concerned about enclosures, we should subsidize Monroe County as well as other communities in the program and allow them to run their own programs. In another comment, someone stated that the proposed rule disregards the fact that Monroe County is entitled to interpret its own laws as it has by allowing finished ground level enclosures. Several other people questioned why the NFIP requirements for enclosures were necessary since non-structural elements of lower area enclosures are not covered under the Standard Flood Insurance Policy. In a related question, someone asked what our role was in the enclosure issue since flood insurance is only required when a mortgage is being obtained. Several questions were also raised as to why we are focusing on lower level enclosures and not on buildings constructed at ground level or on buildings with enclosures built before 1975.

We also received recommendations on alternatives that we should consider in addressing enclosures. They included: (1) Allowing homeowners to buy a bond for the replacement cost of the enclosure, which would be used to repair flood damaged items; (2) allowing property owners to self-insure against any flood damages below the flood level; and (3) allowing property owners to purchase private insurance to cover the entire structure since we do not fully cover building elements below the lowest floor.

Several people commented that we have not made a case that ground level enclosures increase the risk to loss of life and property. Many people commenting believe that most storm-induced damages in the Florida Keys will be caused by wind loads rather than from flood loads. Specifically, some asked us what we base our claim on that lower level enclosures will be damaged and will cause the elevated part of the building to collapse or be damaged, or will cause damages to nearby buildings of a major hurricane. One commenter stated that many of the prohibitions pertaining to enclosures are overly broad and appear to apply without reason to harmless uses of enclosures. In other comments, some stated that lower level enclosures do not pose any more of a threat than anything else at ground level, such as automobiles, boats, and recreation equipment, and that enclosures can serve to limit the amount of wind-blown debris.

In several comments on the NFIP construction requirements commenters stated that enclosures could be made safe. One person recommended the use of breakaway walls. Others recommended that rather than constructing a building on a pile or column foundation system required under the NFIP in coastal areas, we should allow buildings to be constructed on solid reinforced concrete block foundation since they can provide better protection to buildings in the Florida Keys. One questioner asked why we believe that steel reinforced concrete foundation walls supporting the upper levels and enclosing the lower level pose a threat to buildings.

One person wanted clarification on how the proposed inspection procedure would address the critical difference between the requirements of a true foundation flood vent and the air vents that are not true flood vents.

Several people also questioned our requirements on the use of enclosures. Within this category of comments, one person suggested that the use limitation on enclosures was designed to solve a zoning problem by creating a false impression that finished enclosures threaten the upper level of buildings. Several people questioned our requirement of prohibiting uses other than parking, access, and storage in which cars, boats, and garden items can be stored that can be damaged or cause damage to the building, but not permit finished materials and other items. In other comments, several asked why we do not allow workrooms, home offices, libraries, wine cellars, recreation rooms, and additional storage since the finished space is not insurable. Many suggested that we should focus on enclosures that are used as apartments instead of other uses such as family rooms with breakaway walls.

One person urged us to permit homeowners to use an engineering solution similar to that of commercial buildings by allowing finished lower level enclosures below the Base Flood Elevation to be dry floodproofed. That person stated that we should recognize home offices in residences and treat them similar to non-residential buildings.

Response

In order to address these comments fully, we are first providing some background information on the NFIP in general.

General program description. Congress created the NFIP under the National Flood Insurance Act of 1968, as amended, to provide federally supported flood insurance coverage, which generally had not been available from private companies. Congress created the NFIP in response to the escalating cost of flood damages from a series of flood events from hurricanes and riverine floods in the early 1960's. However, making flood insurance available was not the only objective in creating the NFIP. In addition to indemnifying individuals for flood losses through insurance, Congress also created the NFIP to: (1) Reduce future flood damages through State and community floodplain management regulations; and (2) reduce Federal expenditures for disaster assistance and flood control.

Section 1315 of the Act prohibits us from providing flood insurance to property owners unless the community adopts and enforces a floodplain management ordinance that meets or exceeds the criteria found in our NFIP regulations at 44 CFR 60.3. Community participation in the NFIP is voluntary. Over 19,000 communities currently participate in the NFIP.

The National Flood Insurance Act of 1968 requires us to charge full actuarial rates reflecting the complete flood risk to buildings constructed or substantially improved on or after the effective date of the initial FIRM for the community or after December 31, 1974, whichever is later. We refer to these buildings as post-FIRM. Actuarial rating assures that those locating in flood prone areas bear the risks associated with new buildings in such areas and not by the taxpayers at large. Flood insurance premiums on pre-FIRM buildings, buildings constructed before the effective date of the initial FIRM, are subsidized.

In general, the NFIP minimum floodplain management regulations require that new construction or substantially improved existing buildings in A Zones must have their lowest floor (including basement) to or above the Base Flood Elevation. In V Zones, the bottom of the lowest horizontal structural member of the lowest floor of all new construction or substantially improved existing buildings must be elevated to or above the Base Flood Elevation. Using knowledge of local conditions and in the interest of increased safety, many States and communities have more restrictive requirements than those that we established under the NFIP. We have designed the NFIP floodplain management regulations to protect buildings constructed in floodplains from flood damages; they help keep flood insurance rates affordable, and they minimize the need for disaster assistance.

For Monroe County and the Village of Islamorada, Florida, a post-FIRM building is a building constructed or substantially improved after December 31, 1974. When Monroe County and the Village of Islamorada joined the NFIP, they agreed to regulate all new construction built after the effective date of their initial FIRM, and substantial improvements to pre-FIRM buildings after this date to ensure that these buildings meet the requirements of the community's floodplain management ordinance, which meets the minimum requirements of the NFIP Floodplain Management Regulations.

Two other important components of the program are: (1) That Federal agencies are prohibited from providing financial assistance for the acquisition or construction of buildings in the designated flood hazard areas of communities that do not participate in the NFIP; and (2) that flood insurance is a condition of receiving federal financial assistance or loans from federally insured or regulated lenders in those communities that do participate. Flood insurance is not limited to property owners who must purchase flood insurance for mortgage purposes. It is available in participating communities to anyone, including those who live outside the designated flood hazard area.

We are responsible under the Act for establishing, developing, and implementing policies and programs in Special Flood Hazard Areas. This includes monitoring community compliance with the NFIP Floodplain Management Regulations and providing technical assistance to communities.

NFIP requirements for enclosures. We do not limit the NFIP floodplain management requirements to those building elements insured under the Standard Flood Insurance Policy or located above the Base Flood Elevation. While insurance coverage for enclosures below the lowest floor of an elevated building is very limited (see the *Flood Insurance* section below), the NFIP floodplain management requirements apply to all elements of a building and apply to both insured and non-insured buildings. Under the NFIP, communities are required to regulate all development in flood hazard areas, including those building elements located below the Base Flood Elevation such as enclosures. "Development" is defined under the NFIP as "any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials."

Responding to the public's desire to permit an enclosed area below an elevated building, but recognizing the potential risks to lives and property, the NFIP Floodplain Management Regulations allow certain limited uses of enclosures below the lowest floor. Under the NFIP, the enclosed area below an elevated building can be used for the parking of vehicles, building access, or storage. Storage should be limited to items such as lawn and garden equipment, tires, and other low damage items. Our regulations allow these uses below the Base Flood Elevation because the amount of damage caused by flooding to these areas can easily be kept to a minimum by following certain performance standards that we describe below for the design and construction of these areas in A Zones and V Zones.

In A Zones, the NFIP allows construction of new and substantially improved buildings on extended foundation walls or other enclosure walls below the Base Flood Elevation. Because these walls will be exposed to flood forces, they must be designed and constructed to withstand hydrostatic, hydrodynamic and impact loads. If the walls are not designed and constructed to withstand those loads the walls can fail and the building can be damaged. Under the NFIP, the foundation and enclosure walls that are subject to the 1-percent annual chance flood must contain openings that will permit the automatic entry and exit of floodwaters. These openings allow floodwaters to reach equal levels on both sides of the walls, which will lessen the potential for flood damage by equalizing hydrostatic pressure.

The inspection procedure in this regulation does not modify the current NFIP requirements pertaining to openings. Under the NFIP,

- The building must provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding.
- The bottom of all openings can be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- As an alternative to the openings criteria described above, a registered engineer or architect may design openings that achieve the same objective of equalizing hydrostatic pressure.
- The design professional must certify that the openings are designed in accordance with accepted standards of practice. The design professional must submit this certification to the community.
- Local officials must inspect buildings with enclosures in A Zones to ensure that the enclosure walls contain proper openings.

In V Zones, the velocity water and wave action associated with coastal flooding can exert strong hydrodynamic forces on anything that obstructs the flow of water. Standard foundations such as solid reinforced masonry or concrete walls or wood-frame walls will obstruct flow and be at risk to damage from high-velocity flood forces, breaking waves, and debris impact. Foundation walls or other enclosure walls can also

create higher localized velocities capable of increased scour as water flows around the obstruction. In addition, solid foundation walls can direct coastal floodwaters into the elevated portion of the building or into adjacent buildings. The result can be structural failure of the building. For these reasons, buildings constructed in V Zones—

- Must be elevated on open foundations constructed of pile, posts, piers, or columns,
- The area below the lowest floor of elevated buildings must either be free of obstruction, or
- Any enclosure must be constructed with open wood lattice-panels or insect screening, or
- An enclosure must be constructed with non-supporting, non-load bearing breakaway walls that meet applicable NFIP criteria.

The NFIP requires that in V Zones, the open foundation and the structure attached to it must be anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Open foundations must be designed to accommodate the base flood, wind and other loads acting simultaneously. The designs must comply with water loading values associated with the 1-percent annual chance flood. They must also comply with the wind loads required by applicable State or local building codes or with the wind and flood loads contained in the American Society of Civil Engineers Standard for Minimum Design Loads for Buildings and other Structures (ASCE 7–98). Under the NFIP, construction plans for all new and substantially improved buildings in V zones must be signed and sealed by a registered design professional.

Furthermore, to minimize flood damages in both A and V Zones, the enclosed area below the lowest floor must be built using flood resistant building materials, and mechanical, electrical, plumbing equipment, and other service facilities must be designed or located so as to prevent damage during flooding conditions. The uses of the area beneath an elevated building are restricted to parking, access, and storage.

Basis for these requirements. We have over 25 years of experience, including direct observations, flood insurance loss data, and field investigations that confirm that the NFIP floodplain management requirements described above minimize and reduce flood damages.

We conduct field investigations following major flood disasters to evaluate how well the NFIP floodplain management requirements performed. During these investigations, a team of experts inspect disaster-induced damages to residential and commercial buildings and other structures and infrastructure; conduct forensic engineering analyses to determine causes of structural and building component failures and successes; and evaluate local design practices, construction methods and materials, building codes, and building inspection and code enforcement processes. In addition, the teams make recommendations of actions that State and local governments, the construction industry, building code organizations, and individual property owners can take to reduce future damages and protect lives and property in flood hazard areas. Lessons learned by analyzing these building performance findings are also used by us to fine-tune and improve NFIP Floodplain Management Regulations related to building performance, designs, methods, and materials. These assessments are documented by us in Flood Damage Assessment Reports and Building Performance Assessment Team (BPAT) reports. We distribute this information widely using a variety of media including technical manuals, workshops, and the Internet, and through formal training courses.

We have conducted numerous post-flood disaster damage assessments that indicate that improperly constructed ground level enclosures significantly increase damages to buildings in both A Zones and V Zones. Hurricane Alicia was a Category 3 hurricane that made landfall on Galveston Island, Texas in August 1983. One of the findings from an on-site assessment of damages following that hurricane indicated that severe structural damage occurred to buildings with ground level enclosures when the storm surge hit non-breakaway walls in the areas where velocity was significant (Interagency Flood Hazard Mitigation Report, September 2, 1983). The findings confirmed that where water was able to pass below the elevated structure unobstructed, as required in V zones, damage was limited to items such as exterior stairways and decks. This finding, in particular, is often cited in assessments in coastal disasters (Hurricane Hugo, 1989, South Carolina; Hurricane Bob, 1991, Massachusetts). Hurricane Hugo struck a number of elevated coastal buildings that were enclosed with non-breakaway walls. Hugo's powerful wave action and storm surge destroyed the finished enclosed areas, which resulted in considerable contents losses to homeowners.

Hurricane Fran was a Category 3 hurricane that struck North Carolina in 1996. An assessment of damages indicated design and construction flaws in breakaway walls in V zones, including connections between breakaway panels and the building foundation, interior cross-bracing behind the breakaway walls, and attachment of utility lines to breakaway wall panels. These connections and attachments inhibited velocity flows and waves from passing freely under the building, and resulted in extensive damage to the building. In addition, the assessment also found homes in A zones and in areas outside the floodplain landward of the coast elevated 8–9 feet above grade to allow parking and storage beneath the building. However, the assessment found that where the area beneath the elevated building had been enclosed with non-breakaway wall panels and were used as finished living space, the enclosure walls had collapsed and the affected buildings had incurred extensive damage.

Based on our flood insurance experience, we know that buildings constructed to the minimum requirements of the NFIP also minimize insured losses. Our insureds avoid approximately $1 billion of flood damages every year as a result of the NFIP and our building requirements. We also know that structures that are not built to NFIP requirements suffer as much as five times the amount of flood damages that compliant structures suffer.

Our insurance experience further reveals that post-FIRM buildings with enclosures below the Base Flood Elevation suffer twice as much flood damage when compared to post-FIRM buildings without enclosures. This is particularly important to note since coverage is limited for enclosures below the lowest floor of elevated buildings to what are considered to be essential elements, namely, sump pumps, well water tanks, oil tanks, furnaces, hot water heaters, clothes washers and dryers, freezers, air conditioners, heat pumps, and electrical junction and circuit breaker boxes. The foundation elements that support the building are also covered under the NFIP. We do not cover such items as finished enclosure walls, floors, ceilings, and personal property such as rugs, carpets, and furniture, which are not reflected in our flood insurance loss data.

Dry floodproofed structures. This section addresses the comments that we should treat residential buildings the same as non-residential buildings by dry

floodproofing homes with enclosures below the Base Flood Elevation.

Under the NFIP, residential buildings in A Zones must have their lowest floor elevated to or above the Base Flood Elevation. Non-residential buildings in A Zones must be either elevated or floodproofed to the Base Flood Elevation. Since the program's inception, the NFIP's emphasis has been for people to live above the Base Flood Elevation. We have consistently found in our post-disaster assessments and in our flood insurance experience that properly elevated residential buildings successfully minimize flood damages. In addition to property protection, elevation also achieves another important objective of the program—the protection of lives.

We do not permit dry floodproofing in V Zones for either non-residential buildings or residential buildings because of high velocity flood flows and wave action. In V zones, both residential and non-residential buildings must have the bottom of the lowest horizontal structural member of the lowest floor elevated to or above the Base Flood Elevation.

Under the NFIP, floodproofed non-residential buildings in an A Zone must be designed so that below the Base Flood Elevation, the structure and associated utility and sanitary facilities are watertight with walls substantially impermeable to the passage of water. This technique is often referred to as "dry floodproofing". Dry floodproofing is a technically complex method of flood protection, which requires significant adjustments and additions of features to the non-residential building that are intended to reduce the potential for flood damage. The structural components of dry floodproofed buildings must be capable of resisting hydrostatic, hydrodynamic, and debris impact loads. The type of adjustments and additions that must be considered in the design and construction of a dry floodproofed building include:

- Anchoring of the building to resist flotation, collapse and lateral movement;
- Installation of watertight closures for doors and windows;
- Reinforcement of walls to withstand floodwater forces and impact forces generated by floating debris;
- Use of membranes and other sealants to reduce seepage of floodwater through walls and wall penetrations;
- Installation of pumps with an uninterruptible power source to control interior water levels;
- Installation of check valves to prevent entrance of floodwater or sewage flows through utilities; and
- Locating electrical, mechanical, utility, and other valuable damageable equipment and contents above the Base Flood Elevation.

A registered engineer or architect must certify the design and methods of construction used to dry floodproof the nonresidential structure on a Floodproofing Certificate. The owner must submit this certification to the community and with the Flood Insurance Application in order for the building to be eligible for lower flood insurance rates.

In studies on dry floodproofing and in post-flood disaster assessments, we have found that the long-term viability of floodproofed buildings depends on other factors in addition to design and construction. To ensure the long-term viability of the floodproofing method, the design professional should develop the following plans for the non-residential structure:

(1) A flood emergency operation plan that addresses issues such as flood warning and evacuation, and identifies who has responsibility for implementing the plan including the installation of flood shields over the openings if required; and

(2) An inspection and maintenance plan for the various components and features of the flood protection method such as sump pumps and generators to make sure they continuously work, flood shields and gaskets to ensure that they are in good condition, and walls and joints to ensure that no cracks or potential leaks develop.

If the business has an emergency operation plan, the owner should file the plan with the community so that adequate flood warning can be provided in order to implement the floodproofing system and for an orderly evacuation of employees. If there is a flood warning, employees on site would be evacuated before flooding occurs to minimize the threat to their safety. These employees are likely to return to their homes or relocate to shelters.

Under the NFIP, we do not permit dry floodproofing for either residential or non-residential buildings in coastal V zones due to loads generated by hydrodynamic forces, including wave impact, storm surge, and debris impact loads. While Base Flood Elevations in coastal A zones contain a wave height component of less than 3 feet, the severity of the flood hazard in coastal A zones, such as in the Florida Keys, is often much greater than in non-coastal A zones due to the combination of water velocity, wave action, and debris impact that can occur in these areas. Consequently, while permitted under the NFIP for non-residential buildings, generally we do not recommend dry floodproofing in coastal A zones. During base flood (1-percent annual chance flood) conditions, buildings in both V zones and coastal A zones can experience some of the most extreme loads associated with natural hazards. This was confirmed in a recent study on breakaway walls funded both by us and by the National Science Foundation ("Behavior of Breakaway Wall Subjected to Wave Forces: Analytical and Experimental Studies", 1999). In the study, laboratory wave tank tests demonstrated that over 10,000 pounds of pressure can be generated on an 8 foot wide test wall by waves of less than 3 feet in height, *i.e.*, those found in coastal A zones during base flood conditions.

Although dry floodproofing may seem simple, it is a technically complex flood protection method that requires an understanding of the possible dangers from poor planning, design, construction, and maintenance. Our concerns about the limitations on the use of dry floodproofing for residential construction and in coastal areas are also supported by nationally recognized experts in the field of flood resistant construction.

The United States Army Corps of Engineer's (COE) National Floodproofing Committee has sponsored studies and tests of materials and systems for dry floodproofing structures, has sponsored post-disaster field investigations to analyze how well dry floodproofed buildings perform during actual flooding conditions, and has issued guidance on dry floodproofing (Flood Proofing Tests, 1988; Flood Proofing Techniques, Programs, and References, 1997; and Flood Proofing Performance Successes and Failures, 1998). The National Flood Proofing Committee is comprised of a group of Corps of Engineers employees experienced in floodplain management and selected from various Division and District Corps offices nationwide. The Committee promotes the development and use of proper floodproofing techniques throughout the United States. These reports discuss the critical features of dry floodproofing, the importance of using design professionals to analyze hydrostatic forces on the building, and some of the limitations on its use in preventing floodwaters from entering the building. Over a period of several years, the National Flood Proofing Committee documented the performance of buildings in actual flood events (Flood Proofing Performance Successes and Failures, 1998). Several building sites visited included dry floodproofed

buildings that had been exposed to floodwaters. Almost all of the dry floodproofed buildings that the Committee observed had failed for various reasons.

Current model building codes and national consensus standards do not permit dry floodproofing of residential buildings. As examples, the new International Building Code (IBC) and its companion, the International Residential Code (IRC), do not allow dry floodproofed residential buildings. No model building codes issued before the IBC or IRC that addressed flood resistant construction allowed dry floodproofed residential buildings. The American Society of Civil Engineers national consensus standard for Flood Resistant Design and Construction (SEI/ASCE 24–98) does not permit dry floodproofing of residential buildings and for non-residential buildings it is only permitted outside of "high risk" flood hazard areas that are subject to high velocity flows and wave action. Furthermore, the proposed Florida Building Code will not permit dry floodproofing of residential buildings either.

The combination of flood loads in a coastal A zone is generally beyond the design strength of standard exterior walls of residential buildings and most non-residential buildings. The specialized design, engineering, and construction requirements for dry floodproofing a coastal A zone building may make it cost prohibitive. Designers of dry floodproofed coastal A Zone buildings must know the strengths of connections, the response of walls to velocity flows, wave action, and debris impact and the conditions under which failure occurs and the potential modes of failure. Most design professionals and contractors of low-rise residential buildings are not familiar with designing and constructing buildings with these extreme loads in mind. Residents would be faced with significant threats to life and damages to property if their homes were not properly designed, constructed, and maintained.

However, even when design and construction constraints can be overcome, there are other significant constraints associated with dry floodproofed homes that may compromise the level of public safety and property protection envisioned in the NFIP's objectives for people who choose to live in floodplains. These constraints are described below.

With any flood protection measure, residents may have a false sense of security that they are protected from flood events of any magnitude. Dry floodproofing does not place the finished living spaces of residential buildings above the Base Flood Elevation. If the dry floodproofed measure for the home fails from a flood event greater than the base flood, the flood damages will be much greater compared to damages to an elevated building. The dry floodproofed area acts as a bathtub and would fill to the level of the flood damaging everything below that level, whereas in an elevated building only that area below the base flood would be damaged.

The potential for a false sense of security may also inhibit individuals from heeding calls by emergency management officials to evacuate and may result in the use of the dry floodproofed space during a flood event. Consequently, the safety of the residents living in floodproofed homes is jeopardized should the level of protection be overtopped or a failure of the floodproofed wall or components occur.

Unlike elevation, dry floodproofing requires critical human intervention and maintenance for it to operate properly and effectively when flooding is imminent or actually occurring. Individual property owners must have adequate warning time to implement whatever measures are necessary to protect the building, such as installing flood shields over doors and windows, checking for deterioration of gaskets, joints, or other critical features, and making sure drainage systems and generators will operate. It may take several hours to implement. If property owners are away, they will need someone else available to implement and check the floodproofing measures. In areas with a large number of second homes or vacation homes, such as in coastal areas, it may be difficult to find people to undertake steps to protect floodproofed homes if these same people must also protect their own homes and prepare to evacuate.

The community itself may have to develop and implement a separate flood-warning system for individual property owners of dry floodproofed buildings so that they have adequate time to implement the floodproofing measures. In the case of hurricanes and other approaching coastal storms, abrupt changes in direction may not give property owners adequate time to prepare, which may reduce or eliminate the amount of time available to implement the floodproofing measures and prepare to evacuate. As a result, evacuations may get delayed affecting the entire community. In Monroe County orderly evacuation is extremely critical given its unique transportation system with a single road and connecting bridges to the mainland that form the backbone of the entire County transportation system.

Invariably all dry floodproofing measures leak through the sealant, cracks, joints, and around openings into the interior of the building. That is why a sump pump and drainage system are critical components of the dry floodproofed system. Since electrical power will likely be interrupted during a coastal storm, alternative sources of power need to be provided, such as an onsite power generator to provide energy during a power failure. Homeowners may decide to stay home to make sure these systems work if there is a flood. As a result, homeowners may be in the floodproofed area of the home checking pumps or other systems as floodwaters rise, exposing themselves to extreme danger. A homeowner's decision to stay and floodfight may well be contrary to evacuation orders from emergency management officials.

Dry floodproofing is not a simple flood protection technique that can be ignored once it is installed. Periodic checking and maintenance are very important aspects of making sure dry floodproofing will work when it is needed. Waterproofing compounds or sealants and gaskets eventually deteriorate and owners may lose flood shields that cover critical openings. To make sure that the floodproofing measure will work in a flood, property owners would need to check periodically that floodproofing items are on site and easily accessible, such as bolts, gaskets, caulking, timbers, and flood shields to cover doors, windows, or other openings below the Base Flood Elevation. If homeowners or tenants become complacent about maintenance, lack of care can result in complete failure of the dry floodproofing method. Homeowners would have to be diligent in maintaining the various components for the floodproofing measure to remain effective.

As new homeowners replace former homeowners, the former owners may not disclose the importance of the floodproofing measure to protect the home. Moreover, if the unsuspecting buyer is not notified that the home is floodproofed, the former owners and others may be liable if the home is damaged in a flood disaster. There is also little chance that future property owners will receive proper guidance or information on emergency operations and maintenance requirements that come along with a dry floodproofed building.

Allowing residents to sleep, work, recreate, or otherwise occupy the space below the Base Flood Elevation would

conflict directly with sound floodplain management practices. People who may occupy the floodproofed space below the Base Flood Elevation as a separate housing unit may be subject to significant adverse health and safety risks should the floodproofed system fail. Environmental justice issues for the program are raised when dry floodproofed housing units serve as the primary source of affordable housing for low-income populations in the community. One of the basic premises of the NFIP is that economic means should not be the basis for the level of protection afforded to individuals by having those with the most limited resources living in the most vulnerable area of the building—below the Base Flood Elevation. Under the National Flood Insurance Act of 1968, as amended, we have a responsibility to protect both property and lives. Other than locating outside the SFHA elevation is the best flood protection method for minimizing the threat to public safety, especially for homeowners. The 1-percent annual chance flood (100-year flood) is a reasonable compromise between the cost of meeting this standard and the resulting reduction in loss of life and damage to property. Furthermore, the elevation requirements for residences is consistent with mandates in Executive Order 11988, Floodplain Management, current model building codes, national consensus standards, and the proposed Florida Building Code to reduce the risk of flood losses and minimize the impacts of floods on human safety, health, and welfare.

Flood Insurance

We received fourteen comments asking how buildings are rated under the NFIP in general and specific comments on the effect that the implementation of this rule would have on the insurance aspects of the NFIP.

Comments on NFIP Insurance Rates

One person asked that we describe the rate making process and explain the differences in methodology used in determining premium rates for pre-FIRM buildings, post-FIRM buildings, and non-compliant buildings. Why are rates the same for different parts of the country? The risk would appear to be different. We also received a comment that Monroe County property owners are paying the highest flood insurance rates in the nation even though houses are elevated.

