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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG36

List of Approved Spent Fuel Storage Casks: PSNA VSC–24 Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to revise the Pacific Sierra Nuclear Associates (PSNA) VSC–24 cask system listing within the "List of approved spent fuel storage casks" to include Amendment No. 1 to the Certificate of Compliance. Amendment No. 1 will modify the present cask system design to permit a licensee to store burnable poison rod assemblies in the VSC–24 cask system with the spent fuel under a general license.

EFFECTIVE DATE: This final rule is effective on May 30, 2000.

FOR FURTHER INFORMATION CONTACT: Richard Milstein, telephone (301) 415–8149, e-mail rim@nrc.gov, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that "[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, that "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR part 72 entitled "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181, July 18, 1990). This rule also established a new Subpart L within 10 CFR part 72, entitled "Approval of Spent Fuel Storage Casks," containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on April 7, 1993 (58 FR 17948) that approved the VSC–24 design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance Number (CoC No.) 1007.

Discussion

On December 30, 1998, the certificate holder (PSNA) submitted an application to the NRC to amend CoC No. 1007 to permit a Part 72 licensee to store burnable poison rod assemblies (BPRAs) with Babcock & Wilcox (B&W) 15×15 spent fuel assemblies in the VSC–24 system. A BPRA is a reactor core component that is inserted inside a fuel assembly during core refueling. BPRAs provide a means of controlling reactor power distribution and do not contain fissile material. No other changes to the VSC–24 system design were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that the addition of the BPRAs to the B&W 15×15 fuel does not reduce the VSC–24 safety margin. In addition, the NRC staff has determined that the storage of BPRAs in the VSC–24 does not pose any increased risk to public health and safety.

This final rule revises the VSC–24 design listing in § 72.214 by adding Amendment No. 1 to CoC No. 1007. The amendment consists of changes to the Technical Specifications (TS) for the VSC–24 design that will permit a Part 72 licensee to store BPRAs with B&W 15×15 spent fuel assemblies in a VSC–24 system. The particular TS that are changed are identified in the NRC staff's Safety Evaluation Report (SER) for Amendment No. 1.

The title of the safety analysis report (SAR) will be changed from "Safety Analysis Report for the Ventilated Storage Cask System" to "Final Safety Analysis Report for the Ventilated Storage Cask System." This action is being taken to ensure that the SAR title is consistent with the approach taken in new § 72.248, recently approved by the Commission (64 FR 53582; October 4, 1999). Additionally, other minor, nontechnical, changes have been made to CoC No. 1007 to ensure consistency with the NRC's new standard format and content for CoCs.

The NRC finds that the amended PSNA VSC–24 system, as designed and when fabricated and used under the conditions specified in the CoC, meets the requirements of Part 72, Subpart L. Thus, use of the PSNA VSC–24 system, as approved by the NRC, will continue to provide adequate protection of public health and safety and the environment. With this final rule, the NRC is approving the use of Amendment No. 1 to the PSNA VSC–24 system under the general license provisions in 10 CFR part 72, subpart K [holders of power reactor operating licenses under 10 CFR part 50]. Simultaneously, the NRC is issuing a final SER and CoC that will be effective on May 30, 2000. Single copies of the CoC and SER are available for public inspection and/or copying for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20003–1527.

Summary of Public Comments on the Proposed Rule

The NRC received one comment letter on the proposed rule from a member of the public. A copy of the comment letter is available for review in the NRC Public Document Room. The NRC's response to the issues raised by the commenter are discussed below.

As stated in the proposed rule (64 FR 51270), the NRC considered this rulemaking to add Amendment No. 1 to the VSC–24 system design to 10 CFR 72.214 to be a noncontroversial and routine action. Therefore, the NRC published a direct final rule concurrent with the proposed rule. The NRC indicated that if it received a

"significant adverse comment" on the proposed rule, the NRC would publish a notice withdrawing the direct final rule and subsequently publish a final rule that addressed comments made on the proposed rule. The NRC believes that at least one of the issues raised by the commenter was a "significant adverse comment." Therefore, the NRC published a notice withdrawing the direct final rule (64 FR 72019; December 23, 1999). This subsequent final rule addresses the issues raised by the commenter that were within the scope of the proposed rule, including the issue that was determined to be a "significant adverse comment."