Response

A key provision of the National Flood Insurance Act is section 1315, which prohibits FEMA from providing flood insurance unless the community adopts and enforces a floodplain management ordinance that meets the minimum requirements established at 44 CFR 60.3. A major component of the program is to identify and map the nation's floodplains to create broad-based awareness of the flood hazards and to provide the data needed for floodplain management programs and to rate flood insurance actuarially.

The National Flood Insurance Act of 1968, as amended, separated the flood insurance ratemaking process into two distinct categories. The two categories are subsidized rates and actuarial rates.

Congress authorized the NFIP to offer policies at less than full risk (actuarial) premiums to existing buildings constructed on or before December 31, 1974 or before the effective date of the initial Flood Insurance Rate Map. Congress concluded that these buildings were built without the occupants' full knowledge and understanding of the flood risk, and to rate them using the actuarial rates might make the flood insurance prohibitively expensive. These less-than-full-risk rates are known as subsidized rates. We estimate that risks in this class are paying only 35 to 40 percent of what the full risk premium should be to fund the long-term expectation of the flood losses to the building. Only such general rating factors as flood risk zone, occupancy type, and building type are used to rate these buildings for flood insurance. Even though premiums for policies on existing buildings are subsidized, floodplain occupants pay for at least part of the cost of the insurance and no longer need disaster assistance.

In exchange for this subsidized insurance, participating communities must protect new construction. The National Flood Insurance Act requires that we charge full actuarial rates reflecting the complete flood risk to buildings constructed or substantially improved on or after the effective date of the initial FIRM for the community or after December 31, 1974, whichever is later. Once we identify the flood risk and make the information available to communities, actuarial rating assures that those located in such areas bear the risks associated with buildings in flood prone areas and not taxpayers at large. The flood insurance rates take into account a number of different factors including the flood risk zone shown on the FIRM (*i.e.*, Zones A, AH, AO, AE, A1–30, AR, V, VE, V1–30, B, C, X) elevation of the lowest floor above or below the Base Flood Elevation, the type of building, the number of floors, and the existence of a basement or an enclosure.

The flood risk zone and the Base Flood Elevation are specific factors that can differentiate the flood risk in various areas of the country. For example, we designate certain shallow flooding areas as AO and AH zones. We designate some riverine areas and inland areas of coastal communities as A and AE zones, while we may designate areas subject to damage by waves and storm surge as V and VE zones. The rates in the various types of A zones are much lower than the rates for the V and VE zones. This difference reflects both the lower expectation of loss and our actual loss experience for these zones. While we print rate tables showing all possible flood risk zones and use them for the entire country, we do not show the same zones on every FIRM. For example, communities in Utah or Kansas do not have V zones because they are not subject to wave action and storm surge. However, where the same zone designation is used in two different areas of the country, it is because our engineering studies have shown that the degree of risk is very similar. Consequently, Monroe County is not paying higher rates compared to other parts of the country. Policyholders in AE and VE zones in Monroe County are paying the same rates as policyholders in other parts of the country, if the lowest floor elevation of the buildings are the same in relation to the Base Flood Elevation. This is because their risk of flooding is statistically the same.

Buildings that comply with community floodplain management regulations pay premiums based on flood insurance rates that are in most cases significantly lower than the subsidized rates charged pre-FIRM buildings. However, buildings constructed in violation of the community's floodplain management ordinance pay much higher rates, which can exceed thousands of dollars a year for buildings substantially below the required elevations. We base the flood insurance rates for structures on a building's exposure to flood damage. Based on our loss experience older structures built before establishment of NFIP minimum building requirements, we can generally expect that they will suffer as much as 5 times the flood damage that compliant new structures experience. New buildings with non-compliant ground level enclosures in coastal areas can actually represent risks that are at least as poor as the average older pre-FIRM buildings. Also, buildings with illegally built ground level enclosures will be damaged during

flooding conditions that occur more often than those associated with the Base Flood.

Comments on Flood Insurance and Enclosures

We received eight comments specifically related to the insurance provisions pertaining to enclosures. Some asked why there is a requirement to purchase flood insurance when ground level enclosures are not covered by the NFIP. Another commented that since we have no liability, it is reasonable to allow enclosures below elevated buildings to be finished with sheet-rock, carpet, and office equipment, and other furniture. One recommended that instead of implementing an inspection procedure, we should treat buildings with improperly built enclosures as "Submit for Rate" properties so that normal policy provisions and re-rating apply. In a related comment, the commenter expressed concern that we are treating Monroe County differently from other communities where flood insurance rates are simply adjusted upward. Another commenter expressed concern that FEMA would be charging property owners potentially punitive rates that did not reflect the actual exposure of the building to flood risk.

Response

In 1983 we began to limit the coverage for enclosed areas below the lowest floor of elevated buildings, including basement areas, due to the financial losses that we experienced when we provided full coverage in these areas. In order to provide insurance coverage for the items that are excluded under the NFIP Standard Flood Insurance Policy (SFIP), we would have to charge significantly higher flood insurance rates, which would make flood insurance on the building unaffordable for many property owners.

The Article 6—Property Not Covered provision in the Dwelling Form of the SFIP limits coverage for enclosures, including personal property contained in them. However, the SFIP does provide some coverage for enclosed areas below the lowest floor of elevated buildings for what are considered essential elements; namely, sump pumps, well water tanks, oil tanks, furnaces, hot water heaters, clothes washers and dryers, freezers, air conditioners, heat pumps, and electrical junction and circuit breaker boxes. Foundation elements that support the building, and foundation walls in A Zones, are also insurable under the NFIP. The NFIP does not cover items in the enclosure, such as finished walls, floors, ceilings, and personal property, such as rugs, carpets, and furniture.

The limitation of flood insurance coverage for the enclosed area of an elevated building is consistent with the NFIP floodplain management requirements since these requirements limit the use of the enclosed space to parking, access, and storage, thereby minimizing the potential for damage to the building and its contents. Furthermore, flood damages can easily be kept to a minimum by following certain performance standards for the design and construction of enclosures in A Zones and V Zones. We described these in detail earlier in the section on NFIP Floodplain Management Requirements. Finished enclosures used for other than parking, building access, and storage significantly increase the flood damage potential to the area below the lowest floor of the elevated building. Furthermore, finished enclosures increase the flood damage potential to the foundation and to the elevated portion of the building that are insured under the NFIP. Improperly constructed enclosure walls and utilities can tear away and damage the upper portions of the elevated building exposing the building to greater damage. Improperly constructed enclosures can also result in flood forces being transferred to the foundation and to the elevated portion of the building with the potential for catastrophic collapse.

The resulting increased damage to buildings with illegally built enclosures has implications for all policyholders. We will have to charge higher flood insurance rates for buildings with enclosures to reflect the higher NFIP loss frequency and high damage potential. The increased flood risk and our loss experience must be reflected in the premiums that we charge to policyholders of buildings with ground level enclosures below the lowest floor. When we receive a flood insurance application that describes an elevated building with a finished enclosure below the Base Flood Elevation, we rate the building using the Submit for Rate procedures. The flood insurance rates that we charge for all buildings reflect the coverage limitations in the policy and our loss experience with this type of building. They do not include any rating factor designed solely as punishment for building illegally—we have no specifically punitive rates.

Furthermore, the resulting increased damage to buildings with illegally built enclosures has implications on the financial stability of the National Flood Insurance Fund. By increasing the damage experienced from a single flood event, the claim payments on these buildings will result in slower recovery of the Fund in rebuilding the surplus needed to respond to subsequent flood events.

Additionally, we are concerned about the effect that finished ground level enclosures have on the policyholder at claims time. If we rate a building with an enclosure as an elevated building, but do not include the finished ground level enclosure in the flood insurance premium at the time application is made for flood insurance, problems may occur during a flood insurance claim. In this case, the policyholder may not have paid sufficient premiums that reflect the risk to the building. The Reformation provision in the SFIP requires the policyholder to pay the additional premium for the current and prior year for the additional risk to the building before the settlement of the claim. Correcting misratings complicates the loss adjustment process and can substantially delay claim payments. If new owners of the building are not aware that the enclosure is illegally built, they will likely be disappointed when they find out the finished enclosure is not covered by flood insurance.

Furthermore, if there is a major flood, there is the potential for significant uninsured losses in a community for buildings with illegally built enclosures. That would shift the burden from flood insurance coverage under the NFIP to legitimate policyholders and potentially to taxpayers in general in the form of casualty loss deductions and Federal disaster assistance, such as loans from SBA.

This inspection procedure will provide us with accurate rating information on buildings with illegally built enclosures to ensure that the building is properly rated to reflect the flood risk. The flood insurance rates that we will charge policyholders that obtain an inspection under this procedure will reflect the actuarial principles described above. For those policyholders that receive a notice to obtain an inspection before renewal of the flood insurance policy, but choose not to obtain an inspection from the community, we will not renew the flood insurance policy. These policyholders cannot reapply for coverage under the NFIP until they obtain an inspection report from the community and submit a copy with their application for coverage.

Comment Regarding Property Owner Notification

We received a comment that the procedure does not address the existence of absentee owners. It suggested that the communities were in

a better position to facilitate awareness by sending the notices to the property owners rather than to the agent or insurer who will not have answers to specific questions.

Response

In establishing this inspection procedure, we were careful to separate the responsibilities of the communities and the insurance companies and agents based on their normal roles. Notices to policyholders concerning the renewal of their insurance is normally the role of the insurance company with any questions about the notice being directed to the policyholder's insurance agent. The community's role is to inspect the buildings and to complete an inspection report detailing the findings. We think that it would be a major complication if we were to change these roles with respect to this procedure. Furthermore, questions that insurance companies or agents receive concerning the floodplain management aspects of this procedure should be directed to the respective communities, which is no different than what is currently done.

Comments on Windstorm and Flood Insurance Purchase Requirements

We received three comments expressing concern about the requirement in Monroe County, Florida that the purchase of flood insurance is a condition for obtaining windstorm insurance.

Response

The Florida Windstorm Underwriting Association (FWUA) provides Florida citizens adequate wind and hail coverage when it is not available in the insurance marketplace. In June of 1996, the FWUA established that as a condition of eligibility for windstorm coverage through the FWUA owners must maintain flood insurance. That is the FWUA's prerogative. We briefed the Florida Windstorm Underwriting Association on the details of the inspection procedure before we published the proposed rule and we will provide them information on the final rule.

Comment About the Endorsement Form

We received one comment about the length of the proposed endorsement for inspection procedure. It suggested that we simplify the endorsement by referring only to the particular change in the policy endorsement for the inspection and place the rest of the endorsement in the flood insurance manual.

Response

We considered the suggestion that we shorten the endorsement, but for clarity we decided to publish it as shown in the Proposed Rule. The Endorsement outlines the rights, obligations, and penalties connected with the inspection procedure. Since it has such important consequences for the policyholder pertaining to the renewal or non-renewal of the policy, we felt that it would be in the policyholder's best interest to repeat the policy provisions in their entirety in the **Federal Register**. The alternative was to show only the changes that we are making in the **Federal Register**. This would require the reader to make a side-by-side comparison of the policy before the changes related to the inspection. We plan to print the endorsement as an attachment to the policy, which will result in a much shorter version than what appears in the **Federal Register**. We will not have to include those portions that already appear in the policy.

Comment Regarding the Administrative Burden to the Insurance Companies

We received a comment that the cost of the inspection procedure to the Write Your Own (WYO) insurers will be extensive. The concern is that the inspection procedure does not provide for any compensation to the WYO Insurance Companies for the additional costs associated with distribution of the endorsement, policyholder notices, and application processing for property owners who obtained an inspection after the expiration date of their policy. This person added that this procedure contradicts the arrangement with the WYO insurers.

Response

We have reviewed these concerns regarding the potential costs to the WYO companies, and we also discussed the concern with the WYO insurance companies on our advisory committee. We have determined that the provisions of our arrangement with the companies will cover this activity and that their compensation is adequate.

Participation in the Inspection Procedure

Comments on Singling Out Communities for the Inspection Procedure

We received seven comments that we are singling out Monroe County and the Village of Islamorada for the inspection procedure. Specifically, these commenters asked why the inspection procedure is not being done in other communities in Monroe County, such as Layton, Key Colony, or Key West and elsewhere in the country. Others also commented that we forced Monroe County and the Village of Islamorada into participating in the inspection procedure by threatening to cancel flood insurance policies if they did not comply. We also received comments that the County's willingness to participate was made based on a general concept of the inspection procedure and not on the specifics of how the procedure would work. With respect to the Village of Islamorada, some asked why the Village must participate in the inspection procedure since it was not involved in the development of the procedure and since it did not create the problem, but inherited the problem from Monroe County when the Village incorporated in January of 1998. In addition, we received four comments that innocent property owners have become victims as a result of the County not enforcing the provisions of the NFIP according to its agreement with us when it joined the program. Those commenting also stated that if we had also strictly enforced this agreement with the County there would not be thousands of illegally built enclosures.

We also received a comment that the argument that people did not know that finished ground level enclosures below the Base Flood Elevation were illegal is without merit. The party commenting cited the fact that the County had indicated to them that finished enclosures were not allowed when they applied for a permit in 1983. This commenter urged us to continue to implement the inspection procedure.

Response

We are not singling out Monroe County and the Village of Islamorada for an enforcement action. Furthermore, the implementation of the inspection procedure does not create any new floodplain management requirements under the program. All communities in Florida and throughout the country that wish to participate in the NFIP must adopt and adequately enforce the minimum requirements of the program, including the requirement that the enclosed space below the lowest floor of an elevated building meets the minimum requirements of the NFIP. Monroe County and the Village of Islamorada are only being treated differently from other communities in the country in that we are giving them additional assistance through an inspection procedure to fulfill their responsibilities under the NFIP. Participation by the communities in the inspection procedure is voluntary.

When Monroe County and the Village of Islamorada joined the NFIP in 1970 and 1998 respectively, they agreed to adopt and adequately enforce the minimum floodplain management requirements of the NFIP at 44 CFR 60.3. It is the communities' responsibility to ensure that buildings are properly elevated and that the enclosed area below the lowest floor of an elevated building meets the minimum requirements of the NFIP and the communities' floodplain management ordinances.

Under the National Flood Insurance Act of 1968, as amended, we are responsible to ensure that States and communities properly and effectively administer the NFIP floodplain management requirements. We offer technical assistance in a variety of forms to assist communities in understanding the NFIP floodplain management requirements. It can take the form of our staff having direct one-on-one contacts with State and local officials through Community Assistance Visits (CAV), workshops, formal training courses, telephone calls, and through other contacts. A CAV is a comprehensive assessment of a community's floodplain management program. We have found that most program deficiencies and problems identified through a CAV can be resolved through technical assistance to the community.

Staff from our Region IV office in Atlanta, Georgia conducted Community Assistance Visits in Monroe County in 1982, 1987, and again in August 1995. During these visits, we offered the community technical assistance to address any program deficiencies that we had identified during the visit. During each visit in Monroe County we identified floodplain management program deficiencies and violations and asked the County to take corrective actions .

In 1995, the CAV confirmed that, while the County had corrected administrative problems identified during earlier visits, the illegal conversion of the space below the lowest floor of an elevated building to uses other than parking, access or storage had become an even more serious problem than we had identified in earlier monitoring visits.

Because of the number and serious nature of the violations that we identified in Monroe County as a result of the 1995 CAV, we determined that an enforcement action would be necessary in Monroe County. The primary purpose for conducting an enforcement action is to obtain community compliance with the NFIP in order to reduce the potential for future flood damages and loss of life. When we identify communities with program deficiencies and violations, we work closely with communities to try to resolve the problems in the community before taking an enforcement action. An enforcement action is a FEMA-initiated measure to obtain community compliance with NFIP floodplain management requirements. The action is to ensure that communities correct program deficiencies and remedy violations and enforce their floodplain management ordinance for new construction and other development.

Rather than addressing the problem through our existing enforcement options by placing Monroe County on probation and potentially suspending the County from the program, we explored other options with County officials on how the problem could be addressed. Probation and program suspension are existing enforcement options established in NFIP Regulations at 44 CFR 59.24(b) and (c). If the community is not willing to correct program deficiencies and remedy violations, we will initiate a probation action with a formal notification that the community will be placed on probation on a date certain (usually several months) unless the community takes measures before the probation date to correct the identified deficiencies and remedy all known violations.

While a probation action does not affect the availability of flood insurance, we would add a $50 surcharge to the renewal of all flood insurance policies in the community for at least one year. During this period we would require the community to take measures to correct program deficiencies and to remedy violations to the maximum extent possible. If the community fails to take remedial measures during the period of probation, we might suspend the community from the NFIP. When we suspend a community from the NFIP it is subject to the provision of Section 202(a) of Public law 93–234, as amended, which prohibits Federal officers or agencies from approving any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan, or grant (in connection with a flood), for acquisition or construction purposes within SFHAs. Further, section 202(b) of Public Law 93–234, as amended, states that if the community suffers a disaster caused by a flood, Federal disaster relief assistance will not be available to any property located within the suspended community.

Since 1986, we have notified over 104 NFIP communities that they would be placed on probation if they did not address the problems identified in the CAV. We did not place many of these communities on probation because they addressed their program deficiencies and remedied identified violations. However, we did place over 55 of these communities on probation and we suspended at least 9 of those from the NFIP for not addressing their program deficiencies and violations during the probationary period. Currently, 7 communities participating in the NFIP are on probation and each policyholder in these communities must pay an additional $50 with their annual premium.

In addressing the issue of illegally built ground level enclosures, a Monroe County Citizen Task Force, appointed by the Monroe County Board of County Commissioners, recommended in a letter to us dated January 23, 1997 that we establish a procedure to require an inspection and a compliance report before the renewal of any flood insurance policy. In response to the Task Force recommendation and Monroe County's interest in trying to resolve these violations, we sent a letter to the Mayor of Monroe County on March 23, 1998, which provided details of how the proposed inspection procedure would work, including the requirement that Monroe County remedy any violations identified through this process. Therefore, we provided the details of how the inspection procedure would work to Monroe County almost a full year before publication of the proposed rule in the **Federal Register**.

On June 11, 1998, the Board of County Commissioners of Monroe County passed a resolution that asked us to establish an inspection procedure for the County as a means of verifying that buildings insured under the NFIP comply with the County's floodplain management ordinance. Our Region IV staff attended the June 11, 1998 meeting and made a presentation on how the inspection procedure would work. Our Region IV staff also had a number of conversations and meetings with local officials in both communities about the communities' implementation of their floodplain management ordinance.

The Village of Islamorada incorporated as a separate community within Monroe County in January 1998 and became a participating NFIP community on October 1, 1998. The Village encompasses four of the Florida Keys that would have been included in the inspection procedure for Monroe County. Because of the amount of land area incorporated, there are possible illegal enclosures within the Village's jurisdiction. The Village of Islamorada was not a party to the early

development of this inspection procedure since it was still a part of Monroe County when we and the County discussed the development of the proposal before the Village incorporated. We notified the Village of the Islamorada of the proposed inspection procedure before it applied to join the NFIP. The community indicated its interest in participating in the pilot inspection procedure in a letter dated September 24, 1998. Community incorporation within Monroe County does not absolve the Village from its responsibility under the NFIP to address existing floodplain management violations. Therefore, the Village of Islamorada assumes responsibility for any violations under the NFIP that occurred while it was part of the County. We are giving the Village of Islamorada the same assistance that we are providing to Monroe County to address these violations. In the supplementary information to the proposed rule we stated that "[w]e would require that areas in Monroe County that incorporate and become a separate community on or after January 1, 1999 to participate in the inspection procedure as a condition of joining the NFIP."

Florida State Statute Governing Inspections

We received nine comments about the State statute governing property inspections and using the insurance mechanism to require inspections. Specifically, we received comments that the inspection procedure circumvents Florida State law, which exempts owner-occupied single family residences from administrative inspection warrants for possible code violations. Some of these commenters expressed concern that the inspection procedure results in an illegal search of property owners' homes. One also suggested that if an enclosure did contain an illegal apartment that it should be addressed through existing zoning laws. Two commenters suggested that since the communities are limited in enforcing ordinances because of inadequacies in State law, the remedy should be sought with the State to give communities the ability to enforce their ordinances.

Response

The NFIP is a voluntary program. When they join the program communities are obtaining the right for their citizens to obtain otherwise unavailable flood insurance in exchange for regulating floodplain development. The inspection procedure does not change the fundamental premise of the program or establish or require any new land use measures or criteria in floodplains. With respect to the requirements that owners of insured buildings obtain an inspection from local officials and submit an inspection report as a condition of renewing flood insurance on the building, we believe that it is a reasonable condition on the recipients of Federal financial assistance to ensure that flood insurance policies are properly rated. Under the terms of the flood insurance policy, insureds have full contracting powers to agree to those conditions. Furthermore, property owners must still give their consent to the community to inspect their property under the inspection procedure.

Comment on Disclosure of Enclosures

We received a comment that many people bought their homes in good faith without the benefit of disclosure from contractors, insurance agents, banks, real estate agents, the County, or us that the enclosure was non-compliant with the community's floodplain management ordinance.

Response

In response to the concern that property owners were not given adequate disclosure of the existence of illegally built enclosures before the property was purchased, we do not have authority to establish or require the disclosure of properties that are built in violation of the community's floodplain management ordinance. State or local laws and regulations will govern establishment of property disclosure requirements. In the final rule, we have provided for several notices to policyholders on the inspection procedure. We will provide these notices before implementation as well as during implementation of the inspection procedure.

Comments on Giving Amnesty to Enclosures

One person commented that the citizen's Task Force, established to address the issue of illegally built enclosures, recommended that we grant complete amnesty for all buildings built between January 1, 1975 and December 31, 1986 based on the contention that the citizens were not aware of the NFIP requirements and the County had not developed an effective permit and inspection program. Another person also recommended that we grant amnesty for illegal enclosures built before 1995.

Response

We have no authority under the National Flood Insurance Act of 1968 and the NFIP Floodplain Management Regulations to grant amnesty to illegally built enclosures that violate the minimum requirements of the NFIP and the community's floodplain management ordinance. As stated above, we are responsible to ensure that the community effectively carries out the program requirements. Ignoring the problem of illegally built enclosures below elevated buildings has serious implications for exposing buildings to flood damages and impacting the safety of residents. Allowing uses other than parking, building access, or storage in the enclosed area below the Base Flood Elevation significantly increases the flood damage potential for the area below the lowest floor of the elevated building and to the elevated portion of the building. It can undermine:

- Any efforts by the two communities to administer and enforce their floodplain management ordinances effectively and to protect their citizens from the devastating effects of flooding;
- Our efforts to ensure that communities throughout the country effectively administer and enforce the minimum requirements of the NFIP;
- What we are trying to achieve under the Community Rating System, which provides incentives to communities to take measures beyond the minimum requirements of the NFIP to reduce flood damages; and
- The purpose of promoting federally-backed flood insurance as an alternative to disaster assistance and other forms of federally subsidized financial assistance by continued construction of buildings in the floodplains that do not meet the minimum requirements of the NFIP.

Number of Illegal Enclosures

Comments

We received four comments asking how we estimated the number of possible illegal enclosures (2,000–4,000). In particular, a commenter referred to a March 21, 1996 letter from our Region IV office to Monroe County in which we stated that there are an estimated 8,000–12,000 illegal enclosures. Another referred to a letter from Monroe County to our Region IV office dated January 23, 1997 in which the County placed the number of affected structures at 11,590. Since we currently estimate that only 2,000–4,000 buildings will be inspected, it seems to these commenters that the procedure is being applied to a small percentage of the problem, and that, therefore, the inspection procedure will be ineffective and misguided.

Response

After the August 1995 Community Assistance Visit, we had estimated that there were potentially up to 4,000–5,000 buildings with possible illegally built enclosures. Our estimate of 8,000–12,000 buildings with possible illegally built enclosures referenced in our March 21, 1996 letter to the County was based on a local estimate provided to us, which we now believe overestimates the problem. The County's estimate of 11,590 buildings was based on the following breakdown: 5,795 pre-FIRM residential structures (built before January 1, 1975) with the lowest floor below the Base Flood Elevation and approximately 5,795 post-FIRM residential structures (built after 1975) with potentially some type of finished ground level enclosure that may not comply with the County's floodplain management ordinance.

Before we published the proposed rule, we discussed the potential number of illegal enclosures in post-FIRM buildings with Monroe County officials. We believe that the County's estimate of 2,000–4,000 insured buildings that have illegally built enclosures is a reasonable estimate. This inspection procedure only applies to insured post-FIRM buildings. Since publication of the proposed rule, local officials from Islamorada indicated to us during their visit in August 1999 that there were approximately 3,600 residential buildings in the entire Village and that 2,300 of these buildings had some type of enclosures. We believe that many of the 2,300 buildings are either pre-FIRM buildings or are post-FIRM buildings with compliant ground level enclosures that will not be subject to inspection.

At the present time we cannot specifically determine the number of illegally built enclosures since most of these enclosures were built without the benefit of a floodplain development permit. However, the number of post-FIRM flood insurance *policies* in force in each community is an indication that the 2,000–4,000 estimated number of insured buildings with possible illegal enclosures is a reasonable estimate.

In Monroe County and the Village of Islamorada combined, there are over 29,000 flood insurance policies in force. Respectively, there are approximately 3,500 flood insurance policies in force in the Village of Islamorada and approximately 25,500 flood insurance policies in force in Monroe County. Of these totals, Monroe County has approximately 11,000 post-FIRM policies and the Village of Islamorada has approximately 1,700 post-FIRM policies. The estimate of 8,000–12,000 illegal enclosures would mean that most of the communities' post-FIRM insured buildings are non-compliant. While this would be an extremely serious compliance problem, we do not believe that most of the post-FIRM insured buildings in Monroe County and the Village of Islamorada are non-compliant.

Therefore, only a small percentage (approximately 7–14 percent) of the total number of policyholders (approximately 29,000) would be affected by the proposed inspection procedure. We do not believe that the implementation of the inspection procedure would be adversely affected if the number of illegally built enclosures were somewhat less or somewhat greater than the estimated 2,000–4,000 buildings with possible illegal enclosures. Some of these enclosures may even comply, in which case the community would take no further action. With respect to non-insured buildings, which are not subject to the inspection procedure, the communities still have responsibility to remedy violations in these buildings to the maximum extent possible, including illegally built enclosures.

Procedural Comments

We received a number of comments and questions on procedural aspects of the inspection process.

Comments on Identifying Possible Violations.

We were asked how the possible violations would be identified.

Response

It is the communities' responsibility under their floodplain management ordinance to investigate possible violations of illegally built enclosures. We will give the communities several months before the effective start date for the inspection procedure to investigate and research the history of buildings to determine whether a possible violation exists using permit records, tax records and other community information. We will encourage the communities to share permit and other pertinent information about the buildings particularly since the County previously had land use authority over the area that is now within the Village of Islamorada. We will also provide a complete list to the communities of pre-FIRM and post-FIRM flood insurance policy information as additional information. In addition to these reviews, the communities would conduct a visual street inspection of the building to further identify a list of insured post-FIRM buildings that are possible violations. Through a process of reviews and visual street inspections, communities would identify those buildings that would need an inspection. The communities would submit a list of insured buildings that are possible violations to us.

Comment on the Frequency of Inspections

One person asked how frequently the inspections were to take place for each property. Specifically, the person asked whether inspections will be required on an annual basis and will they be required every time a new policy is written.

Response

Only buildings identified as possible violations by Monroe County and the Village of Islamorada would be required to obtain an inspection. For those buildings identified with possible violations, we expect that the notice that an inspection is required will be sent to the policyholder generally once during the timeframe established for implementing the inspection procedure. There may be circumstances where a building may be required to be inspected more than once in a case such as when the policyholder removes an illegally built enclosure, then sells the property, and the subsequent policyholder illegally builds an enclosure during the time period in which the inspection procedure is implemented. If the community identifies this insured building as a possible violation, the community will provide information on this building to us along with other possible violations.

New flood insurance policies issued after the effective date for implementing the inspection procedure will also contain the established endorsement in Appendices (A)(4), (A)(5), and (A)(6). If the communities identify buildings with illegally built enclosures for any new policies that we issue during implementation of the inspection procedure, these new policies will also receive a notice 6 months before the policy expiration date that the owner must obtain an inspection from local officials and the owner must submit an inspection report to the insurer as a condition of renewing flood insurance on the building.

Comment on Time Frame To Obtain an Inspection

One commenter expressed concern that homeowners may not have enough time to obtain an inspection before the policy expiration date.

Response

There are two notices that we will provide when an inspection is required. We will provide the first notice six months before the policy renewal advising the policyholder that an inspection is required in order to renew the policy. The insurer will provide the second notice with the renewal premium notice, approximately 45-days before the policy expiration date, reminding the policyholder that an inspection is required for policy renewal. We believe that the two notices provide ample time for a policyholder to request an inspection by the community. To further extend the notification period would not increase the likelihood that a policyholder would obtain an inspection within the time frame established. The six-month notice and 45-day reminder will state that the current flood insurance policy cannot be renewed until the policyholder obtains an inspection and submits the inspection report along with the renewal premium payment to the insurer by the end of the renewal grace period (30 days after the date of the policy expiration).

Comments on the Added Community Workload

We received comments expressing concern about the potential added workload on the communities to implement the inspection procedure in addition to the large number of inspections currently done as part of ongoing permit requests for new construction or improvements to existing buildings. One person stated that many buildings can be brought into compliance through the natural permitting process rather than through an inspection procedure.

Response

We will coordinate and consult closely with each community on the start date and the termination date for implementing the inspection procedure. We expect that the communities will factor in staffing and other resource issues when they determine the number of possible inspections that they can conduct each year and the follow-up actions that may be required to remedy the violations to the maximum extent possible. If the community identifies violations of illegally built enclosures through its normal permit and enforcement process unrelated to the inspection procedure, we would expect the community to remedy the violation to the maximum extent possible. Only insured buildings are subject to the inspection procedure. Therefore, under the NFIP, the community still has a responsibility under its normal processes to identify violations of non-insured buildings and insured buildings where the policyholder did not obtain an inspection report under the inspection procedure and to remedy these violations to the maximum extent possible. Actions that the community takes to address any violations of insured buildings through its normal permit and enforcement processes will reduce the number of buildings that would need to be addressed through the inspection procedure.

Comments on the Time Frame To Remedy Violations

Several commenters were concerned about the time frame in which the communities must remedy the violations. Their concern was expressed in the context of needing more time to make sure new housing is available to replace those illegally built enclosures that contain a full housing unit that must be removed. We were asked to modify the final rule to extend the time for compliance up to one additional year for illegally built enclosures that contain affordable housing. One question asked was why the community must exhaust all legal remedies including notices to the property owners and appropriate legal action.

Response

In the preamble of the proposed rule, we stated that "[f]or each violation identified, the community would have to demonstrate to us that it is undertaking all possible actions to remedy the violation. If, after one year, the community demonstrated that it has taken all enforcement actions within its authority to remedy the violation to the maximum extent possible, including a notice to the property owner to remedy the violation and appropriate legal action, and the property owner had not corrected the violation, the community would submit a declaration of a violation and request a denial of flood insurance under 44 CFR 73, Implementation of Section 1316 of the National Flood Insurance Act of 1968." We recognize that there may be illegally built enclosures that the communities will identify through the inspection procedure where the community may need additional time to remedy the violation. We expect that most of the owners will be able to remedy violations within the first year after the inspection. However, we will give the communities flexibility to remedy a violation beyond the first year when they need additional time. The communities will notify us when they need additional time beyond the one year to remedy a violation before the one year anniversary date of the inspection of the building.

We are asking Monroe County and the Village of Islmorada to demonstrate to us that they have taken all enforcement actions within their authority to remedy the violation. One of the primary purposes of conducting the inspection procedure is to help the communities verify that buildings comply with each community's floodplain management ordinance. Once an inspection reveals a violation of the community's floodplain management ordinance, the responsible local official will notify the property owner of actions they must take to remedy the violation. We expect communities to remedy a violation to the maximum extent possible.

Comments on Contracting Inspections

One person asked whether the community participating in the inspection procedure can contract out the inspections or must use local government staff conduct the inspections.

Response

The responsibility for carrying out the inspections rests with the communities. It is up to the communities of Monroe County and the Village of Islamorada to determine how they intend to staff implementation of the inspection procedure. Whether the communities hire outside contractors, use existing staff resources, or hire additional inspectors is a community decision. Our primary concern is that each community adequately staff the inspection procedure according to the time frame (start date and termination date) established for implementing the inspection procedure.

Comment on the Inspection Report

Someone asked how insurance companies would know that they have received a legitimate inspection report.

Response

As indicated in the proposed rule, the policyholder would be responsible for contacting the community to arrange for the inspection. The community would inspect the building to determine whether it complies with the community's floodplain management ordinance and document the findings of its inspection on an inspection report. The community would provide two copies of the inspection report to the property owner. Communities have existing procedures and forms in place for documenting inspections under their floodplain management ordinance, which can be adapted for purposes of

implementing this inspection procedure. We will coordinate closely with the communities to ensure that these inspection reports will be easily identifiable to the insurance companies such as on community letterhead, signed by an authorized local official, and that they contain information for the insurer to properly rate the building.

Comments on the Cost of Inspections

Several commenters asked how much the inspections would cost. One person stated that our estimate of $35 to $50 for each inspection is significantly understated. This person further stated that property inspections are more likely to be closer to $125 if they are performed by third parties.

Response

We sought information from officials from each community on what they intended to charge for an inspection and addressed the fee to be charged for an inspection in the proposed rule that we published on May 5, 1999 in the **Federal Register**. The communities provided a general estimate of the cost for an inspection that ranged from $35 to $50 per inspection. The decision whether to charge and how much to charge for an inspection is the community's decision. In terms of third party services, the decision whether the community will use its own staff to conduct inspections or contract out the inspections is also a local decision.

We also sought information from the communities on their annual cost to implement this procedure. The County indicated that the annual cost for implementing the inspection fee is approximately $48,292 per year, which covers primarily the costs associated with conducting the inspection, administration, and research by county staff and indirect costs. We anticipate that the inspection fee Monroe County intends to charge for the inspection would cover much of these annual costs. The County also indicated that permit fees and fines would cover costs associated with any follow-up actions to address the violations identified through the inspection procedure. The Village of Islamorada indicated that the annual cost for implementing the inspection fee is approximately $250,000 per year, which includes the inspections, administration, research, follow-up actions by Village staff to address the violations, and indirect costs. The Village indicated that it intends to charge an inspection fee as well as a permit fee and fines to cover some of the costs associated with the inspection procedure.

We understand that the differences in the budgets between the two communities are largely attributable to the fact that much of the basic infrastructure and processes are already in place in Monroe County to implement the inspection procedure, and that the County does not intend to hire additional staff but intends to use existing building and code enforcement staff and resources. We also understand that the Village of Islamorada will need to hire additional staff. Furthermore, because it recently incorporated (1998), the Village will need to put basic systems and procedures in place that are associated with administration and enforcement of this inspection procedure. However, whatever systems and procedures the Village puts in place can also be used to implement their building code and floodplain management program in general; the systems and procedures are not just related to the pilot inspection program.

The fees that the communities intend to charge for the inspection, permits to bring the building into compliance, and any fines associated with enforcement are in line with what a community would normally charge property owners that violate a floodplain management ordinance, zoning ordinance, or building code.

Comment

A person asked whether we would suspend the community from the NFIP if owners of illegal enclosures opted not to participate in the inspection procedure.

Response

If the policyholder does not obtain and submit a community inspection report the insurer will not renew the policy. The community is responsible under the NFIP to enforce floodplain management regulations that meet the minimum requirements of the program for all new and substantially improved structures within the SFHAs. This includes the insured buildings where the policyholder did not obtain an inspection report, and non-insured buildings that this procedure does not cover.

Starting and Termination Dates

We did not receive comments on the establishment of the starting date or termination date established at 44 CFR 59.30(c)(1). That section states that the Associate Director for Mitigation and the Federal Insurance Administrator will establish the starting date and the termination date for implementing the pilot inspection procedure upon the recommendation of the Regional Director. The Regional Director will consult with each community. However, we recognize that there may be unique circumstances that may warrant an extension of the termination date such as a major disaster declaration under The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended. We have added in subsection (c)(2) that the Associate Director for Mitigation and the Federal Insurance Administrator may extend the implementation of the inspection procedure with a new termination date upon the recommendation of the Regional Director. The Regional Director will consult with the community. The Associate Director for Mitigation and the Federal Insurance Administrator would grant an extension based on good cause, such as a presidentially declared disaster. The termination date means that all notices have been sent to policyholders stating that we require an inspection in order to renew the flood insurance policy and that the communities have completed all inspections for the notices that have been sent to policyholders.

Lender Involvement

We received four letters and one e-mail message containing multiple comments concerning lender involvement with respect to the inspection procedure.

Comments on Notification Process

Three commenters questioned how lending institutions and loan servicers for loans on the affected properties would be notified of inspections. They stated that community outreach efforts must go beyond the community level since lenders and servicers can be located outside of the State of Florida.

Response

The Federal Insurance Administration will instruct the insurers to notify the insured and all mortgagees of record six months in advance of the policy renewal for which the policyholder must obtain an inspection. The National Flood Insurance Reform Act of 1994 mandates that if the secured property is in an SFHA a regulated lender must notify our designee of the identity of the loan servicer at any time a change occurs. We have designated the various insurers, or the NFIP's Servicing Agent, as our representatives to receive the notice regarding change of servicer. If the lender follows the notice procedures, this will facilitate the inspection notification process. We will provide notice to the Federal Agencies regulating lenders of the start date for implementing the inspection procedure

to enable them to notify their lending institutions that may have loans on affected properties.

Comment on Requiring Corrective Measures

One commenter questioned whether a lender could use its rights under the mortgage contract to require corrective measures if the enclosure is determined to be in violation of the community floodplain management ordinance or require an inspection of the property if the homeowner refuses to obtain an inspection.

Response

The question of the legal rights of lending institutions to compel borrowers to undertake corrective actions or to force non-consenting borrowers to submit to a property inspection by community officials is outside our authority to answer. The terms and conditions of the mortgage agreement fully describe the rights and conditions of the parties. Therefore, we defer questions of this nature to the mortgage lenders and to the Federal regulatory agencies for lenders to address.

Comment on Lender-Related Inspections

Another commenter questioned whether the inspection by the community is the type contemplated by the mortgage, or does the mortgage only permit the lender to inspect the property for waste and other hazards specifically stated in the mortgage.

Response

We cannot comment on whether the inspection with respect to enclosures is the type contemplated by the mortgage agreement or whether the mortgage contract only permits a lender to inspect the property for specific hazards. The terms and conditions of the mortgage agreement fully describe the rights and conditions of the parties. Again, this is a matter that would be better addressed by mortgage lenders and the Federal regulatory agencies for lenders.

Comments on the Standard Flood Hazard Determination (SFHD) Form Procedures

Some commenters asked whether completing the existing Standard Flood Hazard Determination form would include reviewing inspection records and whether current contracts for flood determinations with national vendors would include this service. We were also asked whether we would require lending institutions to renegotiate these contracts.

Response

The Standard Flood Hazard Determination form documents the process of determining whether lenders should require flood insurance in connection with a given mortgage loan transaction, while Federal banking entities use it to monitor compliance by lenders. The form documents that the lender made a determination for a building or mobile home, whether the building or mobile home is in or out of the Special Flood Hazard Area, whether flood insurance is required, and whether Federal flood insurance is available. The flood determination depicts the location of the building and is separate from the inspection procedure. The determination process and inspection procedure are used for very different purposes. We will not revise the Standard Flood Hazard Determination form to include information about the inspection procedure. Therefore, we do not perceive a need for contracts with Flood Zone Determination companies to be renegotiated in response to the inspection procedure.

Comments on the Effect of Denying Flood Insurance Coverage

We received two comments that the denial of flood insurance might cause a bank to be viewed as non-compliant with the mandatory flood insurance purchase requirement and consequently assessed a civil monetary penalty by a Federal regulatory agency. Additionally, comments stated that the banks would have an increased credit risk that could result in loan defaults and eventually foreclosures if flood insurance has been denied.

Response

The statute mandates coverage only when "the sale of flood insurance has been made available," 42 U.S.C. 4012a(b). We interpret this to mean that a lender would not be in violation of the law if the structure were deemed ineligible for NFIP coverage. Therefore, we are of the opinion that a lender would not be compelled to call a loan on a building that is ineligible for NFIP coverage because it violates a community's floodplain management ordinance and we have denied NFIP insurance under Section 1316 of the National Flood Insurance Act of 1968. The *Mandatory Purchase of Flood Insurance Guidelines*, which we published, addresses the issue of buildings ineligible for NFIP insurance under Section 1316. The fact that a property subsequently becomes ineligible for NFIP coverage does not mean that the lender is non-compliant for a conventional loan. Of course, the lender could force-place private flood insurance (non-NFIP) as an alternative if the term of the mortgage permitted this and the lender wanted to have flood insurance even though the statute does not require it. However, the lender should be aware that the building is at a greater risk of flood damages than buildings that are compliant with the community's floodplain management ordinance. Each lender must tailor its flood insurance risk management procedures to suit its particular circumstances. We encourage lenders to evaluate and modify their flood insurance programs to comply both with the mandatory purchase requirements and with principles of safe and sound banking that may be unique to a particular lender. The lack of available NFIP coverage in a participating community does not prohibit a lender from making a conventional loan. We believe that the same rules that apply to buildings in violation also apply to a building not eligible for NFIP insurance because the required inspection was not done.

Comment on the Recourse for Buildings in Violation

One commenter questioned what happens to existing loans if a building enclosure is determined to be in violation of the community's floodplain management ordinance and whether time is allowed to make the necessary corrections to the structure.

Response

We expect that owners will be able to fix violations within the first year after the inspection. However, we will give the communities flexibility to remedy a violation beyond the first year if time is needed. If, after one year, the community has taken all enforcement actions within its authority to remedy the violation to the maximum extent possible, and the property owner does not correct the violation, the community will submit a declaration of a violation to us. This will result in denial of flood insurance under 44 CFR 73, Implementation of Section 1316 of the National Flood Insurance Act of 1968. However, as we stated before there is no impact for conventional loans as a result of denial of NFIP insurance under Section 1316.

Comments on the Need for Guidance

Two commenters recommend that FEMA include the lending and servicing community in devising procedures that will support the inspection procedure should we implement it. One comment

was made that not enough attention has been paid in the proposal on the potential impact on the mortgage lenders.

Response

We will continue to strengthen and maintain the partnership already established with the mortgage lending community and Federal agencies regulating lenders. We will undertake activities to coordinate with the lending and servicing industry for implementation of this procedure. We will have detailed information and sources of reference available on our website. We will also offer printed articles for publication in lender trade magazines and issue bulletins addressing the inspection procedure.

Comments on Escrow Provisions

We received two questions asking what happens when the premium is paid under escrow arrangements and, if the insurance is cancelled or ineffective, will the lender or insurance company be required to rebate a portion of the premium or the funds in the escrow account that would pay the premium. We were also asked what impact the disclosure requirements under the Real Estate Settlement Procedures Act (RESPA) of 1974 and Section 21 of HUD Regulation X, would have on existing escrow accounts.

Response

The mandatory purchase law expressly states that escrow accounts established under the Flood Disaster Protection Act of 1973 are subject to the escrow account provisions of Section 10 of RESPA, which imposes accounting and notice obligations on a lender for consumer loans. We would expect that the rules adhered to for issuing refunds when excess escrow funds have accumulated under standard practices would apply. The 1994 Reform Act mandates the escrowing of flood insurance premiums if the lender is escrowing for other reasons, *i.e.*, for insurance or taxes. While we administer the NFIP, we are not a regulatory agency for lending institutions and we do not have authority over any settlement activities performed by lending institutions. Therefore, the matter of RESPA and escrow provisions should be referred to the Department of Housing and Urban Development or to a Federal agency regulating lenders for guidance.

Comments on Forced Placement Insurance

We received two comments on the force placement process that takes place if the servicer does not receive evidence of renewal and whether we have considered the outcome. One commenter asked whether forced placement policies would cover the lender during periods when the borrower's policy is ineffective.

Response

We have considered the outcome of force placement coverage. Force placement under the NFIP will not be available for structures deemed to be in violation of State or local laws under Section 1316 of the 1968 Act or for structures where policyholders do not obtain an inspection and submit an inspection report under this procedure. The insurers and the NFIP Bureau and Statistical Agent will maintain a list of all structures found to be ineligible for flood insurance coverage. The NFIP Bureau and Statistical Agent will review the policies issued and renewed by insurers to make sure that any policies inadvertently issued for structures on this list are voided. Only private flood insurance coverage may be available for these structures.

Implementation in Other Communities and Evaluation of the Inspection Procedure

Comments on Implementation in Other Communities

We received four comments concerning implementation of the proposed inspection procedure outside of Monroe County, Florida. Specifically, we received several comments from communities and a State outside of Florida stating their objection to the implementation of the inspection procedure within their jurisdiction, citing primarily the impact that the inspection procedure would have on manpower and workload.

Response

We designed the proposed inspection procedure specifically to help the communities of Monroe County, Florida and the Village of Islamorada, located in Monroe County, to verify that structures are built in compliance with their floodplain management ordinance. The intent of this procedure is to assist these two communities materially to identify and correct violations of illegally built ground level enclosures below elevated buildings. We will undertake the inspection procedure on a pilot basis only in these two communities, and any other community within Monroe County, Florida that incorporated after January 1, 1999. We would make any decision to implement the inspection procedure in other NFIP participating communities outside of Monroe County, Florida only after completing the pilot inspection procedure within the selected communities and after we evaluate the procedure's effectiveness. If we decide to implement this procedure outside of Monroe County, Florida after we complete the evaluation, we would have to issue a proposed rule and then a final rule so that interested parties could comment.

Comments on the Evaluation

We also received two comments concerning the evaluation of the inspection procedure. Specifically, the commenters expressed concern about the impact that the inspection procedure would have on property owners if we evaluate it and find that it is ineffective. One person specifically asked how we would gauge the effectiveness of the inspection procedure.

Response

We designed the proposed inspection procedure to assist the communities of Monroe County and the Village of Islamorada, Florida verify that structures comply with their floodplain management ordinances. We also designed it to ensure that property owners pay flood insurance premiums commensurate with their flood risk. The evaluation will include the extent to which we achieve these objectives. Other factors that we will evaluate include:

- The extent to which policyholders do not obtain an inspection,
- The extent to which buildings are brought into compliance with the minimum requirements of the NFIP,
- Whether other enforcement options can be used to achieve the same objective,
- Whether the benefits derived from this procedure outweigh the associated costs, and
- The extent to which manual processes are required to implement the inspection procedure and the extent that such manual processes affect the implementation.

We would monitor and evaluate the inspection procedure and we would closely coordinate with each community throughout implementation of this procedure. The FEMA Region IV office would review the status of implementation with each community on activities such as the number of inspections conducted, the results of the inspections, and the follow-up actions being taken to remedy the violations to the maximum extent practicable. This review would be undertaken on at least a monthly basis for the first several months of implementation and on at

least a quarterly basis thereafter. The FEMA Region IV office would also make site visits on at least a semi-annual basis and more frequently if needed.

The results of any evaluation on the effectiveness of the inspection procedure does not modify or relieve Monroe County or the Village of Islamorada's responsibility under the NFIP to enforce their floodplain management ordinance and to bring noncompliant enclosures below elevated buildings into compliance with the community's floodplain management ordinance.

Economic Impact and Loss of Affordable Housing

Comments

We received 25 comments on the economic impact and loss of affordable housing. Many of those commenting on the inspection procedure stated that the inspection procedure would result in a much more devastating impact on the local economy and on housing compared to a major hurricane that would strike the Florida Keys. Many expressed concern that the inspection procedure and the removal of enclosures will create an economic disaster for homeowners, particularly those living on fixed incomes and those who supplement their income from renting these enclosures. Others also expressed concern that this procedure will have a serious impact on the value of property with as much as 25–30 percent of the value affected and will result in a significant loss in the local tax base. One commenter estimated that the County could lose as much as $2.47 million per year in property taxes.

Some suggested that since the County created the problem, it should reimburse homeowners half the assessed value of their property and adjust the property taxes accordingly. In addition, several people indicated that this procedure is unfair with regard to the rights of unsuspecting purchasers who bought their property in good faith and now must remove a substantial investment in the property.

A number of those commenting on the proposed rule expressed concern over the impact that the inspection procedure would have on the availability of affordable housing in Monroe County. Many people stated that the procedure would exacerbate an already existing housing crisis in the County. Several of those commenting indicated that these enclosures provide much needed housing particularly for low and moderate-income residents and that these enclosures provide much needed housing for the employees who work in the service industry, a major employer in the County. Commenters stated that these enclosures also provide housing for senior citizens or other family members and housing for seasonal workers and vacationers.

One person recommended that no tenant-occupied enclosure be demolished until there is an agreed upon plan by all the governmental agencies involved to increase the affordable housing stock and that an affordable unit be built prior to eliminating any existing units.

Response

As stated before, we have estimated that there are 2,000–4,000 illegally built enclosures in Monroe County and the Village of Islamorada. Since any finished enclosures were built illegally in the first place and do not comply with the community's floodplain management ordinance and the minimum requirements of the NFIP, we do not know precisely how many illegally built enclosures below elevated buildings exist and whether they are being used as rental units or additional living space. Our estimate is based on the 1995 CAV conducted by our Region IV office, a review of post-FIRM policies, and discussions with local officials from both communities. A December 1999 Memorandum of Agreement between the State of Florida Department of Community Affairs and Monroe County gives some indication of the number of possible illegal enclosures. It states that "County staff estimates that these illegal downstairs enclosures may contain hundreds of below base flood dwellings serving as living quarters for Monroe County households" and that "an unknown portion of these illegal downstairs enclosures has traditionally provided housing for low and moderate income and working class households".

Based on these estimates, we have conservatively estimated that there are between 500–800 out of the 2,000–4000 illegally built enclosures that may be occupied by low-income households in Monroe County and the Village of Islamorada. The impact on low-income populations is documented in our "Record of Environmental Review" on the proposed rule. These estimates indicate that there should not be a disproportionately adverse impact on low-income populations. While we do not have an exact estimate within each of the two communities, we estimate that Monroe County, which has the larger land area and greater number of post-FIRM buildings, has a significantly larger portion of the illegally built enclosures including enclosures used as a housing unit than the Village of Islamorada. Furthermore, based on the statement in the Memorandum of Agreement cited above, we believe that the owners of a majority of the illegally built enclosures use them as additional living space for their immediate family rather than as full living quarters for separate full-time households.

We do not dispute the fact that there will be some impacts as a result of implementing the inspection procedure. There will be some impacts on the estimated 500–800 low-income households living in a housing unit within an illegally built enclosure. The impact on low-income populations would result from the removal of the illegal enclosure under the inspection procedure. Consequently, the low-income renter will need to find replacement housing. However, finding available replacement housing may be a problem for the low-income households.

Local officials as well as people commenting on the proposed rule indicated to us that availability of affordable housing is a problem throughout the County. There are also limitations on the amount of housing that can be built in the communities in any given year. Communities in Monroe County, including the County, are under a State mandated Rate of Growth Ordinance (ROGO). This ordinance establishes the number of residential dwelling units, including the number of affordable housing dwelling units that can be built in a given year. The purpose of the ROGO is to protect property owners and others from the devastating effects of a natural disaster and to establish a rate of growth that is commensurate with the County's ability to maintain a reasonable and safe hurricane evacuation clearance time.

There are other market conditions that have also had an impact on the availability of affordable housing, such as availability of land and financing as documented in the Monroe County Year 2010, Comprehensive Plan Technical Document, dated April 15, 1993. Under these conditions, the low-income household may have difficulty finding appropriate replacement housing.

Additionally, there will be some impacts on the property owners. Impacts on the property owners may include loss of additional living space or rental income if a housing unit is located in the ground level enclosure, the cost of removing the additional living space to bring the building into compliance with the community's floodplain management ordinance, and the potential loss in property value depending on the size and extent of the improvements to the enclosure. The

community may also experience a loss in property tax revenue due to the loss in value in some structures.