Comments on Amendment No. 1 to the VSC–24 System

The comments and responses have been grouped into five subject areas: general, weight considerations, radiation protection, design, and miscellaneous issues. The commenter provided specific comments on the draft CoC, the NRC staff's preliminary SER, and the TS. To the extent possible, all of the comments on a particular subject are grouped together. The listing of the VSC–24 system within 10 CFR 72.214, "List of approved spent fuel storage casks," has not been changed as a result of the public comments. A minor correction to the CoC was made in response to one of the comments, but no changes were made to the TS or SER. A review of the comments and the NRC staff's responses follow:

A. General

Comment A.1: The commenter stated that the proposed action should be called an "amendment" rather than a "revision" of the List of Approved Spent Fuel Storage Casks.

Response: The NRC disagrees with the comment. The NRC is issuing Amendment No. 1 to CoC No. 1007 to allow for the storage of BPRAs in the VSC–24 system; therefore, changes are required to both the CoC and the TS. Because each approved Part 72 CoC is listed under 10 CFR 72.214, the NRC is also required to revise the language in § 72.214 to reflect the approval and applicability of Amendment No. 1. Therefore, to promote clarity the NRC is using both the term "amendment to CoC No. 1007" and "revision to § 72.214" in this rule.

Comment A.2: The commenter stated that the **Federal Register** should not call the action a "Direct Final Rule." Streamlining the rulemaking process in this manner de-emphasizes safety concerns. The commenter also disagreed with NRC's characterization of the amendment as being "noncontroversial and routine" because this is the first amendment to a dry cask generic CoC and it raised many concerns.

Response: The NRC believed no new technical issues would arise from the storage of BPRAs coincident with spent fuel, because: (1) BPRAs are safely used within spent fuel in a reactor; (2) operating conditions inside a reactor are harsher than storage conditions inside a VSC–24 system; and (3) the NRC has previously reviewed the technical issues associated with the operation and storage of BPRAs in dry casks. Additionally, the proposed rule to amend the VSC–24 design was not the first amendment to a Part 72 cask design. A proposed rule to amend the Transnuclear West cask design (CoC No. 1004) was published in the **Federal Register** before this proposed rule was published (see 64 FR 41050; July 29, 1999). Consequently, the NRC considered the storage of BPRAs with spent fuel to be a noncontroversial and routine action. The NRC continues to believe that the use of the direct final rule process was appropriate. Furthermore, the NRC also believes that the public's opportunity to comment on the proposed amendment to the VSC–24 design was not adversely impacted by the use of the direct final rule process. The withdrawal of the direct final rule—in response to receipt of a significant adverse comment—and publication of this final rule containing responses to all public comments demonstrate the NRC's commitment to provide the public the opportunity to comment on direct final rules.

Comment A.3: The commenter objected ". . . to use of new Sec. 72.48 as it muddies the waters as to all change processes and just adds confusion as to how to keep documents current and to who is supposed to do what and be liable for what."

Response: This comment on the revised § 72.48 is beyond the scope of this rule which is focused solely on whether to amend the VSC–24 cask design. The revision to § 72.48 was addressed in a separate rulemaking (64 FR 53582; October 4, 1999).

Comment A.4: The commenter asked for the regulatory justification for allowing the amendment of a CoC and renaming the SAR to FSAR (Final SAR). The commenter also asked why the VSC–24 CoC was not amended to include a process for making amendments. The commenter questioned why the "effective date" of the initial certificate was not included in the CoC "to begin with" which would have precluded the need to amend the CoC. The commenter questioned whether the VSC–24 has received "special treatment" since other CoCs (*e.g.*, NUHOMS CoC Condition 9) have to be changed. The commenter stated that the SAR should not be renamed an FSAR because it is not a "final" document if changes are continually allowed. The commenter further noted that the language in the CoC does not refer to the "final" SAR, nor does it contain the date or revision number of the SAR. This is inconsistent with NRC's objective to change the SAR to an FSAR.