However, these effects are created as a direct result of building these illegal enclosures in the first place and not as a result of community enforcement of its floodplain management ordinance. If these illegal enclosures had not been built, there would be no need for this inspection procedure or any other enforcement actions under the NFIP. Any impacts associated with this inspection procedure should be minimized since it will be implemented over a multi-year period with the actual inspections staggered throughout the year.

Moreover, this inspection procedure will not cause more harm and devastation than a major hurricane as comments purported. As described earlier in this rule, South Florida is one of the most hurricane prone regions of the country. Almost the entire County, including the Village of Islamorada, could be inundated by a flood having a 1-percent chance of being equaled or exceeded in any given year. Buildings in these communities that are not properly protected are extremely vulnerable to flood damage. If a major hurricane were to strike Monroe County, there would be a much more devastating impact especially to the low-income households living in the illegally built enclosures when compared to the effects resulting from implementation of this procedure over a multi-year period.

Allowing uses for something other than parking, access, or storage in the enclosed area below the Base Flood Elevation significantly increases flood damages to the building. If the ground-level enclosure is finished as a separate housing unit or other finished living spaces, there is an increased risk to lives. Residents, who live in these ground-level enclosures, may not be fully aware of the severity of the flood risk.

Further, while the shortage of housing will be a significant problem in a major hurricane, it could become a crisis situation for those households living in illegally built ground level enclosures. The impact on housing even became evident in Hurricane Georges, a Category 2 hurricane. We provided over 1400 households with rental assistance in Monroe County in response to this event. We learned in comments that businesses throughout the County closed for several days following Hurricane Georges because they could not find enough people to work in them because housing was unavailable. Flooding and the coastal storm surges resulting from a major hurricane event could damage or destroy a number of illegally built enclosures used as full living units, compounding the problem of available housing. Since flood insurance is very limited for enclosures, property owners as well as any affected households living in these enclosures will not have the financial support of flood insurance to replace their personal belongings. Property owners will not be able to repair the illegal enclosures as finished living space or the housing unit since the community's floodplain management ordinance does not allow such enclosures. Households living in these enclosures will be dependent on federal and other disaster assistance and temporary housing in the short-term. If the property is not a primary residence, the property owner may be ineligible for Federal disaster assistance in the form of grants or loans.

With limited financial assistance available, the impact will be especially devastating to the low-income households living in these illegal ground level enclosures. The low-income population living in these enclosures may not be able to financially compete for available housing in the County. As a result, low-income households may be left without replacement housing in the long-term and they may have to relocate outside the County thereby placing additional economic and other burdens on the household. In the event of a major hurricane, the loss of housing units within illegally built ground level enclosures will only compound an already existing affordable housing shortage in Monroe County.

While we recognize the investment that property owners may have in these lower level enclosures, the increase in any value to the property is the direct result of violating the community's floodplain management ordinance. Property owners will also lose this value in a major hurricane. When a major hurricane strikes, the loss in property value will likely have more significant financial consequences to individual property owners and any tenants living in the enclosures than the inspection procedure will have. Property owners will not receive compensation for the loss of enclosures through flood insurance or through disaster assistance. There may be other financial repercussions if property owners still have outstanding mortgages on their buildings.

Communities should not rely on illegally built enclosures as a dependable source of tax revenue. In the event of a major hurricane, the loss of a number of illegally built enclosures would result in a more dramatic loss in the tax base and would impact the community as a whole more severely than through the removal of illegally built enclosures under the inspection procedure over a multi-year period.

In comparison to a major hurricane striking the County, the proposed inspection procedure will actually have a beneficial affect by eliminating illegally built enclosures over a several-year period. Because the inspection procedure will be implemented over several years and the inspections themselves will be staggered throughout the year as flood insurance policies are renewed, it will have the added benefit of giving the property owners time to remedy the violation and to give any tenants living in these illegal enclosures time to find appropriate alternative housing. Over time, buildings will comply with a greater level of flood protection.

We will make every effort to ensure that we and the communities provide effective outreach and public information on the inspection procedure. The communities will have several months before the actual starting date of the inspection procedure to undertake outreach and to provide information to the public about the procedure. The final rule provides criteria for several notices to be given to property owners about the inspection procedure.

- Before the starting date of the inspection procedure, each community must publish a notice in a prominent local newspaper and publish other notices as appropriate.
- We will also publish a notice in the **Federal Register** that the communities will undertake an inspection procedure.
- Published notices will include the purpose of implementing the inspection procedure.
- Policyholders of insured structures will receive at least three specific notices established in the final rule.

—The first notice will be after the starting date, the policyholder will receive an endorsement to their Standard Flood Insurance Policy that an inspection may be required;

—The second notice will be for buildings that the communities identify as possible violations—the insurer will send a notice to policyholders approximately 6 months before the policy expiration date. This notice will state that the policyholder must obtain an inspection from the community and submit the results of the inspection as part of the renewal of the flood insurance policy by the end of the renewal grace period (30 days after the date that the policy expires); and

—Third, the insurer will send a reminder notice to the policyholder with the Renewal Notice about 45–60 days before the policy expires.

We will closely coordinate with the communities to ensure that there is adequate notification to the public in general and to the affected population throughout the implementation phase of the inspection procedure.

The inspection procedure also supports ROGO, which is tied to the County's hurricane evacuation plan. ROGO establishes a rate of growth that is commensurate with the County's ability to maintain a reasonable and safe hurricane evacuation clearance time. Illegally built enclosures that have full housing units may effectively exceed the permit allocation system of ROGO for new residential development, thereby jeopardizing the County's goal of safeguarding the public against the effects of hurricanes and tropical storms.

The impacts created by the inspection procedure will be further minimized through steps that Monroe County is undertaking to address affordable housing. The Monroe County Board of County Commissioners approved an *Affordable Housing Action Plan* at its November 10, 1999 meeting. The first part of the action plan directs the County Planning Department to prepare a Memorandum of Agreement (MOA) between the County and the Department of Community Affairs (DCA) that would allow the County to receive credit for those affordable housing units that were counted in the ROGO, and could be lost due to the removal of illegal ground level enclosures.

On December 27, 1999, the DCA signed this MOA, thereby enabling Monroe County to add 90 ROGO credit units to its year 8 allocations. The agreement allows Monroe County to add up to 90 housing unit credits through July 13, 2002 to its ROGO allocation as replacement housing for affordable housing units in enclosures removed as a result of the implementation of the proposed inspection procedure.

The 90 credits can only be applied to those units that qualify as "affordable housing" as defined by the Monroe County Code. The Agreement provides for an amendment to adjust the number of ROGO credits should the County's inspection report document the removal of more than 30 housing units in illegally built enclosures. We understand that any housing units illegally created after 1990 do not qualify for the ROGO credits since they were not included in the 1991 Hurricane Evacuation Study upon which the ROGO annual residential dwelling unit allocation is based. However, under the general annual ROGO allocation, at least 20% of the annual allocation is for affordable housing. This annual allocation for affordable housing could be used for those low-income households living in an illegal enclosure created after 1990.

The second part of the action plan directs the County Planning Department to identify potential suitable sites for the construction of attached affordable housing. In addition, the County is looking at other considerations to improve the availability of affordable housing, such as developing partnerships with private developers to encourage development of affordable housing and evaluating zoning regulations to increase opportunities to build affordable housing units.

The Village of Islamorada incorporated in 1998 and joined the National Flood Insurance Program as a participating community on October 1, 1998. The Village is currently working to put in place plans, programs, and procedures affecting land use. We will work with the Village of Islamorada to pursue similar efforts for additional ROGO credits with the State Florida Department of Community Affairs should it be necessary.

We encourage both communities to continue efforts to develop plans, programs and procedures to provide affordable housing in order to minimize impacts resulting from the implementation of the proposed inspection procedure.

Previously Issued Permits

Comments

We received six comments and questions concerning the finished ground level enclosures for which permits were purported to have been issued by Monroe County. Specifically, the commenters asked why we did not make a distinction in the proposed rule between the finished enclosures for which a permit was issued and those that had been built without the benefit of a permit.

They also asked why we did not recognize in the proposed rule the settlement agreement between Monroe County and the plaintiffs, which was signed on April 13, 1999 in the Circuit Court of the Sixteenth Judicial Circuit in and for Monroe County, Florida. This settlement agreement stipulated that, "the Court acknowledges that plaintiffs have agreed to a dismissal of their putative class action based upon Monroe County's agreement that all below Base Flood Elevation non-conforming enclosed space that was authorized by permit from Monroe County shall not be cited for violating County ordinances setting forth floodplain regulations." With respect to this settlement, one commenter stated that the final rule must explicitly recognize the settlement and resultant Order and that the final rule must provide that: (1) permitted enclosed (below) Base Flood Elevation space shall not be considered to violate the floodplain management ordinance; and (2) flood insurance renewals shall be available to all such permitted but non-conforming structures.

Based on this settlement, some asked how the settlement affects the County's role in the inspection procedure. Some also asked how the settlement agreement affects the Village of Islamorada's role in the inspection procedure. In this regard, several commenters said that it would be unfair to require the Village of Islamorada to enforce its floodplain management ordinance on previously permitted finished enclosures that the County approved since the County does not intend to enforce its ordinance on permitted finished enclosures based on the settlement agreement. Some asked us to provide guidance on whether the Village could also enter into a similar agreement and to confirm that the Village would not be excluded from the NFIP if it enters into a similar agreement.

Response

When the communities of Monroe County and the Village of Islamorada applied to join the NFIP, each community adopted a resolution committing itself to recognize and evaluate flood hazards in all official actions and to take such other officials actions as reasonably necessary to carry out the objectives of the program [44 CFR 59.22(a)(8)]. This commitment is in addition to the requirement that the community takes into account flood hazards to the extent that they are known in all official actions relating to land management and use [44 CFR 60.1(c)]. In order to participate in the NFIP, all communities must adopt a floodplain management ordinance that meets or exceeds the minimum requirements of the program at 44 CFR 60.3. A community eligible for the sale of flood insurance shall be subject to suspension from the program for failing to submit copies of adequate floodplain management regulations meeting the minimum NFIP requirements in accordance with 44 CFR 59.24(a). Similarly, a community eligible for the sale of flood insurance shall be subject

to probation and potentially to suspension from the program for failing to enforce floodplain management regulations adequately meeting the minimum NFIP requirements in accordance with 44 CFR 59.24(b) and (c).

While communities participating in the NFIP have flexibility to adopt more restrictive criteria and to enforce their floodplain management ordinances, communities cannot enforce floodplain management requirements in a way that would contravene those requirements that they agreed to adopt and enforce at 44 CFR 60.3 when they joined the program. In that regard, communities are not allowed to permit finished ground level enclosures below the Base Flood Elevation since they would violate the requirements in 44 CFR 60.3. Nor are communities allowed to give amnesty to a building or a class of buildings that violate the communities' floodplain management ordinance. To do so, would jeopardize the communities' participation in the NFIP.

With respect to the April 13, 1999 settlement agreement between Monroe County and the plaintiff in which the County agreed that it would not enforce its floodplain management ordinance on previously permitted finished enclosures, we were not a party to that agreement nor were we aware that the County was entering into the agreement with the plaintiffs in the case. It would be contrary to the National Flood Insurance Act of 1968, as amended, and to the NFIP Floodplain Management Regulations at 44 CFR Parts 59 and 60 for us to grant amnesty for certain classes of buildings because the community failed to enforce its floodplain management ordinance adequately or the community granted permits for construction that violate the community's ordinance. Nor can we advise communities to grant amnesty for buildings or certain classes of buildings that would violate the community's floodplain management ordinance.

The illegally built enclosures for which the County had previously issued permits are still subject to the inspection procedure. Monroe County is still responsible for obtaining a level of flood loss reduction for these buildings given practical and legal constraints. In this case, the settlement agreement may be a possible legal constraint with respect to enforcement on the actual items that were permitted previously by Monroe County. However, the County must inspect the enclosure to ensure that it has not been improved beyond what had been previously permitted. If so, the County must take an enforcement action on those improvements that go beyond the previously issued permit for the finished enclosure and bring those improvements into compliance. As part of the inspection report to the policyholder, the County must notify the policyholder of the flood hazard and that the finished ground level enclosure cannot be expanded or improved or repaired from damages of any origin in accordance with the requirements in 44 CFR 59.22(a)(8), 60.1(c), and 60.3. Furthermore, for any finished ground level enclosure in which a permit was issued, the policyholder must obtain and submit an inspection report before the flood insurance policy renewal date.

The settlement agreement has no impact on the rating of insured structures. The National Flood Insurance Act of 1968, as amended, requires us to rate structures according to the risk and accepted actuarial principles for any types and classes of properties for which insurance coverage is available under the Act. The Village of Islamorada would be subject to similar requirements described above should it enter into a similar settlement agreement.

National Environmental Policy Act

We have reviewed the proposed rule under the requirements of 44 CFR 10, Environmental Considerations, and under the mandates of the National Environmental Policy Act. We determined that the action in the proposed rule qualifies for the exclusion on rulemaking relating to actions that themselves are excludable. The exclusions are in 44 CFR 10.8(d)(2)(ii) and (iv) regarding inspections, monitoring activities, and actions to enforce local regulations.

The rule does not establish any new requirements that Monroe County and the Village of Islamorada must adopt and enforce under the NFIP. Rather, it provides the communities with an additional tool to enforce existing requirements in their floodplain management ordinance. This existing ordinance requires that all new and substantially improved structures must be elevated to or above the Base Flood Elevation (BFE), and must be adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads.

We also determined that no extraordinary circumstances exist regarding this rule, as defined in 44 CFR 10.8(d)(3). We considered these potential extraordinary circumstances: Greater scope or size than normally experienced for a particular category action; high level of public controversy; presence of endangered or threatened species and their critical habitat; presence of hazardous substances; and actions with the potential to affect special status areas adversely or other critical resources.

We provided a copy of the Record of the Environmental Review documenting the findings to Monroe County and the Village of Islamorada. A copy may be obtained through our website at *www.FEMA.gov,* or by writing to the Federal Emergency Management Agency at 500 C Street, SW., Washington, DC 20472, Attention: Lois Forster.

Executive Order 12898, Environmental Justice

We have reviewed the proposed rule under E.O. 12898, Environmental Justice, and have determined that the inspection procedure will not have a disproportionate adverse impact on low-income populations and minority populations. We also determined that this action will have some adverse effects on low-income populations because some of the illegal enclosures are used as a full-living unit and the residents will have to find replacement housing. The effect is caused by the illegal activity, not by this regulatory action. We have determined, further, that there would be a much more significant adverse health and safety impact on the affected low-income populations if they stayed in these illegally built ground level enclosures. The enclosures are located in flood hazard areas below the Base Flood Elevation where there is a significant risk of flooding.

We provided a copy of the Record of the Environmental Review documenting the findings to Monroe County and the Village of Islamorada. A copy of the Record of the Environmental Review may be obtained through our website at *www.FEMA.gov* or by writing to the Federal Emergency Management Agency at 500 C Street, SW., Washington, DC 20472, Attention: Lois Forster.

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this final rule under the provisions of E.O. 12866, Regulatory Planning and Review. For the reasons that follow we have concluded that the rule is neither an economically significant nor a significant regulatory action under the executive order:

- The rule is a pilot program that applies only to two communities to address flood insurance and floodplain management issues required by statute for the communities to remain eligible for flood insurance and to avoid

probation and potential suspension from the NFIP;

- We estimate that the costs to the two communities to enforce the rule will be in the range of $48,000 to $250,000 per year, over a few years;
- This rule raises no novel legal or policy issues arising out of legal mandates of the NFIP, presidential priorities, or principles of E.O. 12866. It creates no new requirements that the two communities must adopt and enforce under the NFIP, but provides them with assistance to carry out their responsibilities under the NFIP and to enforce the existing requirements in their floodplain management ordinance;
- This rule will provide these communities with a tool to protect the health, safety, and welfare of their citizens and property exposed to a significant flood risk, a tool not otherwise available to the communities under the current regulations of the NFIP;
- We do not expect that the rule will adversely or materially affect the public directly affected by the rule. The inspection procedure will be implemented over a period of several years, will give property owners time to remedy the violations, and will give tenants living in illegal enclosures time to final appropriate alternative housing. The rule also accommodates the State-mandated Rate of Growth Ordinance (ROGO), the memorandum of agreement between the County and the State on ROGO allocations in order to deal with replacement units for illegal enclosures removed as a result of the inspection procedure;
- The inspection procedure adopted in the rule arises out of work done by a Citizen's Task Force that the Monroe County Board of County Commissioners appointed. We have worked closely with County, Village and State officials in preparing the rule [see Executive Order 13132, Federalism, below]; and
- The inspection procedure under this rule is the best available method to achieve the NFIP regulatory objective while taking into account State statutory constraints on inspections, State rate of growth mandates, housing limits with the two communities, and related factors.

The Office of Management and Budget has reviewed this rule under the principles of Executive Order 12866.

Executive Order 13132, Federalism

Executive Order 13132, Federalism seeks to ensure that Executive agencies consider principles of federalism when developing new policies, and requires them to consult with State and local officials when their actions may have federalism implications.

In the proposed rule, we stated that this rule has no policies that have federalism implications under E.O. 12612, Federalism. However, we received three comments on the proposed rule that the inspection procedure violated the Executive Order on Federalism. Since the publication of the proposed rule, the President issued E.O. 13132, Federalism, signed on August 4, 1999. E.O. 13132 revoked E.O. 12612 and E.O. 13083.

We reviewed this rule for federalism implications under E.O. 13132. Based on our review, we have determined that this rule does not have federalism implications as defined in E.O. 13132 as it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule imposes no mandates on State or local governments; participation in the inspection procedure by Monroe County and the Village of Islamorada is voluntary. Moreover, we have consulted extensively with Monroe County, the Village of Islamorada, and the State of Florida during the development of the inspection procedure and the proposed and final rule.

As a result of the 1995 Community Assistance Visit (CAV) in which we assessed Monroe County's floodplain management program, we determined that the illegal conversion of ground level enclosures to uses other than parking, access, and storage had become an even more serious problem than in prior CAVs. In a follow-up CAV letter to the community, we outlined steps the County must take to remedy the violations or we would have to take an enforcement action in the community because of the serious nature and extent of the violations.

To address the issue of illegally built enclosures, the Monroe County Board of County Commissioners appointed a Citizens Task Force to develop recommendations for addressing the problem. The Monroe County Citizen's Task Force initially proposed the concept of an inspection procedure to us in a letter dated January 23, 1997. In their letter, the Task Force recommended establishment of a procedure to require an inspection and a compliance report before renewal of a flood insurance policy. In response to the Task Force recommendation and Monroe County's interest in trying to resolve the violations of illegally built enclosures identified in the 1995 CAV, we sent a letter to the Mayor of Monroe County on March 23, 1998, in which we agreed to develop an inspection procedure. Our letter included a detailed description of how the proposed inspection procedure would work. Through this letter we provided to Monroe County details of how the inspection procedure would work almost a full year before we published the proposed rule in the **Federal Register**. On June 11, 1998, the Board of County Commissioners of Monroe County, Florida, passed a resolution that asked us to establish an inspection procedure for the County as a means to verify that buildings insured under the NFIP comply with the County's floodplain management ordinance. Our Region IV staff attended the June 11, 1998 meeting and made a presentation on how the inspection procedure would work.

During this time, the Village of Islamorada incorporated as a separate community in January 1998 and became a participating NFIP community on October 1, 1998. We notified the Village of the Islamorada about the proposed inspection procedure before it applied to join the NFIP. The community indicated its interest in participating in the inspection procedure in a letter dated September 24, 1998, when it applied to join the NFIP. The Village encompasses four of the Florida Keys that would have been included as part of the inspection procedure in Monroe County.

Our Region IV staff consulted with the Florida Department of Community Affairs (DCA), Division of Emergency Management, which is responsible for coordinating the NFIP for the State, on the proposal by the Citizen's Task Force and steps that we were taking to develop the inspection procedure. This was part of our normal process in coordinating with our State NFIP coordinators on floodplain management issues in communities. This includes consulting with the State NFIP coordinators before we conduct a CAV, inviting the State NFIP coordinators to participate in the CAV with us, and consulting with them on the findings of the CAV and follow-up actions that the community needs to take to address any floodplain management program deficiencies and violations.

Before we published the proposed rule, we consulted with several state agencies on the proposed rule for the inspection procedure. On May 3, 1999, our FEMA Region IV staff met with several Florida State agencies to explain how the inspection procedure would work. In addition to the Secretary of the Florida Department of Community Affairs (DCA), representatives from the

following State offices and agencies participated in the meeting: Executive Office of the Governor; the Office of the Attorney General; the Florida DCA, Division of Emergency Management, Division of Community Planning, Division of Housing and Community Development, and Division of Coastal Management, and DCA staff from the Florida Keys Field Office; the Department of Insurance; and the Florida Windstorm Underwriting Association. Also present during this meeting were representatives from Monroe County. Officials from the Village of Islamorada were unable to attend, but were provided a separate briefing on the inspection procedure.

We received only one set of comments from the State of Florida. The Florida State Clearinghouse coordinated a review of the proposed rule. The responses received from the 17 State agencies and offices that reviewed the proposed rule indicated that they had "no comments" or made a "consistency determination".

Paperwork Reduction Act

We submitted the information collection requirements in the proposed rule to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements were approved by the OMB under Control Number 3067–0275.

Executive Order 12778, Civil Justice Reform

This final rule meets the applicable standards of subsections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Parts 59 and 61

Flood Insurance, Reporting and recordkeeping requirements.

Accordingly, we amend 44 CFR Parts 59 and 61 as follows:

PART 59—GENERAL PROVISIONS

1. The authority citation for Part 59 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. We amend Part 59 by adding a new subpart C consisting of § 59.30, to read as follows:

Subpart C—Pilot Inspection Program

§ 59.30 A Pilot inspection procedure.

(a) *Purpose.* This section sets forth the criteria for implementing a pilot inspection procedure in Monroe County and the Village of Islamorada, Florida. These criteria will also be used to implement the pilot inspection procedure in any area within Monroe County, Florida that incorporates on or after January 1, 1999 and is eligible for the sale of flood insurance. The purpose of this inspection procedure is to provide the communities participating in the pilot inspection procedure with an additional means to identify whether structures built in Special Flood Hazard Areas (SFHAs) after the date of the effective Flood Insurance Rate Map (FIRM) comply with the community's floodplain management regulations. The pilot inspection procedure will also assist FEMA in verifying that structures insured under the National Flood Insurance Program's Standard Flood Insurance Policy are properly rated.

(b) *Procedures and requirements for implementation.* Each community must establish procedures and requirements for implementing the pilot inspection procedure consistent with the criteria established in this section.

(c) *Inspection procedure*—(1) *Starting and termination dates.* The Associate Director for Mitigation and the Federal Insurance Administrator will establish the starting date and the termination date for implementing the pilot inspection procedure upon the recommendation of the Regional Director. The Regional Director will consult with each community.

(2) *Extension.* The Associate Director for Mitigation and the Federal Insurance Administrator may extend the implementation of the inspection procedure with a new termination date upon the recommendation of the Regional Director. The Regional Director will consult with the community. An extension will be granted based on good cause.

(3) *Notices.* Before the starting date of the inspection procedure, each community must publish a notice in a prominent local newspaper and publish other notices as appropriate. The Associate Director for Mitigation and the Federal Insurance Administrator will publish a notice in the **Federal Register** that the community will undertake an inspection procedure. Published notices will include the purpose for implementing the inspection procedure and the effective period of time that the inspection procedure will cover.

(4) *Community reviews.* The communities participating in the pilot inspection procedure must review a list of all pre-FIRM and post-FIRM flood insurance policies in SFHAs to confirm that the start of construction or substantial improvement of insured pre-FIRM buildings occurred on or before December 31, 1974, and to identify possible violations of insured post-FIRM buildings. The community will provide to FEMA a list of insured buildings incorrectly rated as pre-FIRM and a list of insured post-FIRM buildings that the community identifies as possible violations.

(5) *SFIP endorsement.* In the communities that undertake the pilot inspection procedure, all new and renewed flood insurance policies that become effective on and after the date that we and the community establish for the start of the inspection procedure will contain an endorsement to the Standard Flood Insurance Policy that an inspection may be necessary before a subsequent policy renewal [see Part 61, Appendices A(4), (5), and (6)].

(6) *Notice from insurer.* For a building identified as a possible violation under paragraph (c)(4) of this section, the insurer will send a notice to the policyholder that an inspection is necessary in order to renew the policy and that the policyholder must submit a community inspection report as part of the policy renewal process, which includes the payment of the premium. The insurer will send this notice about 6 months before the Standard Flood Insurance Policy expires.

(7) *Conditions for renewal.* If a policyholder receives a notice under paragraph (c)(6) of this section that an inspection is necessary in order to renew the Standard Flood Insurance Policy the following conditions apply:

(i) If the policyholder obtains an inspection from the community and the policyholder sends the community inspection report to the insurer as part of the renewal process, which includes the payment of the premium, the insurer will renew the policy and will verify the flood insurance rate, or

(ii) If the policyholder does not obtain and submit a community inspection report the insurer will not renew the policy.

(8) *Community responsibilities.* For insured post-FIRM buildings that the community inspects and determines to violate the community's floodplain management regulations, the community must demonstrate to FEMA that the community is undertaking measures to remedy the violation to the maximum extent possible. Nothing in this section modifies the community's responsibility under the NFIP to enforce floodplain management regulations adequately that meet the minimum requirements in § 60.3 for all new construction and substantial improvements within the community's

SFHAs. The community's responsibility also includes the insured buildings where the policyholder did not obtain an inspection report, and non-insured buildings that this procedure does not cover.

(d) *Restoration of flood insurance coverage.* Insurers will not provide new flood insurance on any building if a property owner does not obtain a community inspection report or if the property owner obtains a community inspection report but does not submit the report with the renewal premium payment. Flood insurance policies sold on a building ineligible in accordance with paragraph (c)(6)(ii) of this section are void under the Standard Flood Insurance Policy inspection endorsements [44 CFR Part 61, Appendices (A)(4), (A)(5), and (A)(6)]. When the property owner applies for a flood insurance policy and submits a completed community inspection report by the community with an application and renewal premium payment, the insurer will issue a flood insurance policy.

(Approved by the Office of Management and Budget under Control Number 3067–0275)

PART 61—INSURANCE COVERAGE AND RATES

3. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

4. We amend Part 61 by adding Appendix A(4) to Part 61 to read as follows:

Appendix A(4) to Part 61

Federal Emergency Management Agency, Federal Insurance Administration

Standard Flood Insurance Policy Endorsement to Dwelling Form

[Issued under the National Flood Insurance Act of 1968, as amended (Act), and applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B. The provisions of this endorsement replace the provisions of Article 9 of the Standard Flood Insurance Policy, Dwelling Form, only in applicable policies in Monroe County and the Village of Islamorada, Florida].

Article 9—General Conditions and Provisions

A. *Pair and Set Clause:* If you lose an article that is part of a pair or set, we will have the option of paying you an amount equal to the cost of replacing the lost article, less depreciation, or an amount that represents the fair proportion of the total value of the pair or set that the lost article bears to the pair or set.

B. *Concealment, Fraud:* We will not cover you under this policy, which will be void, nor can this policy be renewed or any new flood insurance coverage be issued to you if:

1. You have sworn falsely, or willfully concealed or misrepresented any material fact; or

2. You have done any fraudulent act concerning this insurance (see paragraph F.1.d. below); or

3. You have willfully concealed or misrepresented any fact on a "Recertification Questionnaire," that causes us to issue a policy to you based on a premium amount that is less than the premium amount that would have been payable by you were it not for the misstatement of fact (see paragraph G. below).

C. *Other Insurance.* If a loss covered by this policy is also covered by other insurance whether collectible or not, except insurance in the name of the Condominium Association issued pursuant to the Act, we will pay only the proportion of the loss that the limit of liability that applies under this policy bears to the total amount of insurance covering the loss. If there is other insurance in the name of the Condominium Association covering the same property covered by this policy, this insurance will be excess over the other insurance.

D. *Amendments, Waivers, Assignment:* This policy cannot be amended nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action we take under the terms of this policy can constitute a waiver of any of our rights. Except in the case of 1. a contents only policy, and 2. a policy issued to cover a building in the course of construction, assignment of this policy, in writing, is allowed upon transfer of title.

E. *Cancellation of Policy By You:* You may cancel this policy at any time but a refund of premium money will only be made to you when:

1. You cancel because you have transferred ownership of the described building or unit to someone else. In this case, we will refund to you, once we receive your written request for cancellation (signed by you), the excess of premiums paid by you that apply to the unused portion of the policy's term, pro rata but with retention of the expense constant and the Federal policy fee.

2. You cancel a policy having a term of 3 years, on an anniversary date, and the reason for the cancellation is:

a. A policy of flood insurance has been obtained or is being obtained in substitution for this policy and we have received a written concurrence in the cancellation from any mortgagee of which we have actual notice; or

b. You have extinguished the insured mortgage debt and are no longer required by the mortgagee to maintain the coverage.

Refund of any premium, under this subparagraph 2., will be pro rata but with retention of the expense constant and the Federal policy fee.

3. You cancel because we have determined that your property is not, in fact, in a special hazard area; and you were required to purchase flood insurance coverage by a private lender or Federal agency pursuant to the Act; and the lender or Federal agency no longer requires the retention by you of the coverage. In this event, if no claims have been paid or are pending, your premium payments will be refunded to you in full, according to our applicable regulations.

F. *Voidance, Reduction or Reformation of the Coverage By Us:*

1. *Voidance:* This policy will be void and of no legal force and effect in the event that any one of the following conditions occurs:

a. The property listed on the application is not eligible for coverage, in which case the policy is void from its inception;

b. The community in which the property is located was not participating in the National Flood Insurance Program on the policy's inception date and did not qualify as a participating community during the policy's term and before the occurrence of any loss for which you may receive compensation under the policy;

c. If, during the term of the policy, the participation in the National Flood Insurance Program of the community in which your property is located ceases, in which case the policy will be deemed void effective at the end of the last day of the policy year in which such cessation occurred and will not be renewed.

If the voided policy included 3 policy years in a contract term of 3 years, you will be entitled to a pro rata refund of any premium applicable to the remainder of the policy's term;

d. If you or your agent have:

(1) Sworn falsely, or

(2) Fraudulently or willfully concealed or misrepresented any material fact including facts relevant to the rating of this policy in the application for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the policy, in which case this entire policy will be void as of the date the wrongful act was committed or from its inception if this policy is a renewal policy and the wrongful act occurred in connection with an application for or renewal or endorsement of a policy issued to you in a prior year and affects the rating of or premium amount received for this policy. Refunds of premiums, if any, will be subject to offsets for our administrative expenses (including the payment of agent's commissions for any voided policy year) in connection with the issuance of the policy;

e. The premium you submit is less than the minimum set forth in 44 CFR 61.10 in connection with any application for a new policy or policy renewal, in which case the policy is void from its inception date.

f. You have not submitted a community inspection report, cited in "G. Policy Renewal" below that was required in a notice sent to you in conjunction with the community inspection procedure established under National Flood Insurance Program Regulations (44 CFR 59.30).

2. *Reduction of Coverage Limits or Reformation:* If the premium payment received by us is not sufficient (whether evident or not) to purchase the amount of coverage requested by an application, renewal, endorsement, or other form and

paragraph F.1.d. does not apply, then the policy will be deemed to provide only such coverage as can be purchased for the entire term of the policy, for the amount of premium received, subject to increasing the amount of coverage pursuant to 44 CFR 61.11; provided, however:

a. If the insufficient premium is discovered by us before a loss and we can determine the amount of insufficient premium from information in our possession at the time of our discovery of the insufficient premium, we will give a notice of additional premium due, and if you remit and we receive the additional premium required to purchase the limits of coverage for each kind of coverage as was initially requested by you within 30 days from the date we give you written notice of additional premium due, the policy will be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide flood insurance coverage in the amount of coverage initially requested.

b. If the insufficient premium is discovered by us at the time of a loss under the policy, we will give a notice of premium due, and if you remit and we receive the additional premium required to purchase (for the current policy term and the previous policy term, if then insured) the limits of coverage for each kind of coverage as was initially requested by you within 30 days from the date we give you written notice of additional premium due, the policy will be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide flood insurance coverage in the amount of coverage initially requested.

c. Under subparagraphs a. and b. as to any mortgagee or trustee named in the policy, we will give a notice of additional premium due and the right of reformation will continue in force for the benefit only of the mortgagee or trustee, up to the amount of your indebtedness, for 30 days after written notice to the mortgagee or trustee.

G. *Policy Renewal:* The term of this policy begins on its inception date and ends on its expiration date, as shown on the declarations page that is attached to the policy. We are under no obligation to:

1. Send you any renewal notice or other notice that your policy term is coming to an end and the receipt of any such notice by you will not be deemed to be a waiver of this provision on our part.

2. Assure that policy changes reflected in endorsements submitted by you during the policy term and accepted by us are included in any renewal notice or new policy that we send to you. Policy changes include the addition of any increases in the amounts of coverage.

This policy will not be renewed and the coverage provided by it will not continue into any successive policy term unless the renewal premium payment, and when applicable, the community inspection report referred to below, is received by us at the office of the National Flood Insurance Program within 30 days of the expiration date of this policy, subject to Article 9, paragraph F. above. If the renewal premium payment, and when applicable, the community inspection report referred to below, is mailed by certified mail to the National Flood Insurance Program before the expiration date, it will be deemed to have been received within the required 30 days. The coverage provided by the renewal policy is in effect for any loss occurring during the 30-day period even if the loss occurs before the renewal premium payment, and when applicable, the community inspection report referred to below, is received within the required 30 days. In all other cases, this policy will end as of the expiration date of the last policy term for which the premium payment, and when applicable, the community inspection report referred to below, was timely received at the office of the National Flood Insurance Program and, in that event, we will not be obligated to provide you with any cancellation, termination, policy lapse, or policy renewal notice.

In connection with the renewal of this policy, you may be requested during the policy term to recertify, on a Recertification Questionnaire we will provide you, the rating information used to rate your most recent application for or renewal of insurance.

Your community has been approved by the Federal Emergency Management Agency to participate in a special inspection procedure set forth in National Flood Insurance Regulations (44 CFR 59.30) that requires the submission of a community inspection report completed hy local officials as one condition for policy renewal. As a property owner in such a community, you may be required to submit such an inspection report by a community official certifying whether your insured property is in compliance with the community's floodplain management ordinance. You will be notified in writing of this requirement approximately 6 months before your renewal date and again at the time your renewal bill is sent.

Notwithstanding your responsibility to submit the appropriate renewal premium in sufficient time to permit its receipt by us before the expiration of the policy being renewed, we have established a business procedure for mailing renewal notices to assist Insureds in meeting their responsibility. Regarding our business procedure, evidence of the placing of any such notices into the U.S. Postal Service, addressed to you at the address appearing on your most recent application or other appropriate form (received by the National Flood Insurance Program before the mailing of the renewal notice by us), does, in all respects for purposes of the National Flood Insurance Program, presumptively establish delivery to you for all purposes irrespective of whether you actually received the notice.

However, if we determine that, through any circumstances, any renewal notice was not placed into the U.S. Postal Service, or, if placed, was prepared or addressed in a manner that we determine could preclude the likelihood of its being actually and timely received by you before the due date for the renewal premium, the following procedures will be followed:

If you or your agent notified us, not later than 1 year after the date on which the payment of the renewal was due, of a nonreceipt of a renewal notice before the due date for the renewal premium, which we determine was attributable to the above circumstance, we will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.

If the renewal payment requested by reason of the second bill is not received by the revised due date, no renewal will occur and the policy will remain as an expired policy as of the expiration date prescribed on the policy.

H. *Conditions Suspending or Restricting Insurance:* Unless otherwise provided in writing added hereto, we will not be liable for loss occurring while the hazard is increased by any means within your control or knowledge.

I. *Alterations and Repairs:* You may, at any time and at your own expense, make alterations, additions and repairs to the insured property, and complete structures in the course of construction.

J. *Requirements in Case of Loss:* Should a flood loss occur to your insured property, you must:

1. Notify us in writing as soon as practicable;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it; and

3. Within 60 days after the loss, send us a proof of loss, which is your statement as to the amount you are claiming under the policy signed and sworn to by you and furnishing us with the following information:

a. The date and time of the loss;

b. A brief explanation of how the loss happened;

c. Your interest in the property damaged (for example, "owner") and the interest, if any, of others in the damaged property;

d. The actual cash value or replacement cost, whichever is appropriate, of each damaged item of insured property and the amount of damages sustained;

e. Names of mortgagees or anyone else having a lien, charge or claim against the insured property;

f. Details as to any other contracts of insurance covering the property, whether valid or not;

g. Details of any changes in ownership, use, occupancy, location or possession of the insured property since the policy was issued;

h. Details as to who occupied any insured building at the time of loss and for what purpose; and

i. The amount you claim is due under this policy to cover the loss, including statements concerning:

(1) The limits of coverage stated in the policy; and

(2) The cost to repair or replace the damaged property (whichever costs less).

4. Cooperate with our adjuster or representative in the investigation of the claim;

5. Document the loss with all bills, receipts, and related documents for the amount being claimed;

6. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help

you to complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help you complete it.

In completing the proof of loss, you must use your own judgment concerning the amount of loss and the justification for that amount.

The adjuster is not authorized to approve or disapprove claims or tell you whether your claim will be approved by us.

7. We may, at our option, waive the requirement for the completion and filing of a proof of loss in certain cases, in which event you will be required to sign and, at our option, swear to an adjuster's report of the loss that includes information about your loss and the damages sustained, which is needed by us in order to adjust your claim.

8. Any false statements made in the course of presenting a claim under this policy may be punishable by fine or imprisonment under the applicable Federal Laws.

K. *Our Options After a Loss:* Options we may, in our sole discretion, exercise after loss include the following:

1. *Evidence of Loss:* If we specifically request it, in writing, you may be required to furnish us with a complete inventory of the destroyed, damaged and undamaged property, including details as to quantities, costs, actual cash values or replacement cost (whichever is appropriate), amounts of loss claimed, and any written plans and specifications for repair of the damaged property that you can make reasonably available to us.

2. *Examination Under Oath and Access to Insured Property Ownership Records and Condominium Documents:* We may require you to:

a. Show us, or our designee, the damaged property, to be examined under oath by our designee and to sign any transcripts of such examinations; and

b. At such reasonable times and places as we may designate, permit us to examine and make extracts and copies of any policies of property insurance insuring you against loss; and the deed establishing your ownership of the insured real property; and the condominium documents including the Declarations of the condominium, its Articles of Association or Incorporation, Bylaws, rules and regulations, and other condominium documents if you are a unit owner in a condominium building; and all books of accounts, bills, invoices and other vouchers, or certified copies thereof if the originals are lost, pertaining to the damaged property.

3. *Options to Replace:* We may take all or any part of the damaged property at the agreed or appraised value and, also, repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving you notice of our intention to do so within 30 days after the receipt of the proof of loss herein required under paragraph J.3. above.

4. *Adjustment Options:* We may adjust loss to any insured property of others with the owners of such property or with you for their account. Any such insurance under this policy will not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

L. *When Loss Payable:* Loss is payable within 60 days after you file your proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by you in lieu of a proof of loss) and ascertainment of the loss is made either by agreement between us and you expressed in writing or by the filing with us of an award as provided in paragraph N. below.

If we reject your proof of loss in whole or in part, you may accept such denial of your claim, or exercise your rights under this policy, or file an amended proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

M. *Abandonment:* You may not abandon damaged or undamaged insured property to us. However, we may permit you to keep damaged, insured property ("salvage") after a loss and we will reduce the amount of the loss proceeds payable to you under the policy by the value of the salvage.

N. *Appraisal:* If at any time after a loss, we are unable to agree with you as to the actual cash value or, if applicable, replacement cost of the damaged property so as to determine the amount of loss to be paid to you, then, on the written demand of either one of us, each of us will select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand. The appraisers will first select a competent and disinterested umpire; and failing, after 15 days, to agree upon such umpire, then, on your request or our request, such umpire will be selected by a judge of a court of record in the State in which the insured property is located. The appraisers will then appraise the loss, stating separately replacement cost, actual cash value and loss to each item; and, failing to agree, will submit their differences, only, to the umpire. An award in writing, so itemized, of any two (appraisers or appraiser and umpire) when filed with us will determine the amount of actual cash value and loss or, should this policy's replacement cost provisions apply, the amount of replacement cost and loss. Each appraiser will be paid by the party selecting him or her and the expenses of appraisal and umpire will be paid by both of us equally.

O. *Loss Clause:* If we pay you for damage to property sustained in a flood loss, you are still eligible, during the term of the policy, to collect for a subsequent loss due to another flood. Of course, all loss arising out of a single, continuous flood of long duration will be adjusted as one flood loss.

P. *Mortgage Clause:* (Applicable to building coverage only and effective only when the policy is made payable to a mortgagee or trustee named in the application and declarations page attached to this policy or of whom we have actual notice before the payment of loss proceeds under this policy).

Loss, if any, under this policy, will be payable to the aforesaid as mortgagee or trustee as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee or trustee, in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee or trustee only therein, will not be invalidated by any act or neglect of the mortgagor or owner of the described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; provided, that in case the mortgagor or owner will neglect to pay any premium due under this policy, the mortgagee or trustee will, on demand, pay the same.

Provided, also, that the mortgagee or trustee will notify us of any change of ownership or occupancy or increase of hazard that will come to the knowledge of said mortgagee or trustee and, unless permitted by this policy, it will be noted thereon and the mortgagee or trustee will, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise, this policy will be null and void.

If we cancel this policy, it will continue in force for the benefit only of the mortgagee or trustee for 30 days after written notice to the mortgagee or trustee of such cancellation and will then cease, and we will have the right, on like notice, to cancel this agreement.

Whenever we will pay the mortgagee or trustee any sum for loss under this policy and will claim that, as to the mortgagor or owner, no liability therefor existed, we will, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment will be made, under all securities held as collateral to the mortgage debt, or may, at our option, pay to the mortgagee or trustee the whole principal due or to grow due on the mortgage with interest, and will thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation will impair the right of the mortgagee or trustee to recover the full amount of said mortgagee's or trustee's claim.

Q. *Mortgagee Obligations:* If you fail to render proof of loss, the named mortgagee or trustee, upon notice, will render proof of loss in the form herein specified within 60 days thereafter and will be subject to the provisions of this policy relating to appraisal and time of payment and of bringing suit.

R. *Conditions for Filing a Lawsuit:* You may not sue us to recover money under this policy unless you have complied with all the requirements of the policy. If you do sue, you must start the suit within 12 months from the date we mailed you notice that we have denied your claim, or part of your claim, and you must file the suit in the United States District Court of the district in which the insured property was located at the time of loss.

S. *Subrogation:* Whenever we make a payment for a loss under this policy, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up

our right to recover this money or do anything that would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you must pay us back first before you may keep any of that money.

T. *Continuous Lake Flooding:* Where the insured building has been inundated by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in damage, reimbursable under this policy, to the insured building equal to or greater than the building policy limits plus the deductible(s) or the maximum payable under the policy for any one building loss, we will pay you the lesser of these two amounts without waiting for the further damage to occur if you sign a release agreeing:

1. To make no further claim under this policy;

2. Not to seek renewal of this policy; and

3. Not to apply for any flood insurance under the Act for property at the property location of the insured building.

If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph T. still apply so long as the first building damage reimbursable under this policy from the continuous flooding occurred before the end of the policy term.

U. *Duplicate Policies Not Allowed:* Property may not be insured under more than one policy issued under the Act. When we find that duplicate policies are in effect, we will by written notice give you the option of choosing which policy is to remain in effect under the following procedures:

1. If you choose to keep in effect the policy with the earlier effective date, we will by the same written notice give you an opportunity to add the coverage limits of the later policy to those of the earlier policy, as of the effective date of the later policy.

2. If you choose to keep in effect the policy with the later effective date, we will by the same written notice give you the opportunity to add the coverage limits of the earlier policy to those of the later policy, as of the effective date of the later policy.

In either case, you must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event will the resulting coverage limits exceed the statutorily permissible limits of coverage under the Act or your insurable interests, whichever is less.

We will make a refund to you, according to applicable National Flood Insurance Program rules, of the premium for the policy not being kept in effect. For purposes of this paragraph U., the term effective date means the date coverage that has been in effect without any lapse was first placed in effect.

In addition to the provisions of this paragraph U. for increasing policy limits, the usual procedures for increasing policy limits, by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the policy you choose to keep in effect.

5. We amend Part 61 by adding Appendix A(5) to Part 61 as follows:

Appendix A(5) to Part 61

Federal Emergency Management Agency, Federal Insurance Administration

Standard Flood Insurance Policy

Endorsement to General Property Form

[Issued under the National Flood Insurance Act of 1968, as amended (Act), and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B. The provisions of this endorsement replace the provisions of Article 8 of the Standard Flood Insurance Policy, General Property Form, only in applicable policies in Monroe County and the Village of Islamorada, Florida].

Article 8—General Conditions and Provisions

A. *Pair and Set Clause:* If there is loss of an article that is part of a pair or set, the measure of loss will be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article, but such loss will not be construed to mean total loss of the pair or set.

B. *Concealment, Fraud:* This policy will be void, nor can this policy be renewed or any new flood insurance coverage be issued to the Insured if any person insured under Article 1, paragraph A., whether before or after a loss, has:

1. Sworn falsely, or willfully concealed or misrepresented any material fact; or

2. Done any fraudulent act concerning this insurance (See paragraph E.1.d. below); or

3. Willfully concealed or misrepresented any fact on a "Recertification Questionnaire," which causes the Insurer to issue a policy based on a premium amount that is less than the premium amount that would have been payable were it not for the misstatement of fact (see paragraph F. below).

C. *Other Insurance:* If a loss covered by this policy is also covered by other insurance, whether collectible or not, the Insurer will pay only the proportion of the loss that the limit of liability that applies under this policy bears to the total amount of insurance covering the loss, provided, if at the time of loss, there is other insurance made available under the Act, in the name of a unit owner that provides coverage for the same loss covered by this policy, this policy's coverage will be primary and not contributing with such other insurance.

D. *Amendments and Waivers, Assignment:* This Standard Flood Insurance Policy cannot be amended nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action the Insurer takes under the terms of this policy can constitute a waiver of any of its rights. Except in the case of 1. a contents only policy and 2. a policy issued to cover a building in the course of construction, assignment of this policy, in writing, is allowed upon transfer of title.

E. *Voidance, Reduction or Reformation of the Coverage:*

1. Voidance: This policy will be void and of no legal force and effect if any one of the following conditions occurs:

a. The property listed on the application is not eligible for coverage, in which case the policy is void from its inception;

b. The community in which the property is located was not participating in the National Flood Insurance Program on the policy's inception date and did not qualify as a participating community during the policy's term and before the occurrence of any loss;

c. If, during the term of the policy, the participation in the National Flood Insurance Program of the community in which the property is located ceases, in which case the policy will be deemed void effective at the end of the last day of the policy year in which such cessation occurred and will not be renewed.

If the voided policy included 3 policy years in a contract term of 3 years, the Insured will be entitled to a pro-rata refund of any premium applicable to the remainder of the policy's term;

d. If any Insured or its agent has:

(1) Sworn falsely; or

(2) Fraudulently or willfully concealed or misrepresented any material fact including facts relevant to the rating of this policy in the application for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the policy, in which case this entire policy will be void as of the date the wrongful act was committed or from its inception if this policy is a renewal policy and the wrongful act occurred in connection with an application for or renewal or endorsement of a policy issued to the Insured in a prior year and affects the rating of or premium amount received for this policy. Refunds of premiums, if any, will be subject to offsets for the Insurer's administrative expenses (including the payment of agent's commissions for any voided policy year) in connection with the issuance of the policy;

e. The premium submitted is less than the minimum set forth in 44 CFR 61.10 in connection with any application for a new policy or policy renewal, in which case the policy is void from its inception date.

f. The insured has not submitted a community inspection report, cited in "F. Policy Renewal" below and required in any notice that may have been sent to the Insured previously in conjunction with the community inspection procedure established under National Flood Insurance Program Regulations (44 CFR 59.30).

2. *Reduction of Coverage Limits or Reformation:* If the premium payment is not sufficient (whether evident or not) to purchase the amount of coverage requested by an application, renewal, endorsement, or other form and paragraph E.1.d. does not apply, then the policy will be deemed to provide only such coverage as can be purchased for the entire term of the policy, for the amount of premium received, subject to increasing the amount of coverage pursuant to 44 CFR 61.11; provided, however:

a. If the insufficient premium is discovered by the Insurer prior to a loss and the Insurer can determine the amount of insufficient premium from information in its possession at the time of its discovery of the insufficient premium, the Insurer will give a notice of additional premium due, and if the Insured remits and the Insurer receives the additional

premium required to purchase the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the policy will be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide flood insurance coverage in the amount of coverage initially requested.

b. If the insufficient premium is discovered by the Insurer at the time of a loss under the policy, the Insurer will give a notice of premium due, and if the Insured remits and the Insurer receives the additional premium required to purchase (for the current policy term and the previous policy term, if then insured) the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the policy will be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide flood insurance coverage in the amount of coverage initially requested.

c. Under subparagraphs a. and b. as to any mortgagee or trustee named in the policy, the Insurer will give a notice of additional premium due and the right of reformation will continue in force for the benefit only of the mortgagee or trustee, up to the amount of the Insured's indebtedness, for 30 days after written notice to the mortgagee or trustee.

F. *Policy Renewal:* The term of this policy begins on its inception date and ends on its expiration date, as shown on the declarations page that is attached to the policy. The Insurer is under no obligation to:

1. Send the Insured any renewal notice or other notice that the policy term is coming to an end and the receipt of any such notice by the Insured will not be deemed to be a waiver of this provision on the Insurer's part.

2. Assure that policy changes reflected in endorsements submitted during the policy term are included in any renewal notice or new policy sent to the Insured. Policy changes include the addition of any increases in the amounts of coverage.

This policy will not be renewed and the coverage provided by it will not continue into any successive policy term unless the renewal premium payment, and when applicable, the community inspection report referred to below, is received by the Insurer at the office of the National Flood Insurance Program within 30 days of the expiration date of this policy, subject to paragraph E. above. If the renewal premium payment, and when applicable, the community inspection report referred to below, is mailed by certified mail to the Insurer before the expiration date, it will be deemed to have been received within the required 30 days. The coverage provided by the renewal policy is in effect for any loss occurring during the 30-day period even if the loss occurs before the renewal premium payment, and when applicable, the community inspection report referred to below, is received within the required 30 days. In all other cases, this policy will terminate as of the expiration date, of the last policy term for which the premium payment, and when applicable, the community inspection report referred to below, was timely received and, in that event, the Insurer will not be obligated to provide the Insured with any cancellation, termination, policy lapse, or policy renewal notice.

In connection with the renewal of this policy, the Insured may be requested during the policy term to recertify, on a Recertification Questionnaire that the Insurer will provide, the rating information used to rate the most recent application for or renewal of insurance.

The community in which the insured property is located has been approved by the Federal Emergency Management Agency to participate in a special inspection procedure set forth in National Flood Insurance Program Regulations (44 CFR 59.30) that requires the submission of a community inspection report completed by local officials as one condition for policy renewal. The Insured may be required to submit such an inspection report completed by a community official to certify whether the insured property is in compliance with the community's floodplain management ordinance. The Insured will be notified in writing of this requirement approximately 6 months before the renewal date and again at the time the renewal bill is sent.

Notwithstanding the Insured's responsibility to submit the appropriate renewal premium in sufficient time to permit its receipt by the Insurer before the expiration of the policy being renewed, the Insurer has established a business procedure for mailing renewal notices to assist Insureds in meeting their responsibility. Regarding the business procedure, evidence of the placing of any such notices into the U.S. Postal Service, addressed to the Insured at the address appearing on its most recent application or other appropriate form (received by the Insurer before the mailing of the renewal notice), does, in all respects, for purposes of the National Flood Insurance Program, presumptively establish delivery to the Insured for all purposes irrespective of whether the Insured actually received the notice.