Response: As stated in the proposed rule, the authority to approve a CoC for a spent fuel storage cask design is contained in Sections 218(a) and 133 of the NWPA. Inherent with the NRC's authority under the NWPA to approve a spent fuel storage cask design is the authority to amend a previously approved cask design. The NRC regulations on amending a Part 72 cask design are contained in §§ 72.244 and 72.246 (see 64 FR 53582). With respect to the comment to add language to the CoC to include a process for amending the cask design, this is unnecessary because of the regulations contained in §§ 72.244 and 72.246. Furthermore, Condition No. 9 of CoC No. 1004 for the NUHOMS–24P and –52B cask design is intended to allow that certificate holder to make minor changes to the cask design without obtaining prior NRC approval. It was not intended to define a process for submitting an amendment to the certificate. Furthermore, this provision is not necessary for the VSC–24 CoC because the recent change to § 72.48 included certificate holders.

The NRC has not previously added the effective date for a CoC to the list contained in § 72.214 because the NRC believed the public and industry had adequate information on the effective date for a new CoC in the **Federal Register** notice that published the final rule [approving a specific cask design]. However, with the issuance of amendments, the NRC determined that it is necessary to identify the effective date of a CoC amendment because the CoC amendment may require certain changes, or may not permit certain actions, for casks that were put in service before the effective date of the amendment. The use of an effective date in § 72.214 for both the amendment and the original CoC will improve clarity and ensure that both the industry and public understand the standard to which a specific cask has been manufactured or loaded. For example, an amendment to a hypothetical cask design that changes a material specification or a welding detail in a fuel support basket would not automatically be applied to casks that

have been already fabricated, loaded with spent fuel, and sealed because this would impose an unreasonable burden on the licensees who are using the cask. For the VSC–24 design, the effective date of the amendment is listed in this notice. A licensee can not use a VSC–24 cask under the Part 72 general license to store BPRAs before the effective date of Amendment No. 1.

The NRC recently added a new regulation in § 72.248 on the submission and updating of the FSAR for each approved cask design (see 64 FR 53582). Consequently, the term FSAR is used in both § 72.214 and the CoC to ensure consistency with the language contained in § 72.248. The NRC agrees with the commenter that the word "Final" was inadvertently omitted from the proposed CoC. However, the proposed rule text did include the term "final safety analysis report." Therefore, the final CoC has been corrected to include the term "Final Safety Analysis Report."

The date of the FSAR and the revision number will be included in the document itself, as required by § 72.248. However, the FSAR revision number and date of issuance will not be included in the CoC because § 72.248 requires the certificate holder to update the FSAR every two years. Therefore, the NRC has chosen to omit this information from the CoC to prevent confusion between the rule language and the current FSAR. The NRC also notes that the certificate holder is required by § 72.248 to submit an updated "FSAR" within 90 days of the issuance of this amendment to reflect any changes made to the CoC or TS. For this certificate holder, this process will convert the current SAR into an FSAR.

Comment A.5: The commenter stated that the original rulemaking [approving the VSC–24 design] should have addressed the changes since the desire for these changes (*e.g.*, inclusion of BPRAs) were well known at the time. However, there was a "big push" allowed by the NRC to get the VSC–24 certified "as is," so this action was not taken.

Response: The specific design features of the VSC–24 system are within the purview of the applicant. The NRC's review of a cask design is intended to ensure that the submitted cask design provides reasonable assurance that public health and safety and the environment will be protected. As such, the NRC's review is limited to the cask design submitted by the applicant and does not consider potential future optional features or different designs. Rather, changes to the design (*e.g.*, to store BPRAs) are considered by the NRC in subsequent amendments to the cask design, if and when they are submitted by the certificate holder.

Comment A.6: The commenter noted that the casks used at Palisades were built "by exemption" before the design was certified.

Response: Comments on previously built VSC–24 casks [*e.g.*, those used at the Palisades Nuclear Power Plant] that do not identify any issues relative to the storage of BPRAs are beyond the scope of the proposed rule.

Comment A.7: The commenter has favored the action the NRC is now taking, *i.e.*, to ensure that changes to the cask design be reflected in the various documents including the CoC.

Response: No response necessary.

Comment A.8: The commenter urged the NRC staff to think creatively about different problems including the effects of added weight and added dose. The NRC staff should also "visualize" the potential for accidents by considering the entire process, from removal of BPRAs to their storage in Yucca Mountain.