However, if the Insurer determines that, through any circumstances, any renewal notice was not placed into the U.S. Postal Service, or, if placed, was prepared or addressed in a manner that the Insurer determines could preclude the likelihood of its being actually and timely received by the Insured before the due date for the renewal premium, the following procedures will be followed:

If the Insured or its agent notified the Insurer, not later than 1 year after the date on which the payment of the renewal premium was due, of a nonreceipt of a renewal notice before the due date for the renewal premium, which the Insurer determines was attributable to the above circumstance, the Insurer will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.

If the renewal payment requested by reason of the second bill is not received by the revised due date, no renewal will occur and the policy will remain as an expired policy as of the expiration date prescribed on the policy.

G. *Conditions Suspending or Restricting Insurance:* Unless otherwise provided in writing added hereto, the Insurer will not be liable for loss occurring while the hazard is increased by any means within the control or knowledge of the Insured.

H. *Liberalization clause:* If during the period that insurance is in force under this policy or within 45 days before the inception date thereof, should the Insurer have adopted under the Act, any forms, endorsements, rules or regulations by which this policy could be extended or broadened, without additional premium charge, by endorsement or substitution of form, then, such extended or broadened insurance will inure to the benefit of the Insured as though such endorsement or substitution of form had been made. Any broadening or extension of this policy to the Insured's benefit will only apply to losses occurring on or after the effective date of the adoption of any forms, endorsements, rules or regulations affecting this policy. Alterations and Repairs: The Insured may, at the Insured's own expense, make alterations, additions and repairs, and complete structures in the course of construction.

I. Cancellation of Policy by Insured: The Insured may cancel this policy at any time but a refund of premium money will only be made when:

1. Except with respect to a condominium building or a building that has a condominium form of ownership, the Insured cancels because the Insured has transferred ownership of the insured property to someone else. In this case, the Insurer will refund to the Insured, once the Insurer receives the Insured's written request for cancellation (signed by the Insured) the excess of premiums paid by the Insured that apply to the unused portion of the policy's term, pro rata but with retention of the expense constant and the Federal policy fee.

2. The Insured cancels a policy having a term of 3 years, on an anniversary date, and the reason for the cancellation is that:

a. A policy of flood insurance has been obtained or is being obtained in substitution for this policy and the Insurer has received a written concurrence in the cancellation from any mortgagee of which the Insurer has actual notice, or

b. The Insured has extinguished the insured mortgage debt and is no longer required by the mortgagee to maintain the coverage. Refund of any premium, under this subparagraph 2., will be pro rata but with retention of the expense constant and the Federal policy fee.

3. The Insured cancels because the Insurer has determined that the property is not, in fact, in a special hazard area; and the Insured was required to purchase flood insurance coverage by a private lender or Federal agency pursuant to Public Law 93–234, section 102 and the lender or agency no longer requires the retention of the coverage. In this event, if no claims have been paid or are pending, the premium payments will be refunded in full, according to applicable National Flood Insurance Program regulations.

J. *Loss Clouse:* Payment of any loss under this policy will not reduce the amount of insurance applicable to any other loss during the policy term that arises out of a separate occurrence of the peril insured against hereunder; provided, that all loss arising out of a continuous or protracted occurrence will be deemed to constitute loss arising out of a single occurrence.

K. *Mortgoge Clause:* (Applicable to building coverage only and effective only when the policy is made payable to a mortgagee or trustee named in the application and declarations page attached to this policy or of whom the Insurer has actual notice before the payment of loss proceeds under this policy.)

Loss, if any, under this policy, will be payable to the aforesaid as mortgagee or trustee as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee or trustee, in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee or trustee only therein, will not be invalidated:

1. By any act or neglect of the mortgagor or owner of the described property; nor

2. By any foreclosure or other proceedings or notice of sale relating to the property; nor

3. By any change in the title or ownership of the property; nor

4. By the occupation or the premises for purposes more hazardous than are permitted by this policy, *provided*, that in case the mortgagor or owner will neglect to pay any premium due under this policy, the mortgagee or trustee will, on demand, pay the same.

Provided, olso, that the mortgagee or trustee will notify the Insurer of any change of ownership or occupancy of the building or increase of hazard that will come to the knowledge of said mortgagee or trustee and, unless permitted by this policy, it will be noted thereon and the mortgagee or trustee will, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise, this policy will be null and void.

If this policy is cancelled by the Insurer, it will continue in force for the benefit of the mortgagee or trustee for 30 days after written notice to the mortgagee or trustee of such cancellation and will then cease.

Whenever the Insurer will pay the mortgagee or trustee any sum for loss under this policy and will claim that, as to the mortgagor or owner, no liability therefor existed, the Insurer will, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment will be made, under all securities held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee or trustee the whole principal due or to grow due on the mortgage with interest, and will thereupon receive a full assignment and transfer of the mortgage and of all such other securities, but no subrogation will impair the right of the mortgagee or trustee to recover the full amount of said mortgagee's or trustee's claim.

L. *Mortgogee Obligations:* If the Insured fails to render proof of loss, the named mortgagee or trustee, upon notice, will render proof of loss in the form herein specified within 60 days thereafter and will be subject to the provisions of this policy relating to appraisal and time of payment and of bringing suit.

M. *Loss Payoble Clouse (Applicable to contents items only):* Loss, if any, will be adjusted with the Insured and will be payable to the Insured and loss payee as their interests may appear.

N. *Requirements in Case of Loss:* Should a flood loss occur to the insured property, the Insured must:

1. Notify the Insurer in writing as soon as practicable;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that the Insurer may examine it; and

3. Within 60 days after the loss, send the Insurer a proof of loss, which is the Insured's statement as to the amount it is claiming under the policy signed and sworn to by the Insured and furnishing the following information:

a. The date and time of the loss;

b. A brief explanation of how the loss happened;

c. The Insured's interest in the property damaged (for example, "owner") and the interests, if any, of others in the damaged property;

d. The actual cash value of each damaged item of insured property and the amount of damages sustained;

e. The names of mortgagees or anyone else having a lien, charge or claim against the insured property:

f. Details as to any other contracts of insurance covering the property, whether valid or not;

g. Details of any changes in ownership, use, occupancy, location or possession of the insured property since the policy was issued;

h. Details as to who occupied any insured building at the time of loss and for what purpose; and

i. The amount the Insured claims is due under this policy to cover the loss, including statements concerning:

(1) The limits of coverage stated in the policy; and

(2) The cost to repair or replace the damaged property (whichever costs less).

4. Cooperate with the Insurer's adjuster or representative in the investigation of the claim;

5. Document the loss with all bills, receipts, and related documents for the amount being claimed;

6. The insurance adjuster whom the Insurer hires to investigate the claim may furnish the Insured with a proof of loss form, and she or he may help the Insured to complete it. However, this is a matter of courtesy only, and the Insured must still send the Insurer a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help the Insured complete it. In completing the proof of loss, the Insured must use its own judgment concerning the amount of loss and the justification for the amount.

The adjuster is not authorized to approve or disapprove claims or to tell the Insured whether the claim will be approved by the Insurer.

7. The Insurer may, at its option, waive the requirement for the completion and filing of a proof of loss in certain cases, in which event the Insured will be required to sign and, at the Insurer's option, swear to an adjuster's report of the loss that includes information about the loss and the damages needed by the Insurer in order to adjust the claim.

8. Any false statements made in the course of presenting a claim under this policy may be punishable by fine or imprisonment under the applicable Federal laws.

O. *Options After o Loss:* Options the Insurer may, in its sole discretion, exercise after loss include the following:

1. *Evidence of Loss:* If the Insurer specifically requests it, in writing, the Insured may be required to furnish a complete inventory of the destroyed, damaged and undamaged property, including details as to quantities, costs, actual cash values, amount of loss claims, and any written plans and specifications for repair of the damaged property that can reasonably be made available to the Insurer.

2. *Examination Under Oath and Access to the Condominium Association's Articles of Association or Incorporotion, Property Insurance Policies, and Other Condominium Documents:* The Insurer may require the Insured to:

a. Show the Insurer, or its designee, the damaged property;

b. Be examined under oath by the Insurer or its designee;

c. Sign any transcripts of such examinations; and

d. At such reasonable times and places as the Insurer may designate, permit the Insurer to examine and make extracts and copies of any condominium documents, including the Articles of Association or Incorporation, Bylaws, rules and regulations, Declarations of the condominium, property insurance policies, and other condominium documents; and all books of accounts, bills, invoices and vouchers, or certified copies thereof if the originals are lost, pertaining to the damaged property.

3. *Options to Repair or Reploce:* The Insurer may take all or any part of the damaged property at the agreed or appraised value and, also, repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving the Insured notice of the Insurer's intention to do so within 30 days after the receipt of the proof of loss herein required under paragraph O. above.

4. *Adjustment Options:* The Insurer may adjust loss to any insured property of others with the owners of such property or with the Insured for their account. Any such insurance under this policy will not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

P. *When Loss Poyoble:* Loss is payable within 60 days after the Insured files its proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by the Insured in lieu of a proof of loss) and ascertainment of the loss is made either by agreement between the Insured and

the Insurer in writing or by the filing with the Insurer of an award as provided in paragraph R. below.

If the Insurer rejects the Insured's proof of loss in whole or in part, the Insured may accept such denial of its claim, or exercise its rights under this policy, or file an amended proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

Q. *Abandonment:* The Insured may not abandon damaged or undamaged insured property to the Insurer.

However, the Insurer may permit the Insured to keep damaged, insured property ("salvage") after a loss and reduce the amount of the loss proceeds payable to the Insured under the policy by the value of the salvage.

R. *Appraisal:* In case the Insured and the Insurer will fail to agree as to the actual cash value of the amount of loss, then:

1. On the written demand of either the Insurer or the Insured, each will select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand.

2. The appraisers will first select a competent and disinterested umpire and failing, after 15 days, to agree upon such umpire, then on the Insurer's request or the Insured's request, such umpire will be selected by a judge of a court of record in the State in which the insured property is located.

3. The appraisers will then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, will submit their differences, only, to the umpire.

4. An award in writing, so itemized, of any two (appraisers or appraiser and umpire) when filed with the Insurer will determine the amount of actual cash value and loss.

5. Each appraiser will be paid by the party selecting him or her and the expenses of appraisal and umpire will be paid by both parties equally.

S. *Action Against the Insurer:* No suit or action on this policy for the recovery of any claim will be sustainable in any court of law or equity unless all the requirements of this policy will have been complied with, and unless commenced within 12 months next after the date of mailing of notice of disallowance or partial disallowance of the claim. An action on such claim against the Insurer must be instituted, without regard to the amount in controversy, in the United States District Court for the district in which the property will have been situated.

T. *Subrogation:* If any payment is made under this policy, the Insurer will be subrogated to all the Insured's rights of recovery therefor against any party, and the Insurer may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefor is made by the Insurer. The Insured will do nothing after loss to prejudice such rights; however, this insurance will not be invalidated should the Insured waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the described property.

U. *Continuous Lake Flooding:* Where the insured building has been inundated by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in damage, reimbursable under this policy, to the insured building equal to or greater than the building policy limits plus the deductible(s) or the maximum payable under the policy for any one building loss, the Insurer will pay the Insured the lesser of these two amounts without waiting for the further damage to occur if the Insured signs a release agreeing to:

1. Make no further claim under this policy; and

2. Not seek renewal of this policy; and

3. Not apply for any flood insurance under the Act for property at the property location of the insured building.

If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph U still apply so long as the first building damage reimbursable under this policy from the continuous flooding occurred before the end of the policy term.

V. *Duplicate Policies Not Allowed:* Property may not be insured under more than one policy issued under the Act. When the Insurer finds that duplicate policies are in effect, the Insurer will by written notice give the Insured the option of choosing which policy is to remain in effect, under the following procedures:

1. If the Insured chooses to keep in effect the policy with the earlier effective date, the Insurer will by the same written notice give the Insured an opportunity to add the coverage limits of the later policy to those of the earlier policy, as of the effective date of the later policy.

2. If the Insured chooses to keep in effect the policy with the later effective date, the Insurer will by the same written notice give the Insured the opportunity to add the coverage limits of the earlier policy to those of the later policy, as of the effective date of the later policy.

In either case, the Insured must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event will the resulting coverage limits exceed the statutorily permissible limits of coverage under the Act or the Insured's insurable interest, whichever is less.

The Insurer will make a refund to the Insured, according to applicable National Flood Insurance Program rules, of the premium for the policy not being kept in effect.

For purposes of this paragraph V, the term effective date means the date coverage that has been in effect without any lapse was first placed in effect. In addition to the provisions of this paragraph V. for increasing policy limits, the usual procedures for increasing limits by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the policy the Insured chooses to keep in effect.

6. We amend Part 61 by adding Appendix A(6) as follows:

Appendix A(6) to Part 61

Federal Emergency Management Agency, Federal Insurance Administration

Standard Flood Insurance Policy Endorsement to Residential Condominium Building Association Policy

[Issued under the National Flood Insurance Act of 1968, as amended (Act), and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B. The provisions of this endorsement replace the provisions of Article 10 of the Standard Flood Insurance Policy, Residential Condominium Building Association Policy, only in applicable policies in Monroe County and the Village of Islamorada, Florida].

Article 10—General Conditions and Provisions

A. *Pair and Set Clause:* If there is loss of an article that is part of a pair or set, the measure of loss will be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article, but such loss will not be construed to mean total loss of the pair or set.

B. *Concealment, Fraud:* This policy will be void, nor can this policy be renewed or any new flood insurance coverage be issued to the Insured if any person insured under Article 1, paragraph A., whether before or after a loss, has:

1. Sworn falsely, or willfully concealed or misrepresented any material fact; or

2. Done any fraudulent act concerning this insurance (see paragraph E.1.d. below); or

3. Willfully concealed or misrepresented any fact on a "Recertification Questionnaire," which causes the Insurer to issue a policy based on a premium amount that is less than the premium amount that would have been payable were it not for the misstatement of fact (see paragraph F. below).

C. *Other Insurance:* If a loss covered by this policy is also covered by other insurance, whether collectible or not, the Insurer will pay only the proportion of the loss that the limit of liability that applies under this policy bears to the total amount of insurance covering the loss, provided, if at the time of loss, there is other insurance made available under the Act, in the name of a unit owner that provides coverage for the same loss covered by this policy, this policy's coverage will be primary and not contributing with such other insurance.

D. *Amendments and Waivers, Assignment:* This Standard Flood Insurance Policy cannot be amended nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action the Insurer takes under the terms of this policy can constitute a waiver of any of its rights. Except in the case of 1. a contents only policy, and 2. a policy issued to cover a building in the course of construction, assignment of this policy, in writing, is allowed upon transfer of title.

E. *Voidance, Reduction or Reformation of the Coverage:*

1. *Voidance:* This policy will be void and of no legal force and effect if any one of the following conditions occurs:

a. The property listed on the application is not eligible for coverage, in which case the policy is void from its inception;

b. The community in which the property is located was not participating in the National Flood Insurance Program on the policy's inception date and did not qualify as a participating community during the policy's term and before the occurrence of any loss;

c. If, during the term of the policy, the participation in the National Flood Insurance Program of the community in which the property is located ceases, in which case the policy will be deemed void effective at the end of the last day of the policy year in which such cessation occurred and will not be renewed. If the voided policy included 3 policy years in a contract term of 3 years, the Insured will be entitled to a pro-rata refund of any premium applicable to the remainder of the policy's term;

d. If any Insured or its agent has:

(1) Sworn falsely; or

(2) Fraudulently or willfully concealed or misrepresented any material fact including facts relevant to the rating of this policy in the application for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the policy, in which case this entire policy will be void as of the date the wrongful act was committed or from its inception if this policy is a renewal policy and the wrongful act occurred in connection with an application for or renewal or endorsement of a policy issued to the Insured in a prior year and affects the rating of or premium amount received for this policy. Refunds of premiums, if any, will be subject to offsets for the Insurer's administrative expenses (including the payment of agent's commissions for any voided policy year) in connection with the issuance of the policy;

e. The premium submitted is less than the minimum set forth in 44 CFR 61.10 in connection with any application for a new policy or policy renewal, in which case the policy is void from its inception date.

f. The Insured has not submitted a community inspection report, cited in "F. Policy Renewal" below that was required in a notice sent to the Insured previously in conjunction with the community inspection procedure established under National Flood Insurance Program Regulations (44 CFR 59.30).

2. *Reduction of Coverage Limits or Reformation:* If the premium payment is not sufficient (whether evident or not) to purchase the amount of coverage requested by an application, renewal, endorsement, or other form and paragraph E.1.d. does not apply, then the policy will be deemed to provide only such coverage as can be purchased for the entire term of the policy, for the amount of premium received, subject to increasing the amount of coverage pursuant to 44 CFR 61.11; provided, however:

a. If the insufficient premium is discovered by the Insurer before a loss and the Insurer can determine the amount of insufficient premium from information in its possession at the time of its discovery of the insufficient premium, the Insurer will give a notice of additional premium due, and if the Insured remits and the Insurer receives the additional premium required to purchase the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the policy will be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide flood insurance coverage in the amount of coverage initially requested.

b. If the insufficient premium is discovered by the Insurer at the time of a loss under the *policy,* the Insurer will give a notice of premium due, and if the Insured remits and the Insurer receives the additional premium required to purchase (for the current *policy* term and the previous *policy* term, if then insured) the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the policy will be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide flood insurance coverage in the amount of coverage initially requested.

c. Under subparagraphs a. and b. as to any mortgagee or trustee named in the policy, the Insurer will give a notice of additional premium due and the right of reformation will continue in force for the benefit only of the mortgagee or trustee, up to the amount of the Insured's indebtedness, for 30 days after written notice to the mortgagee or trustee.

F. *Policy Renewal:* The term of this policy begins on its inception date and ends on its expiration date, as shown on the declarations page that is attached to the policy. The Insurer is under no obligation to:

1. Send the Insured any renewal notice or other notice that the policy term is coming to an end and the receipt of any such notice by the Insured will not be deemed to be a waiver of this provision on the Insurer's part.

2. Assure that policy changes reflected in endorsements submitted during the Policy term are included in any renewal notice or new policy sent to the Insured. Policy changes include the addition of any increases in the amounts of coverage.

This policy will not be renewed and the coverage provided by it will not continue into any successive policy term unless the renewal premium payment, and when applicable, the community inspection report referred to below, is received by the Insurer at the office of the National Flood Insurance Program within 30 days of the expiration date of this policy, subject to paragraph E. above. If the renewal premium payment, and when applicable, the community inspection report referred to below, is mailed by certified mail to the Insurer before the expiration date, it will be deemed to have been received within the required 30 days. The coverage provided by the renewal policy is in effect for any loss occurring during the 30-day period even if the loss occurs before the renewal premium payment, and when applicable, the community inspection report referred to below, is received within the required 30 days. In all other cases, this policy will terminate as of the expiration date, of the last policy term for which the premium payment, and when applicable, the community inspection report referred to below, was timely received and, in that event, the Insurer will not be obligated to provide the Insured with any cancellation, termination, policy lapse, or policy renewal notice.

In connection with the renewal of this policy, the Insured may be requested during the policy term to recertify, on a Recertification Questionnaire the Insurer will provide, the rating information used to rate the most recent application for or renewal of insurance. The community in which the insured property is located has been approved by the Federal Emergency Management Agency to participate in a special inspection procedure set forth in National Flood Insurance Program Regulations (44 CFR 59.30) that requires the submission of a community inspection report completed by local officials as one condition for policy renewal. The Insured may be required to submit such an inspection report completed by a community official certifying whether the insured property is in compliance with the community's floodplain management ordinance. The Insured will be notified in writing of this requirement approximately 6 months before the renewal date and again at the time the renewal bill is sent.

Notwithstanding the Insured's responsibility to submit the appropriate renewal premium in sufficient time to permit its receipt by the Insurer before the expiration of the policy being renewed, the Insurer has established a business procedure for mailing renewal notices to assist Insureds in meeting their responsibility. Regarding the business procedure, evidence of the placing of any such notices into the U.S. Postal Service, addressed to the Insured at the address appearing on its most recent application or other appropriate form (received by the Insurer before the mailing of the renewal notice), does, in all respects, for purposes of the National Flood Insurance Program, presumptively establish delivery to the Insured for all purposes irrespective of whether the Insured actually received the notice.

However, if the Insurer determines that, through any circumstances, any renewal notice was not placed into the U.S. Postal Service, or, if placed, was prepared or addressed in a manner that the Insurer determines could preclude the likelihood of its being actually and timely received by the Insured before the due date for the renewal premium, the following procedures will be followed:

If the Insured or its agent notified the Insurer, not later than 1 year after the date on which the payment of the renewal premium was due, of a nonreceipt of a renewal notice before the due date for the renewal premium, which the Insurer determines was attributable to the above circumstance, the Insurer will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.

If we do not receive the renewal payment requested by reason of the second bill by the revised due date, no renewal will occur and the policy will remain as an expired policy

as of the expiration date prescribed on the policy.

G. *Conditions Suspending or Restricting Insurance:* Unless otherwise provided in writing added hereto, the Insurer will not be liable for loss occurring while the hazard is increased by any means within the control or knowledge of the Insured.

H. *Liberalization clause:* If during the period that insurance is in force under this policy or within 45 days prior to the inception date thereof, should the Insurer have adopted under the Act, any forms, endorsements, rules or regulations by which this policy could be extended or broadened, without additional premium charge, by endorsement or substitution of form, then, such extended or broadened insurance will inure to the benefit of the Insured as though such endorsement or substitution of form had been made. Any broadening or extension of this policy to the Insured's benefit will only apply to losses occurring on or after the effective date of the adoption of any forms, endorsements, rules or regulations affecting this policy.

I. *Alterations and Repairs:* The Insured may, at the Insured's own expense, make alterations, additions and repairs, and complete structures in the course of construction.

J. *Cancellation of Policy By Insured:* The Insured may cancel this policy at any time but a refund of premium money will only be made when:

1. The Insured cancels a policy having a term of 3 years, on an anniversary date, and the reason for the cancellation is that:

a. A policy of flood insurance has been obtained or is being obtained in substitution for this policy and the Insurer has received a written concurrence in the cancellation from any mortgagee of which the Insurer has actual notice, or

b. The Insured has extinguished the insured mortgage debt and is no longer required by the mortgagee to maintain the coverage. Refund of any premium, under this subparagraph 1., will be pro rata but with retention of the expense constant and the Federal policy fee.

2. The Insured cancels because the Insurer has determined that the property is not, in fact, in a special hazard area; and the Insured was required to purchase flood insurance coverage by a private lender or Federal agency pursuant to Public Law 93–234, section 102 and the lender or agency no longer requires the retention of the coverage. In this event, if no claims have been paid or are pending, the premium payments will be refunded in full, according to applicable National Flood Insurance Program regulations.

K. *Loss Clause:* Payment of any loss under this policy will not reduce the amount of insurance applicable to any other loss during the policy term that arises out of a separate occurrence of the peril insured against hereunder; provided, that all loss arising out of a continuous or protracted occurrence will be deemed to constitute loss arising out of a single occurrence.

L. *Mortgage Clause:* (Applicable to building coverage only and effective only when the policy is made payable to a mortgagee or trustee named in the application and declarations page attached to this policy or of whom the Insurer has actual notice prior to the payment of loss proceeds under this policy.)

Loss, if any, under this policy, will be payable to the aforesaid as mortgagee or trustee as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee or trustee, in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee or trustee only therein, will not be invalidated:

1. By any act or neglect of the mortgagor or owner of the described property; nor

2. By any foreclosure or other proceedings or notice of sale relating to the property; nor

3. By any change in the title or ownership of the property; nor

4. By the occupation of the premises for purposes more hazardous than are permitted by this policy, *provided,* that it in case the mortgagor or owner will neglect to pay any premium due under this policy, the mortgagee or trustee will, on demand, pay the same.

5. *Provided, also,* that the mortgagee or trustee will notify the Insurer of any change of ownership or occupancy of the building or increase of hazard that will come to the knowledge of said mortgagee or trustee and, unless permitted by this policy, it will be noted thereon and the mortgagee or trustee will, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise, this policy will be null and void.

If this policy is cancelled by the Insurer, it will continue in force for the benefit of the mortgagee or trustee for 30 days after written notice to the mortgagee or trustee of such cancellation and will then cease.

Whenever the Insurer will pay the mortgagee or trustee any sum for loss under this policy and will claim that, as to the mortgagor or owner, no liability therefor existed, the Insurer will, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment will be made, under all securities held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee or trustee the whole principal due or to grow due on the mortgage with interest, and will thereupon receive a full assignment and transfer of the mortgage and of all such other securities, but no subrogation will impair the right of the mortgagee or trustee to recover the full amount of said mortgagee's or trustee's claim.

M. *Mortgagee Obligations:* If the Insured fails to render proof of loss, the named mortgagee or trustee, upon notice, will render proof of loss in the form herein specified within 60 days thereafter and will be subject to the provisions of this policy relating to appraisal and time of payment and of bringing suit.

N. *Loss Payable Clause (Applicable to contents items only):* Loss, if any, will be adjusted with the Insured and will be payable to the Insured and loss payee as their interests may appear.

O. *Requirements in Case of Loss:* Should a flood loss occur to the insured property, the Insured must:

1. Notify the Insurer in writing as soon as practicable;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that the Insurer may examine it; and

3. Within 60 days after the loss, send the Insurer a proof of loss, which is the Insured's statement as to the amount it is claiming under the policy signed and sworn to by the Insured and furnishing the following information:

a. The date and time of the loss;

b. A brief explanation of how the loss happened;

c. The Insured's interest in the property damaged (for example, "owner") and the interests, if any, of others in the damaged property;

d. The actual cash value or replacement cost, whichever is appropriate, of each damaged item of insured property and the amount of damages sustained;

e. The names of mortgagees or anyone else having a lien, charge or claim against the insured property;

f. Details as to any other contracts of insurance covering the property, whether valid or not;

g. Details of any changes in ownership, use, occupancy, location or possession of the insured property since the policy was issued;

h. Details as to who occupied any insured building at the time of loss and for what purpose; and

i. The amount the Insured claims is due under this policy to cover the loss, including statements concerning:

(1) The limits of coverage stated in the policy; and

(2) The cost to repair or replace the damaged property (whichever costs less).

Cooperate with the Insurer's adjuster or representative in the investigation of the claim;

4. Document the loss with all bills, receipts, and related documents for the amount being claimed;

5. The insurance adjuster whom the Insurer hires to investigate the claim may furnish the Insured with a proof of loss form, and she or he may help the Insured to complete it. However, this is a matter of courtesy only, and the Insured must still send the Insurer a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help the Insured complete it. In completing the proof of loss, the Insured must use its own judgment concerning the amount of loss and the justification for the amount.

The adjuster is not authorized to approve or disapprove claims or to tell the Insured whether the claim will be approved by the Insurer.

6. The Insurer may, at its option, waive the requirement for the completion and filing of a proof of loss in certain cases, in which event the Insured will be required to sign and, at the Insurer's option, swear to an adjuster's report of the loss that includes information about the loss and the damages needed by the Insurer in order to adjust the claim.

7. Any false statements made in the course of presenting a claim under this *policy* may be punishable by fine or imprisonment under the applicable Federal laws.

P. *Options After a Loss:* Options the Insurer may, in its sole discretion, exercise after a loss include the following:

1. *Evidence of Loss:* If the Insurer specifically requests it, in writing, the Insured may be required to furnish a complete inventory of the destroyed, damaged and undamaged property, including details as to quantities, costs, actual cash values or replacement cost (whichever is appropriate), amount of loss claims, and any written plans and specifications for repair of the damaged property that can reasonably be made available to the Insurer.

2. *Examination Under Oath and Access to the Condominium Association's Articles of Association or Incorporation, Property Insurance Policies, and Other Condominium Documents:* The Insurer may require the Insured to:

a. Show the Insurer, or its designee, the damaged property;

b. Be examined under oath by the Insurer or its designee;

c. Sign any transcripts of such examinations; and

d. At such reasonable times and places as the Insurer may designate, permit the Insurer to examine and make extracts and copies of any condominium documents, including the Articles of Association or Incorporation, Bylaws, rules and regulations, Declarations of the condominium, property insurance policies, and other condominium documents; and all books of accounts, bills, invoices and vouchers, or certified copies thereof if the originals are lost, pertaining to the damaged property.

3. *Options to Repair or Replace:* The Insurer may take all or any part of the damaged property at the agreed or appraised value and, also, repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving the Insured notice of the Insurer's intention to do so within 30 days after the receipt of the proof of loss herein required under paragraph O. above.

Adjustment Options: The Insurer may adjust loss to any insured property of others with the owners of such property or with the Insured for their account. Any such insurance under this policy will not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

Q. *When Loss Payable:* Loss is payable within 60 days after the Insured files its proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by the Insured in lieu of a proof of loss) and ascertainment of the loss is made either by agreement between the Insured and the Insurer in writing or by the filing with the Insurer of an award as provided in paragraph R. below. If the Insurer rejects the Insured's proof of loss in whole or in part, the Insured may accept such denial of its claim, or exercise its rights under this policy, or file an amended proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

Abandonment: The Insured may not abandon damaged or undamaged insured property to the Insurer. However, the Insurer may permit the Insured to keep damaged, insured property ("salvage") after a loss and reduce the amount of the loss proceeds payable to the Insured under the policy by the value of the salvage.

R. *Appraisal:* If at any time after a loss, the Insurer is unable to agree with the Insured as to the actual cash value—or, if applicable, replacement cost—of the damaged property so as to determine the amount of loss to be paid to the Insured, then:

1. On the written demand of either the Insurer or the Insured, each will select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand.

2. The appraisers will first select a competent and disinterested umpire and failing, after 15 days, to agree upon such umpire, then on the Insurer's request or the Insured's request, such umpire will be selected by a judge of a court of record in the State in which the insured property is located.

3. The appraisers will then appraise the loss, stating separately replacement cost, actual cash value and loss to each item; and, failing to agree, will submit their differences, only, to the umpire.

4. An award in writing, so itemized, of any two (appraisers or appraiser and umpire) when filed with the Insurer will determine the amount of actual cash value and loss or, should this policy's replacement cost provisions apply, the amount of the replacement cost and loss.

5. Each appraiser will be paid by the party selecting him or her and the expenses of appraisal and umpire will be paid by both parties equally.

S. *Action Against the Insurer:* No suit or action on this policy for the recovery of any claim will be sustainable in any court of law or equity unless all the requirements of this policy will have been complied with, and unless commenced within 12 months next after the date of mailing of notice of disallowance or partial disallowance of the claim. An action on such claim against the Insurer must be instituted, without regard to the amount in controversy, in the United States District Court for the district in which the property will have been situated.

T. *Subrogation:* If of any payment under this policy, the Insurer will be subrogated to all the Insured's rights of recovery therefor against any party, and the Insurer may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefor is made by the Insurer. The Insured will do nothing after loss to prejudice such rights; however, this insurance will not be invalidated should the Insured waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the described property.

U. Continuous Lake Flooding: Where the insured building has been inundated by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in damage, reimbursable under this policy, to the insured building equal to or greater than the building policy limits plus the deductible(s) or the maximum payable under the policy for any one building loss, the Insurer will pay the Insured the lesser of these two amounts without waiting for the further damage to occur if the Insured signs a release agreeing to:

1. Make no further claim under this policy; and

2. Not seek renewal of this policy; and

3. Not apply for any flood insurance under the Act for property at the property location of the insured building. If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph U still apply so long as the first building damage reimbursable under this policy from the continuous flooding occurred before the end of the policy term.

V. *Duplicate Policies Not Allowed:* Property may not be insured under more than one policy issued under the Act. When the Insurer finds that duplicate policies are in effect, the Insurer will by written notice give the Insured the option of choosing which policy is to remain in effect, under the following procedures:

1. If the Insured chooses to keep in effect the policy with the earlier effective date, the Insurer will by the same written notice give the Insured an opportunity to add the coverage limits of the later policy to those of the earlier policy, as of the effective date of the later policy.

2. If the Insured chooses to keep in effect the policy with the later effective date, the Insurer will by the same written notice give the Insured the opportunity to add the coverage limits of the earlier policy of those of the later policy, as of the effective date of the later policy.

In either case, the Insured must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event will the resulting coverage limits exceed the statutorily permissible limits of coverage under the Act or the Insured's insurable interest, whichever is less.

The Insurer will make a refund to the Insured, according to applicable National Flood Insurance Program rules, of the premium for the policy not being kept in effect.

For purposes of this paragraph V the term effective date means the date coverage that has been in effect without any lapse was first placed in effect. In addition to the provisions of this paragraph V for increasing policy limits, the usual procedures for increasing limits by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the policy the Insured chooses to keep in effect.

Dated: June 20, 2000.

James L. Witt,

Director.

[FR Doc. 00–16043 Filed 6–26–00; 8:45 am]

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Federal Register

Tuesday,
June 27, 2000

Part V

Department of Labor

Employment and Training Administration

Resource Sharing for Workforce Investment Act One-Stop Centers: Methodologies for Paying or Funding Each Partner Program's Fair Share of Allocable One-Stop Costs; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Resource Sharing for Workforce Investment Act One-Stop Centers: Methodologies for Paying or Funding Each Partner Program's Fair Share of Allocable One-Stop Costs

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is intended to provide guidance on resource sharing and cost allocation methodologies for the shared costs of a One-Stop service delivery system, which is required to be established under the Workforce Investment Act of 1998 (WIA) for a number of Federal employment and training programs. It is anticipated that the primary users of this document will be the financial and accounting staff of the One-Stop partner programs and the One-Stop operators. However, it is also expected that this document will have a much broader audience and will provide program operators and others with a fuller understanding of cost allocation principles and possible ways through which each partner program can pay for its "fair share" of common One-Stop costs.

As the participating programs have come together to work out the details of service delivery in a One-Stop setting, a number of questions have arisen about how resources can be shared and costs allocated. This notice provides a general framework that all One-Stop centers and their partner programs will be able to use to establish their own system for cost allocation and resource sharing. It describes ways to identify and determine One-Stop shared costs and, as a separate issue, describes alternative ways to pay for and fund these costs. This framework may not be applicable for all One-Stop settings, and additional guidance will be provided as needed.

This notice is the result of a collaborative effort involving representatives from the Departments of Agriculture, Education, Health and Human Services, as well as the Department of Labor's Employment and Training Administration, Office of Cost Determination and Office of Inspector General. The Federal partners that participated in the preparation of this paper, as well as the Office of Management and Budget, accept the principles discussed herein as appropriate "resource sharing" and "cost allocation" guidance for WIA One-Stop centers.

DATES: Comments must be received by July 27, 2000.

ADDRESSES: Submit written comments to the Employment and Training Administration, Office of Financial and Administrative Management, 200 Constitution Avenue, NW, Room N–4716, Washington, D.C. 20210, Attention: Mr. Edward J. Donahue, Jr. at 202-219–6719 ext. 102 (voice), 202–501–4811 (fax) or e-mail: *edonahue@doleta.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Edward J. Donahue, Jr. at 202-219–6719 ext. 102 (This is not a toll-free number) or 1–800–326–2577 (TDD). This document may also be found at the website—http://usworkforce.org.

SUPPLEMENTARY INFORMATION:

Background

Title I of the Workforce Investment Act of 1998 (WIA) requires each local workforce investment area to establish a One-Stop system for the delivery of certain Federal workforce development services. Entities responsible for the administration of separate Federal workforce investment, educational, and other human resource programs and funding streams (referred to as One-Stop partners) are to collaborate to create a seamless delivery system that will enhance access to services and improve employment outcomes for individuals receiving services. The system must include at least one comprehensive physical center that provides core services and access to the other activities carried out by the partners. The comprehensive center may be supplemented by additional comprehensive centers, a network of affiliated sites, technological and physical linkages with the partners, and specialized centers.

The WIA specifies that the required One-Stop partners include programs funded by the Departments of Labor (Title I of WIA, Wagner-Peyser, Unemployment Insurance, Trade Adjustment Assistance, NAFTA Transitional Adjustment Assistance, Welfare-to-Work, Senior Community Service Employment, and Veterans Workforce Investment programs and activities under 38 USC Chapter 41), Education (Vocational Rehabilitation, Adult Education, and Postsecondary Vocational Education), Health and Human Services (Community Services Block Grant) and Housing and Urban Development (Employment and Training activities), and authorizes any other appropriate program to serve as a partner, including the Temporary Assistance to Needy Families and the Food Stamp Employment and Training and Work programs. The partner is the entity responsible for the administration of the program in the local area, which in many cases may be a State agency, but is not intended to include each service provider that contracts with or is a subrecipient of the entity responsible for administration.

The responsibilities of the One-Stop partners, which are elaborated below, include:

1. Making available to participants the core services that are applicable to their programs;
2. Using a portion of their funds to create and maintain the One-Stop system and to provide applicable core services;
3. Entering into a Memorandum of Understanding (MOU) with the Local Workforce Investment Board (Local Board) regarding the operation of the One-Stop system;
4. Participating in the operation of the One-Stop system in a manner consistent with the MOU and the partner's authorizing law; and
5. Representation on the Local Board.

The Department of Labor regulations at 20 CFR Part 662 (64 FR 18662, 18701 (April 15, 1999)) relate to the requirements of the One-Stop system, and One-Stop requirements are also included in the Notice of Proposed Rulemaking issued by the Department of Education relating to the Vocational Rehabilitation Services program at 34 CFR Part 361 (65 FR 10620 (February 28, 2000)).

Because WIA mandates that several employment and training programs funded under different laws by various Federal agencies partner in a One-Stop setting, it has become apparent that it is necessary for the Federal funding agencies to present a uniform policy position on acceptable methodologies for cost allocation and resource sharing (methodologies for paying or funding of allocable costs) in the WIA One-Stop environment. As a result, the Office of Management and Budget (OMB) asked agencies to develop a uniform policy position. The Department of Labor's Employment and Training Administration (ETA) took the lead in developing this document in consultation with the Departments of Agriculture, Education, Health and Human Services, as well as Labor's Office of Cost Determination and Office of Inspector General.

The underlying problem for the One-Stop partners is to find an appropriate way of accumulating cost information and assuring appropriate payment for shared costs as they come together in a single location. It must be recognized that cost allocation is a distinctly

different requirement from resource sharing. Cost allocation is a concept that is embedded in the OMB Cost Principles Circulars and one which is based on the premise that Federal programs are to bear an equitable proportion of shared costs based on the benefit received by each program. In contrast, resource sharing is the methodology through which One-Stop partner programs pay for, or fund, their equitable share of the costs. This document explains both concepts and presents acceptable methodologies for both cost allocation and resource sharing.

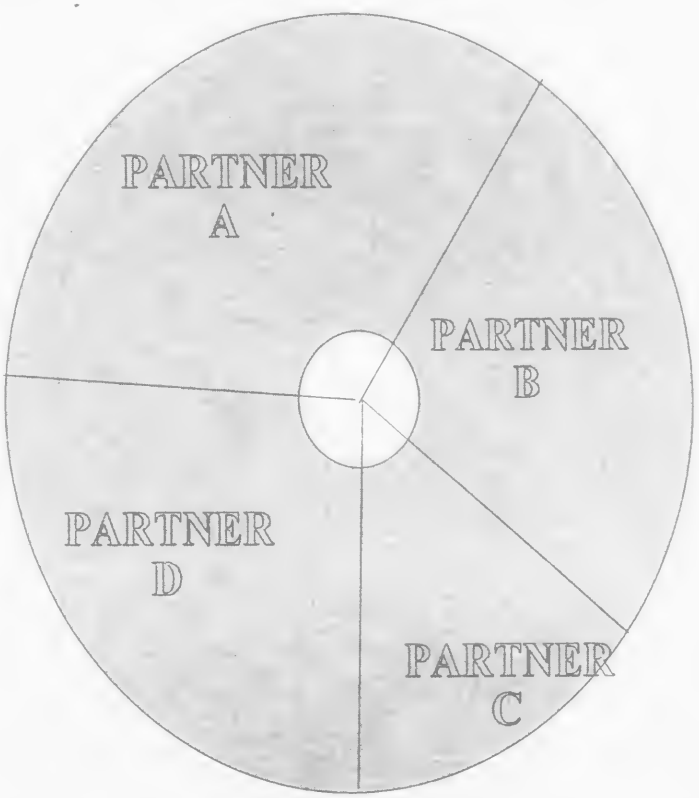
While this document does not make any changes to the OMB cost principles; it helps to describe the flexibility and limitations under those principles for Federal programs to determine equitable proportion.

One-Stop Cost Concepts

Under WIA the local One-Stop center is not a direct recipient of Federal awards. Rather, it is the location through which several workforce development and education programs operate their programs in partnership with other entities and make their services available to the program beneficiaries [participants, students, the unemployed, job seekers, employers, etc.].

These One-Stop center partners are recipients of Federal grant dollars, either directly or from another recipient. They will, in their normal course of business, maintain appropriate accounting and other information in accordance with appropriate Federal guidance. This normally includes accounting for indirect costs, through indirect cost rates or cost allocation plans, as well as for direct costs. All costs must be accounted for in accordance with Generally Accepted Accounting Principles (GAAP). For the direct funded organizations, this includes negotiating the necessary indirect cost rate or obtaining approval of their cost allocation plan.

When individual organizations partner in the One-Stop environment, some activities or functions are performed which benefit more than one individual organization, *e.g.*, a common reception area, provision of information on the services available at the One-Stop, or collection of basic information from individuals seeking assistance at the One-Stop. When this occurs, the cost of performing these functions must be allocated to the benefitting programs or cost objectives (grant). This must be done based on benefits received by the benefitting program, and not on availability of funds. When that distribution is accomplished, the individual partners must include these costs in their total cost picture to determine the total cost of operations to perform the functions for which they were funded. The following diagram shows the relationship of the partner programs to each other and to the "One-Stop".



It should be noted that the unshaded center area is comprised of the shared costs that are applicable to two or more of the partner entities. A does for A, B, C and D; B does for B, C, D and A; and D does for D, A, B and C. Allocating these costs to the benefitting activities (grants/programs) does not necessarily relate to the methodology used for payment. Payment of these costs will be discussed later in this document. Allocating "One-Stop" costs is no different from allocating costs incurred by grantees for their individual grant programs. The "One-Stop" costs have

effectively been pooled. The question is what is the best basis for equitable distribution of shared costs without incurring unnecessary additional burden.

While the physical One-Stop center itself is not required to have a Federally approved negotiated indirect cost rate or cost allocation plan, this does not mean that there is no need for cost allocation. The WIA requires that a portion of the funds provided under the various Federal laws authorizing the required partner programs be used to pay for the creation and maintenance of the One-Stop delivery system, and the provision of core services that are applicable to the individual partner programs, and requires participation in the operation of the One-Stop system, in a manner consistent with the terms of the MOU and the partner's authorizing law [WIA sec. 121(b)(1)(A) and 134(1)(B)]. The core services include:

1. Eligibility determination under WIA Title I formula programs;
2. Outreach, intake and orientation to the information and other services available through the One-Stop delivery system;
3. Initial assessment of skill levels, aptitudes, abilities, and supportive service needs;
4. Job search and placement assistance, and career counseling;
5. Employment statistics information;
6. Providing performance and cost information on WIA title I, adult education, postsecondary vocational education and vocational rehabilitation providers;
7. Providing information on the performance of the local One-Stop delivery system;
8. Providing information on the availability of supportive services;
9. Providing information on the filing of UI claims;
10. Providing assistance in establishing eligibility for welfare-to-work activities and for programs of financial aid assistance for training and education programs not funded under WIA; and
11. Providing follow up services for WIA title I participants who are placed in unsubsidized employment

At a minimum, the core services that are applicable to a partner's program (*i.e.*, are authorized and provided under the program) and that are in addition to the basic labor exchange services traditionally provided in the local area under the Wagner-Peyser Act must be made available by the partner at the comprehensive One-Stop center. (It should be noted the Adult and Dislocated Worker programs authorized under WIA title I must make all the core services available at the One-Stop center). It should also be emphasized that this list of core services is the minimum required to be provided at the comprehensive center, and the partners are encouraged to provide such additional services through such One-Stop centers as may allow them to better serve their customers. For example, providing for a common intake and eligibility determination system, including the development and use of a common application form, can be used for a number of the partner programs at the center to enhance access to the programs. Such a system would be customer friendly, and result in administrative efficiencies. The same cost allocation methods are applicable irrespective of the scope of services provided at a center.

The cost allocation that is necessary relates to the common costs of the One-Stop system, which may include such items as space and occupancy costs, utilities, telephone systems, common supplies and equipment, a common resource center or library, perhaps a common receptionist or centralized intake and eligibility determination staff.

It must be understood that each local One-Stop center is unique and that this document, which intends to share some of the principles and some basic models of One-Stop resource sharing and cost allocation, does not propose to impose a single methodology on the entire WIA One-Stop system. The fact that the resource sharing and cost allocation methodology used in a particular One-Stop system is not discussed in this document does not, on its face, mean that the methodology is inappropriate or unallowable. The cost allocation methodology that is used, however, must be consistent with:

1. GAAP:
2. The applicable OMB cost principles and administrative requirements; and
3. Be accepted by each partner's independent auditors to satisfy the audit testing required under the Single Audit Act and OMB Circular A–133.

Whatever methodology is used, it must be supported by actual cost data. Further, the methodology must not permit the shifting of costs that are not allocable to or do not benefit a specific program to said program.

In the local One-Stop, the idea of sharing resources and allocating costs can be viewed:

1. In the aggregate, *i.e.*, covering all of the One-Stop center's shared costs;
2. On an activity basis where all of the partners pay their allocable share of the total costs of an activity or function (*e.g.*, a common intake and eligibility determination system); or
3. on an item of cost basis where all programs pay their allocable share of each item of cost (*e.g.*, rent).

It could also be some combination of the above, *e.g.*, when a particular or a number of functions are treated on an activity basis and the remaining items of cost are treated on an aggregate or individual item of cost basis.

The WIA regulations require that each partner must contribute a "fair share" of operating costs of the One-Stop delivery system proportionate to the use of the system by individuals attributable to the partner's program. This requirement is intended to establish an equitable principle, but it is not intended to prescribe a single method for allocating costs. The regulation goes on to say that there are a number of methods, consistent with the relevant OMB circulars, that may be used for allocating costs among the partners. Any of the methodologies described in this paper may be used in implementing the regulatory requirement. Any methodology used must:

1. Result in an equitable distribution of costs and not result in any partner paying a disproportionate share of the shared One-Stop costs;
2. Correspond to the types of costs being allocated;
3. Be efficient to use; and
4. Be consistently applied over time.

The methodology used may vary dependent upon the nature of the One-Stop structure. The basic types of One-Stop systems include:

1. *Simple Co-location with Coordinated Delivery of Services:* Several partner agencies coordinate the delivery of their individual programs and share space. Each partner retains its own identity and controls its own resources. Each partner provides services in a coordinated manner with other funding sources while paying for its own fixed and variable costs as direct charges to its own funds. The partners pool only those costs that are shared jointly with the other agencies.

2. *Full Integration:* All partner programs are coordinated and administered under one management structure and accounting system. Full integration is the vision of future One-Stop systems. Under full integration, there is joint delivery of program services and the operation is customer focused. Since resources are combined, the corresponding costs are often collected into cost pools. Pooled costs are later allocated back to individual grant programs using an appropriate method of allocation. Any grant-specific cost and/or administrative constraints

are still valid for the individual grantees.

3. *Electronic Data Sharing (through satellite offices):* Only program information is provided and there are no co-located staff assigned.

While the principles discussed in this document may be applied to all three types of structures, the focus of the paper is to address the most typical structure of co-located programs with shared space and some common functions or activities.

Allocation of One-Stop Shared Costs

While the physical One-Stop center itself is not a specific direct recipient of Federal awards as an entity, it is expected that many program operators within a local One-Stop center, perhaps including the One-Stop operator, are direct recipients of Federal awards and do have negotiated indirect cost rates or approved cost allocation plans.

As previously stated, the costs of a One-Stop may be categorized as: (1) Direct costs that benefit one particular cost objective, (2) shared direct costs that can be readily allocated to the sharing cost objectives, and (3) indirect costs incurred for common or joint purposes benefitting more than one cost objective but are not readily assignable to the benefitting cost objective.

Cost pooling may be used to distribute both shared direct costs and indirect costs. Cost pooling involves the accumulation of costs to pools for later allocation to final cost objectives. It is appropriate to use cost pooling when direct charging requires disproportionate effort in order to determine the amount that should be charged to the individual cost objectives. It may be used for any type of common costs, administrative or program, incurred in a One-Stop center.

After One-Stop shared costs are identified, they may be accumulated by line-item expense categories (also referred to as "natural expense classifications" and "object expense categories"). Some examples of line-item expenses are salaries, occupancy costs, telephone, postage and shipping, printing and duplication, and supplies. Shared costs may also be accumulated or grouped by service department such as data processing and management information (MIS), printing and duplicating, mailing and shipping, purchasing and procurement, payroll, personnel, and general legal services. Another method may be accumulating costs based on function or activity such as eligibility determination; outreach, intake and orientation; initial assessment; job search and placement assistance, and career counseling; and follow up services. Whichever grouping or accumulation method it used, it is the actual incurred costs that are accumulated.

Once the costs have been accumulated, they need to be allocated to the benefiting cost objectives (for One-Stop allocation, the final cost objectives will most often be the partner programs) on some basis that will provide for an equitable distribution. The most commonly used allocation bases include:

1. Direct-staff salaries: Percentage of total salary costs of staff assigned to activities.

2. Direct-staff hours: Percentage of time spent by staff assigned to activities.

3. Modified total direct costs: Percentage of total direct costs for activities, less distorting items (e.g., equipment purchases, flow through funds, etc.)

4. Total direct costs: Percentage of total direct costs for activities. (Normally inappropriate unless there are no distorting items. See item 3 above.)

5. Units of service: Percentage of units of service provided.

6. Usage: Percentage of usage of space, equipment, or other assets by activities.

Allocations may be made on a single basis for all categories of costs or on multiple bases that vary by category. When reliable, using a single basis for allocating common costs can be less burdensome. Direct staff salaries is often appropriate when salaries alone represent about half of an entity's total costs and other categories of costs tend to vary according to staff salaries. Cumulative cost pool allocations for the reporting period are often preferable to monthly allocations in achieving equitable sharing among grant funded activities because of various grant periods during the grantee fiscal year. Monthly allocations can be misleading as to results because all costs do not occur evenly on a monthly basis. Regardless of the methodology used, allocations could be accomplished monthly but must be done no less frequently than the required financial reporting period, usually quarterly.

Funding or Paying for Allocated Share of One-Stop Costs

Under WIA, the One-Stop partners are required to enter into a written Memorandum of Understanding (MOU) with the Local Board, prior to starting operations. The MOU must include provisions that describe:

1. The services to be provided through the One-Stop delivery system;

2. How the cost of those services and the operating costs of the One-Stop delivery system will be funded (paid for);

3. The methods that will be used to refer individuals between the One-Stop operator(s) and the One-Stop partners for the provision of appropriate services and activities; and

4. The duration of the MOU as well as the procedures for amending it during the term or period covered by the MOU.

In order for the MOU to describe how the costs of services and One-Stop operations will be paid for, the partners will first need to identify those costs and prepare a budget for the "One-Stop" activities. This budget will not only describe the costs of the One-Stop system in total, but will also include estimates of how much of the total cost (personnel, space, telecommunications, etc.) of the "One-Stop" is allocable to each partner. The budget development process involves all of the One-Stop partners and the One-Stop operator. The budget document does not need to be included in or attached to the MOU. On a periodic basis, no less frequently than quarterly, the actual costs and the allocation among the partner programs will need to be reviewed. At that time, the budget document, including the allocable partner shares of the One-Stop costs, may need to be adjusted to conform to actual circumstances. An adjustment to the budget will not necessarily require a modification of the MOU unless the terms of the MOU are affected.

After the budget is prepared, all of the partners will then agree how each will pay its allocable fair share. One partner may furnish only personnel; another partner may furnish space and telecommunications, etc., or each partner may use its grant funds to pay for its allocable portion of shared costs. This agreement about how the allocable shares of One-Stop shared costs are to be funded (paid for) must be included in the MOU that is to be followed during the operating period.