Response: The NRC staff has evaluated the storage of BPRAs within B&W 15×15 Mark B fuel assemblies for storage in the VSC–24 system, including added weight and dose, and found it acceptable. Unloading of fuel containing BPRAs is not expected to be any more challenging than unloading of fuel without BPRAs. Use of the VSC–24 at Yucca Mountain is beyond the scope of this rule.

Comment A.9: The commenter disagreed with the assertion that it will cost utilities more time and money to pursue exemptions to permit storage of BPRAs. In the long run, these site-specific actions will be more effective than "one big generic exemption" because they will result in fewer inspections and enforcements.

Response: The NRC disagrees with the comment. NRC regulates licensees by compliance with the Federal regulations rather than exemptions to the regulations. Multiple exemption requests for the same issue are a cost and resource burden to both NRC and licensees. In this case, since multiple licensees are expected to request storage of BPRAs, this provision is more effectively addressed by rulemaking to amend the CoC and TS.

Comment A.10: The commenter recommended that the utilities should remove the BPRAs and dispose of them in separate containers as low level waste. Using [spent fuel storage] casks to dispose of BPRAs is a waste of cask space and repository space that should be used for high level waste.

Response: The NRC disagrees with the comment. BPRAs are reactor core components that are inserted into fuel assemblies during core refueling. A BPRA is physically located within a fuel assembly; therefore, no additional space is required to store or dispose of a spent fuel assembly with a BPRA also stored within the spent fuel assembly. Thus the presence of BPRAs will not affect the number of spent fuel assemblies that can be stored in a spent fuel storage cask.

Comment A.11: The commenter asked why no other agencies (e.g., DOE, NWTRB) were apparently contacted regarding the environmental assessment. Further, the commenter is concerned about the potential cumulative effect on the environment of many "insignificant" incremental changes.

Response: The agencies mentioned by the commenter are notified of the proposed rule in the same manner as the public. Therefore, the NRC did not believe it was necessary to specifically solicit their input. Furthermore, the Environmental Assessment covering the proposed rule, as well as the Finding of No Significant Impact, prepared and published for this rulemaking, fully comply with NRC's environmental regulations in 10 CFR part 51. The Commission's environmental regulations in Part 51 implement the National Environmental Policy Act and are consistent with the guidelines of the Council on Environmental Quality.

Comment A.12: The commenter questioned if the use of Regulatory Guide 3.61 is appropriate for this amendment request since both the CoC and the SAR are being amended. Also, the commenter questioned the designation of LAR 98–01 [License Amendment Request] as a "supplemental document," and asks for whom (SNC, ANO) it is supplemental. The commenter also asked how NRC will assure that LAR 98–01 will be considered with Rev.0 of the SAR.

Response: Regulatory Guide 3.61, "Standard Format and Content for a Topical Safety Analysis Report for a Spent Fuel Dry Storage Cask" is incorporated into NUREG–1536, "Standard Review Plan for Dry Cask Storage Systems." The NRC staff used the guidance in NUREG–1536 for this amendment. LAR 98–01 was referred to as a supplemental document in the SER because it must be considered with information provided in Revision 0 of the SAR. Revision 0 of the SAR will be revised to incorporate the information in LAR 98–01 in the FSAR submitted by the applicant upon completion of this rulemaking.

Comment A.13: The commenter disagreed that unloading procedures

should "be left up to licensees to do after the casks are certified." These procedures should be put in the PDR because they are of great interest and concern to the public. The commenter is specifically concerned about changes needed in the unloading procedures to address BPRAs.

Response: The NRC disagrees with the comment. NRC reviews a licensee's programs for compliance with the regulations by inspecting the adequacy and implementation of licensee procedures. Licensees are not required to submit implementing procedures to NRC on the public docket. Each licensee is required to review the adequacy of its procedures as a result of changes to the cask design or operational parameters. Further, BPRAs are integral to the fuel assembly and few, if any, changes should be needed in the unloading procedures.

Comment A.14: The commenter generally criticized industry's (Nuclear Energy Institute and the plants) waste management policy. Industry is interested in moving the waste into casks as fast as possible and shipping it to Nevada for disposal. The commenter expressed concern about the amounts of waste that are being generated, the potential need for more repositories, and the lack of sound science to justify the storage and disposal of waste.

Response: These comments are beyond the scope of this rule, which is focused solely on whether to amend the VSC–24 cask design.