For many of the partner programs, including the WIA title I–B program, the Federal funds are awarded or passed through to State and local governmental entities subject to the cost principles of OMB Circular A–87. OMB Circular A–87, Attachment A, paragraph C.3.c. states, "Any cost allocable to a particular Federal award or cost objective under the principles provided for in this Circular may not be charged to other Federal awards to overcome fund.deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons. However, this prohibition would not preclude governmental units from shifting costs

that are allowable under two or more awards in accordance with existing program agreements". Question 2–16 in ASMB C–10, the implementation guide for OMB Circular A–87, clarifies that the intent of this paragraph is to distinguish between cost allocation and funding allocation. The C–10 goes on to say "* * * The term 'cost shifting' should not have been used, because cost shifting is unallowable, *per se*.] A function or activity within the government organization that benefits two or more programs may be set up as a single cost objective. Costs allocable to that cost objective would be allowable under any of the involved programs which benefit from these activities/costs. The government can make a business decision regarding what combination of funds made available under these programs would be applied to this cost objective."

This same concept is applicable to the WIA One-Stop environment even when all program service providers are not governed by OMB Circular A–87, provided that its use is consistent with a program's governing statutes and regulations and is agreed to in the MOU by the partners. As an example of the application of this Circular to a One-Stop, an individual might be eligible for the Food Stamps and TANF Work programs as well as the WIA title I–B adult employment and training program. Further, the services provided to that individual, such as acquiring transportation to the job site, could be allowable under any of the three programs. Where these conditions exist, the cost objective is transportation services for individuals meeting "X" criteria. The grantees for these programs can choose which program to charge for the cost of transportation services for these individuals because they are equally eligible under several programs for essentially the same services. As expressed in the A–87 implementation guide, the reference relates to the management decision of an organization concerning which program will pay for a cost which is allowable under and allocable to more than one program in accordance with existing program requirements. These grantee decisions and agreements are to be reflected in the MOU.

The One-Stop environment also permits partner program operators to agree through their local MOU how they pay their total allocable share of common One-Stop costs (Operator A may provide and pay for 100% of rent and Operator B may provide and pay for 100% of some other shared cost(s) where each partner is "paying" an amount equal to their respective share of total allowable/allocable costs). This does not allow a program that receives no benefit from a cost to claim incurrence of that cost; it merely provides flexibility in the payment method of each program operator for its fair share of costs according to benefits received. Under no circumstances may any partner program pay more than its total allocable share of total allowable costs. Further, no program may pay for costs that are not allowable under its governing statutes and regulations. Below are examples of situations for which this provision might be used.

1. Services provided prior to determining eligibility for any given program(s) are allocable to the program(s) for which they are allowable. However, in accordance with the above, any program can pay for those services entirely, to the extent they are allowable, provided that the total payments from any given program do not exceed the total costs for various activities and services that were allocated to that program.

2. Similarly, a receptionist is typically a common cost allocable to all programs. However, the salary costs of the receptionist may be borne by any given program where such costs are allowable, provided that the reimbursements or payments made by that program do not exceed, in total, the total organization-wide allocations made to that program.

However, some caution must be exercised and care taken to draw the line in situations when:

1. The activity begins to serve a specific program purpose instead of being general service to the public; or

2. Only one program directly benefits.

When a staff function that is common to more than one but not necessarily all of the One-Stop partner programs, such as intake and eligibility determination, is included in the One-Stop shared costs, it may be more equitable for "payment" of the program share of the activity to be based on the notion of full time equivalent (FTE) staff position rather than on the aggregate total of staff salaries. The staff of programs in a One-Stop center will likely include State employees, county and/or city employees, as well as employees of educational institutions, non-profit community-based organizations, and for profit commercial entities. Staff who perform the same function for the One-Stop operation will be on different pay scales and pay levels. If all of the programs that require the same specific function provide FTE staff to perform that function in the same proportion as the relative number of individuals attributable to the partner's program (*e.g.*, the referrals to its program), then each would have provided its equitable share of the function. In order to establish the appropriate FTE contribution for each partner, it is first necessary to establish the proportionate share of each of the partner programs. The proportionate share could be established based upon the number of individuals referred to the program compared with the total number of individuals served by the common function. Another methodology, discussed in the paragraph below, establishes the proportionate share of each program based on the number of data elements, included in a common intake and eligibility determination form, that are applicable to and used for the individual partner program. When these programs were operating independently of the One-Stop, such staff would have conducted an intake interview and determined that the individual was not eligible for the program and, hopefully, referred the individual to the appropriate program where they would go through the intake process all over again. In a One-Stop environment using a standardized intake process, it will only be necessary for a client to go through the process once. This will result in a cost savings for the program that actually provides the program services as well as the programs which previously would have incurred the intake cost and not provided service. Obviously, if a particular partner's program is not able to use and does not benefit from the common staff function, then it cannot and should not bear any share of the cost of such function.

An alternative method for determining the proportionate share of a common intake and eligibility system for each of the partner programs could be based on an approach that considers the benefit of individual data elements to each of the benefitting program partners. This can be accomplished by analyzing the data elements and computing the appropriate percentage of effort applicable to each benefitting partner as follows:

Total bytes on the intake form	Used by program				All programs
	500	A	B	C	
Bytes for Name	40	40	40	40	120
Bytes for Street Address	80	80	80	80	240
Bytes for City Address	25	25	25	25	75
Bytes for State Address	2	2	2	2	6
Bytes for Zip Code	10	10	10	10	30
Bytes for Other Information	343	143	183	203	529
Total Bytes	500	300	340	360	1,000
Percentage of Cost to Bear by Program		30	34	36	100

In the above table, the total number of bytes of information for each item on the form is indicated in the first column. The data in the columns headed "A", "B", and "C", indicates the number of bytes of information used by each of the individual programs. All programs require the data elements related to name and address, but each uses different amounts of the remaining data elements. The fifth column in the table represents the total usage of all of the data elements by all of the participating programs and constitutes the denominator, or base, upon which the proportionate share of the individual program use is calculated.

The FTE methodology discussed above works best in those situations when the common function (*e.g.,* intake and eligibility determination) is being allocated to the sharing partners separate from the other shared costs. When common functions are being allocated as part of the process of allocating total shared costs, use of the FTE methodology for a portion of the total may result in inequitable distribution of the total costs. In such cases, it may be better to base the proportionate share allocation on the actual staff salary cost rather than on FTEs.

Conclusion

This document has described the framework created under the Workforce Investment Act which creates the need for resource sharing and cost allocation methodologies for the shared costs of a One-Stop system. It has been a collaborative effort involving comments and discussions among representatives from the Departments of Agriculture, Education, Health and Human Services, as well as the Department of Labor's Employment and Training Administration, Office of Cost Determination and Office of Inspector General. This document separates the identification and determination of One-Stop shared costs from the discussion of how those costs are paid for or funded. While there may be unique One-Stop settings that will require additional guidance, this document provides a useful framework that all One-Stop centers will be able to use to establish their own system for cost allocation and resource sharing. The Federal partners that participated in the preparation of this paper, as well as the Office of Management and Budget, accept the principles discussed herein as appropriate "resource sharing" and "cost allocation" guidance for WIA One-Stop centers.

Signed at Washington, D.C., this 21st day of June, 2000.

Raymond L. Bramucci,

Assistant Secretary of Labor, Employment and Training Administration.

[FR Doc. 00–16170 Filed 6–26–00; 8:45 am]

BILLING CODE 4510–30–U

Federal Register

Tuesday,
June 27, 2000

Part VI

Department of Justice

Bureau of Prisons

28 CFR Part 542

Administrative Remedy Program: Excluded Matters; Proposed Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 542

[BOP–1076–P]

RIN 1120–AA72

Administrative Remedy Program: Excluded Matters

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed Rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) proposes to amend its regulations to allow staff to process any request or appeal that pertains directly or indirectly to an inmate's conditions of confinement under the Administrative Remedy Program. We intend this amendment to provide the inmate with maximum opportunity to seek review of any issue which relates to his or her confinement.

DATES: Comments are due by August 28, 2000.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau proposes to amend its regulations on the Administrative Remedy Program (28 CFR part 542, subpart B, published in the **Federal Register** on January 2, 1996, at 61 FR 88).

The Bureau's Administrative Remedy Program allows inmates to seek review of issues relating to their confinement. Often, we may satisfy an inmate's grievance by explaining the relevant policy or practice. The Administrative Remedy Program also allows the Bureau to examine its policies and practices and make changes without judicial intervention.

Currently, § 542.12 specifies matters excluded from consideration under the Administrative Remedy Program. Under paragraph (b) of this section, we will not accept requests or appeals for claims with other statutorily-mandated procedures (including tort claims (see 28 CFR part 543, subpart C), Inmate Accident Compensation claims (28 CFR part 301), and Freedom of Information Act or Privacy Act requests (28 CFR part 513, subpart D) for processing under the Administrative Remedy Program. We intended these exclusions to reflect the fact that there were other procedures for corrective action which would not be available under the Administrative Remedy Program.

We now propose to remove these exclusions. In accepting such requests or appeals under the Administrative Remedy Program, we may be able to address more quickly the full range of corrective actions available, including any that may be peripheral to issues which have other statutorily-mandated administrative procedures in place.

For example, the Administrative Remedy Program ordinarily cannot provide monetary relief. An inmate's claim for monetary relief may, however, present the basis for non-monetary relief. Under the current regulations, we would not accept the inmate's claim in the Administrative Remedy Program, even though we could provide non-monetary relief on the claim.

Under this proposed rule, however, we would accept the inmate's claim for monetary relief in the Administrative Remedy Program. We would then provide non-monetary relief on the claim, if possible, and refer the inmate to the appropriate statutorily-mandated procedure to resolve remaining issues.

Where the inmate's claim can only be addressed by another administrative procedure, we will simply respond by referring the inmate to the appropriate procedure. Bureau staff responding to the administrative remedy are not responsible for investigating such a claim.

We propose, therefore, to delete § 542.12. Sections 542.10 and 542.16 already cover statements in § 542.12 of the regulation's intent and provisions for assistance to the inmate. We also moved the previous stipulation in § 542.12 that an inmate may not submit a Request or Appeal on behalf of another inmate to § 542.10.

We propose to revise § 542.10 to allow inmates to file any claim under the Administrative Remedy Program, even those which have statutorily-mandated remedies. In our revision, we state that, if an inmate raises an issue in a request or appeal that cannot be resolved through the Administrative Remedy Program, we will refer the inmate to the appropriate statutorily-mandated procedures.

The proposed rule does not require the inmate to file under the Administrative Remedy Program before filing under statutorily-mandated procedures for tort claims (see 28 CFR part 543, subpart C), Inmate Accident Compensation claims (28 CFR part 301), and Freedom of Information Act or Privacy Act requests (28 CFR part 513, subpart D).

Of course, if an inmate has a claim that is solely governed by other statutorily-mandated administrative procedures, the inmate need not first file a claim under the administrative remedy program.

Please send written comments to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. We will consider comments we receive during the comment period before we take final action. We will try to consider comments we receive after the end of the comment period if possible. All comments we receive remain on file for public inspection at the above address. We may change the proposed rule in light of comments we receive. We do not plan to hold oral hearings.

Executive Order 12866

This rule is in a category of actions that the Office of Management and Budget (OMB) determined do not constitute "significant regulatory actions" under section 3(f) of Executive Order 12866. OMB did not, therefore, review this rule.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this rule does not have sufficient federalism implications warranting preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities because: This rule is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are

necessary under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. It will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We want to make Bureau documents easier to read and understand. Our goal is to provide clear tools that are useful in daily Bureau management. If you can suggest how to improve the clarity of these regulations, call or write Roy Nanovic at the address listed above.

List of Subjects in 28 CFR Part 542

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Accordingly, under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), we propose to amend part 542 in subchapter C of 28 CFR, chapter V as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 542—ADMINISTRATIVE REMEDY

1. The authority citation for 28 CFR part 542 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Revise § 542.10 to read as follows:

§ 542.10 Purpose and scope.

(a) *Purpose.* The purpose of the Administrative Remedy Program is to allow an inmate to seek formal review of an issue relating to any aspect of his/her own confinement. An inmate may not submit a Request or Appeal on behalf of another inmate.

(b) *Scope.* This Program applies to all inmates in institutions operated by the Bureau of Prisons, to inmates designated to contract Community Corrections Centers (CCCs) under Bureau of Prisons responsibility, and to former inmates for issues that arose during their confinement. This Program does not apply to inmates confined in other non-federal facilities.

(c) *Statutorily-mandated procedures.* There are statutorily-mandated procedures in place for tort claims (28 CFR part 543, subpart C), Inmate Accident Compensation claims (28 CFR part 301), and Freedom of Information Act or Privacy Act requests (28 CFR part 513, subpart D). If an inmate raises an issue in a request or appeal that cannot be resolved through the Administrative Remedy Program, the Bureau will refer the inmate to the appropriate statutorily-mandated procedures.

§ 542.12 [Removed and Reserved]

3. Remove and reserve § 542.12.

[FR Doc. 00–16120 Filed 6–26–00; 8:45 am]
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Federal Register

Tuesday,
June 27, 2000

Part VII

The President

Federal Register
Vol. 65, No. 124
Tuesday, June 27, 2000

Presidential Documents

Title 3—

The President

Proclamation 7324 of June 23, 2000

50th Anniversary of the Korean War and National Korean War Veterans Armistice Day, 2000

By the President of the United States of America

A Proclamation

Fifty years ago, on June 25, 1950, armed forces from North Korea shattered the peace in the Land of the Morning Calm as they crossed the 38th Parallel and launched an invasion of South Korea. The communist forces advanced rapidly and, at the outset, appeared close to easy victory. President Truman, recognizing the threat to our South Korean allies and their democracy, responded swiftly and decisively. Through the United Nations Security Council, he marshaled international opposition to the invasion and, on June 27, 1950, committed the first U.S. forces to combat in South Korea.

On some of the world's harshest terrain, through the scorching heat of summer and the numbing cold of winter, American troops fought with steely determination and uncommon courage. As they gained ground, pushing the North Koreans back toward the 38th parallel, American families began to hope that our troops would be home by Christmas. But in November, at the Yalu River in North Korean territory, American forces encountered a new and daunting antagonist: Chinese forces had joined their North Korean allies, and the tide of battle turned once again.

Through months of attack and counterattack, falling back and regaining ground, U.S. troops and our allies refused to succumb to enemy forces. The war dragged into a bloody stalemate and long, bitter talks ensued. Finally, negotiators signed an armistice agreement at Panmunjom on July 27, 1953. North Korea withdrew across the 38th parallel, and the Republic of South Korea regained its status as a free, democratic nation. For the first time in history, a world organization of nations had taken up arms to oppose aggression and, thanks largely to the valor, skill, and perseverance of almost 2,000,000 Americans, had succeeded.

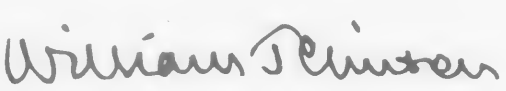
In later years, the Korean War would sometimes be called "the Forgotten War." But we have not forgotten. We pay honor to the courage of our veterans who fought in Korea and to the thousands who died there or whose fate is still unknown. We recall the grief of their families and the gratitude of the people of South Korea. We remember that, in the Korean War, our soldiers' brave stand against communism laid the foundations of peace and freedom that so many nations enjoy today.

Over the next 3-1/2 years, Americans will gather to observe the 50th anniversary of the Korean War and honor our veterans. The Secretary of Defense will help coordinate many of these events and will develop commemorative and educational materials to help inform the American public about our veterans' many contributions and sacrifices.

The Congress, by Public Law 106–195, has authorized and requested the President to issue a proclamation in observance of the 50th anniversary of the Korean War, and by Public Law 104–19 (36 U.S.C. 127), the Congress has designated July 27, 2000, as "National Korean War Veterans Armistice Day" and has authorized and requested the President to issue a proclamation in observance of that day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby urge all Americans to observe the 50th Anniversary of the Korean War and do hereby proclaim July 27, 2000, as National Korean War Veterans Armistice Day. I call upon all Americans to observe these periods with appropriate ceremonies and activities that honor and give thanks to our distinguished Korean War veterans. I also ask Federal departments and agencies and interested groups, organizations, and individuals to fly the flag of the United States at half-staff on July 27, 2000, in memory of the Americans who died as a result of their service in Korea.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of June, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.



[FR Doc. 00–16433
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Billing code 3195–01–P

Presidential Documents

Executive Order 13160 of June 23, 2000

Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Disability, Religion, Age, Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 921–932 of title 20, United States Code; section 2164 of title 10, United States Code; section 2001 *et seq.*, of title 25, United States Code; section 7301 of title 5, United States Code; and section 301 of title 3, United States Code, and to achieve equal opportunity in Federally conducted education and training programs and activities, it is hereby ordered as follows:

Section 1. *Statement of policy on education programs and activities conducted by executive departments and agencies.*

1–101. The Federal Government must hold itself to at least the same principles of nondiscrimination in educational opportunities as it applies to the education programs and activities of State and local governments, and to private institutions receiving Federal financial assistance. Existing laws and regulations prohibit certain forms of discrimination in Federally conducted education and training programs and activities—including discrimination against people with disabilities, prohibited by the Rehabilitation Act of 1973, 29 U.S.C. 701 *et seq.*, as amended, employment discrimination on the basis of race, color, national origin, sex, or religion, prohibited by Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-17, as amended, discrimination on the basis of race, color, national origin, or religion in educational programs receiving Federal assistance, under Title VI of the Civil Rights Acts of 1964, 42 U.S.C. 2000d, and sex-based discrimination in education programs receiving Federal assistance under Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.* Through this Executive Order, discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent will be prohibited in Federally conducted education and training programs and activities.

1–102. No individual, on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in, a Federally conducted education or training program or activity.

Sec. 2. *Definitions.*

2–201. "Federally conducted education and training programs and activities" includes programs and activities conducted, operated, or undertaken by an executive department or agency.

2–202. "Education and training programs and activities" include, but are not limited to, formal schools, extracurricular activities, academic programs, occupational training, scholarships and fellowships, student internships, training for industry members, summer enrichment camps, and teacher training programs.

2–203. The Attorney General is authorized to make a final determination as to whether a program falls within the scope of education and training

programs and activities covered by this order, under subsection 2–202, or is excluded from coverage, under section 3.

2–204. "Military education or training programs" are those education and training programs conducted by the Department of Defense or, where the Coast Guard is concerned, the Department of Transportation, for the primary purpose of educating or training members of the armed forces or meeting a statutory requirement to educate or train Federal, State, or local civilian law enforcement officials pursuant to 10 U.S.C. Chapter 18.

2–205. "Armed Forces" means the Armed Forces of the United States.

2–206. "Status as a parent" refers to the status of an individual who, with respect to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is:

(a) a biological parent;
(b) an adoptive parent;
(c) a foster parent;
(d) a stepparent;
(e) a custodian of a legal ward;
(f) in loco parentis over such an individual; or
(g) actively seeking legal custody or adoption of such an individual.

Sec. 3. *Exemption from coverage.*

3–301. This order does not apply to members of the armed forces, military education or training programs, or authorized intelligence activities. Members of the armed forces, including students at military academies, will continue to be covered by regulations that currently bar specified forms of discrimination that are now enforced by the Department of Defense and the individual service branches. The Department of Defense shall develop procedures to protect the rights of and to provide redress to civilians not otherwise protected by existing Federal law from discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent and who participate in military education or training programs or activities conducted by the Department of Defense.

3–302. This order does not apply to, affect, interfere with, or modify the operation of any otherwise lawful affirmative action plan or program.

3–303. An individual shall not be deemed subjected to discrimination by reason of his or her exclusion from the benefits of a program established consistent with federal law or limited by Federal law to individuals of a particular race, sex, color, disability, national origin, age, religion, sexual orientation, or status as a parent different from his or her own.

3–304. This order does not apply to ceremonial or similar education or training programs or activities of schools conducted by the Department of the Interior, Bureau of Indian Affairs, that are culturally relevant to the children represented in the school. "Culturally relevant" refers to any class, program, or activity that is fundamental to a tribe's culture, customs, traditions, heritage, or religion.

3–305. This order does not apply to (a) selections based on national origin of foreign nationals to participate in covered education or training programs, if such programs primarily concern national security or foreign policy matters; or (b) selections or other decisions regarding participation in covered education or training programs made by entities outside the executive branch. It shall be the policy of the executive branch that education or training programs or activities shall not be available to entities that select persons for participation in violation of Federal or State law.

3–306. The prohibition on discrimination on the basis of age provided in this order does not apply to age-based admissions of participants to education or training programs, if such programs have traditionally been age-specific or must be age- limited for reasons related to health or national security.

Sec. 4. *Administrative enforcement.*

4–401. Any person who believes himself or herself to be aggrieved by a violation of this order or its implementing regulations, rules, policies, or guidance may, personally or through a representative, file a written complaint with the agency that such person believes is in violation of this order or its implementing regulations, rules, policies, or guidance. Pursuant to procedures to be established by the Attorney General, each executive department or agency shall conduct an investigation of any complaint by one of its employees alleging a violation of this Executive Order.

4–402. (a) If the office within an executive department or agency that is designated to investigate complaints for violations of this order or its implementing rules, regulations, policies, or guidance concludes that an employee has not complied with this order or any of its implementing rules, regulations, policies, or guidance, such office shall complete a report and refer a copy of the report and any relevant findings or supporting evidence to an appropriate agency official. The appropriate agency official shall review such material and determine what, if any, disciplinary action is appropriate.

(b) In addition, the designated investigating office may provide appropriate agency officials with a recommendation for any corrective and/or remedial action. The appropriate officials shall consider such recommendation and implement corrective and/or remedial action by the agency, when appropriate. Nothing in this order authorizes monetary relief to the complainant as a form of remedial or corrective action by an executive department or agency.

4–403. Any action to discipline an employee who violates this order or its implementing rules, regulations, policies, or guidance, including removal from employment, where appropriate, shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act of 1978, Public Law No. 95–454, 92 Stat. 1111.

Sec. 5. *Implementation and Agency Responsibilities.*

5–501. The Attorney General shall publish in the **Federal Register** such rules, regulations, policies, or guidance, as the Attorney General deems appropriate, to be followed by all executive departments and agencies. The Attorney General shall address:

a. which programs and activities fall within the scope of education and training programs and activities covered by this order, under subsection 2–202, or excluded from coverage, under section 3 of this order;
b. examples of discriminatory conduct;
c. applicable legal principles;
d. enforcement procedures with respect to complaints against employees;
e. remedies;
f. requirements for agency annual and tri-annual reports as set forth in section 6 of this order; and
g. such other matters as deemed appropriate.

5–502. Within 90 days of the publication of final rules, regulations, policies, or guidance by the Attorney General, each executive department and agency shall establish a procedure to receive and address complaints regarding its Federally conducted education and training programs and activities. Each executive department and agency shall take all necessary steps to effectuate any subsequent rules, regulations, policies, or guidance issued by the Attorney General within 90 days of issuance.

5–503. The head of each executive department and agency shall be responsible for ensuring compliance within this order.

5–504. Each executive department and agency shall cooperate with the Attorney General and provide such information and assistance as the Attorney General may require in the performance of the Attorney General's functions under this order.

5–505. Upon request and to the extent practicable, the Attorney General shall provide technical advice and assistance to executive departments and agencies to assist in full compliance with this order.

Sec. 6. *Reporting Requirements.*

6–601. Consistent with the regulations, rules, policies, or guidance issued by the Attorney General, each executive department and agency shall submit to the Attorney General a report that summarizes the number and nature of complaints filed with the agency and the disposition of such complaints. For the first 3 years after the date of this order, such reports shall be submitted annually within 90 days of the end of the preceding year's activities. Subsequent reports shall be submitted every 3 years and within 90 days of the end of each 3-year period.

Sec. 7. *General Provisions.*

7–701. Nothing in this order shall limit the authority of the Attorney General to provide for the coordinated enforcement of nondiscrimination requirements in Federal assistance programs under Executive Order 12250.

Sec. 8. *Judicial Review.*

8–801. This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This order is not intended, however, to preclude judicial review of final decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701, *et seq.*

William J. Clinton

THE WHITE HOUSE,
June 23, 2000.

[FR Doc. 00–16434
Filed 6–26–00; 12:47 pm]
Billing code 3195–01–P

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 1953/P.L. 106–216
To authorize leases for terms not to exceed 99 years on land held in trust for the Torres Martinez Desert Cahuilla Indians and the Guidiville Band of Pomo Indians of the Guidiville Indian Rancheria. (June 20, 2000; 114 Stat. 343)

H.R. 2484/P.L. 106–217
To provide that land which is owned by the Lower Sioux Indian Community in the State of Minnesota but which is not held in trust by the United States for the Community may be leased or transferred by the Community without further approval by the United States. (June 20, 2000; 114 Stat. 344)

H.R. 3639/P.L. 106–218
To designate the Federal building located at 2201 C Street, Northwest, in the District of Columbia, currently headquarters for the Department of State, as the "Harry S Truman Federal Building". (June 20, 2000; 114 Stat. 345)

H.R. 4542/P.L. 106–219
To designate the Washington Opera in Washington, D.C., as the National Opera. (June 20, 2000; 114 Stat. 346)

S. 291/P.L. 106–220
Carlsbad Irrigation Project Acquired Land Transfer Act (June 20, 2000; 114 Stat. 347)

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S. 777/P.L. 106–222
Freedom to E-File Act (June 20, 2000; 114 Stat. 353)

S. 2722/P.L. 106–223

To authorize the award of the Medal of Honor to Ed W. Freeman, James K. Okubo, and Andrew J. Smith. (June 20, 2000; 114 Stat. 356)

H.R. 2559/P.L. 106–224

Agricultural Risk Protection Act of 2000 (June 20, 2000; 114 Stat. 358)

H.R. 3642/P.L. 106–225

To authorize the President to award posthumously a gold medal on behalf of the Congress to Charles M. Schulz in recognition of his lasting artistic contributions to the Nation and the world, and for other purposes. (June 20, 2000; 114 Stat. 457)

Last List June 19, 2000

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