Comment A.15: The commenter stated that the NRC should always look out for workers and the public because it is NRC's job.

Response: The NRC agrees with the comment. The NRC's highest priority is to protect the health and safety of both the public and workers at nuclear facilities.

Comment A.16: The commenter was sympathetic with the NRC staff which has had to deal with problems caused by licensees, vendors, and subcontractors.

Response: No response necessary.

Comment A.17: The commenter stated that vendors are not responsible enough in QA procedures and that licensees should be responsible.

Response: The NRC staff disagrees with the comment. The CoC holder is required to have and implement a Quality Assurance (QA) program approved by the NRC as part of the CoC issuance process. This QA program must meet the requirements of 10 CFR part 72, subpart G for cask design and fabrication activities. The cask user is ultimately responsible for ensuring that the fabricator's QA programs comply with 10 CFR part 72, subpart G. NRC inspects licensee performance and takes enforcement actions as appropriate.

B. Weight Considerations

Comment B.1: The commenter stated that the added weight from the BPRAs poses a big concern and should not be allowed.

Response: The NRC disagrees with the comment. The overall weight of the Multi-Assembly Sealed Basket (MSB), Ventilated Concrete Cask (VCC), and MSB Transfer Cask (MTC) with the BPRAs included remains below the weight discussed in the SAR. Revision 0 of the SAR specifies the maximum design weight of the MSB as 118,630 lbs. The weight of the MSB with BPRAs is 6130 pounds less than this maximum weight.

Comment B.2: The commenter stated that the safety margin is being reduced because the [VCC maximum] 80-inch lift height is being reduced to 60 inches. This reduction (due to increased stress in vertical drop) will be difficult to enforce and will create confusion and future problems.

Response: The NRC disagrees with the comment. The maximum lifting height of the VCC outside of the spent fuel pool building was reduced from 80 to 60 inches because all supporting calculations in the SAR were based on a 60-inch drop height. Consequently, previous use of an 80-inch drop height was inappropriate. Therefore, this reduction in the administratively controlled lift height will effectively increase the safety margin since the maximum lift height will now be lower.

Comment B.3: The commenter asked whether the additional 60 lbs. more weight per assembly means that there will be an additional $24 \times 60 = 1440$ lbs. per cask, which seems like a significant increment. The commenter further asked if this additional weight would have an effect on the pad, the loading area floor, the pool liner, transporter, sling, etc.

Response: The addition of a BPRA to a B&W Mark B 15X15 fuel assembly increases the weight of the fuel assembly from 1516 lbs. to 1576 lbs. For a cask fully loaded with 24 fuel assemblies containing BPRAs, the cask weight would increase by 1440 lbs., approximately 4 percent of the cask weight. This increase in weight was found by the NRC to be acceptable for complying with the normal use and accident conditions evaluated under the provisions of Part 72. Furthermore, each licensee using a VSC–24 cask is required by §§ 50.59, 72.48, and 72.212 to evaluate whether the additional weight of a cask will have an unacceptable adverse effect on structures, systems, or components, such as the ISFSI pad, the loading floor area, or the pool liner. The cask cannot be used if the licensee identifies an unacceptable adverse impact. [See also response to Comment No. B.1.]

Comment B.4: The commenter stated that the proposed amendment reduces the VSC–24 safety margin and increases the risk to public and worker health and safety. The doses are larger, stresses are more, drop height is reduced, shielding on MTC is reduced, and weight is increased.

Response: The NRC disagrees in part with the comment. The reduction in drop height for a loaded VCC increases the safety margin by ensuring that the VCC is not able to fall through more than 60 inches (rather than 80 inches) in the vertical orientation. Although the stresses associated with a vertical drop of the VCC increase 6 percent, these stresses comply with the ASME Code limits. Regarding the MTC, the shielding in the bottom doors of the MTC was reduced to compensate for the increased weight of the loaded MSB. The MTC weight reduction was required to maintain the lift load within a predetermined crane lift load capacity. Issues related to increased dose are discussed in response to Comment No. C.4.

C. Radiation Protection

Comment C.1: The commenter stated that it is not acceptable to have an increase of 7.5 percent in offsite and direct skyshine dose rate to the public, even if the resulting doses are within the limits. The commenter questioned if the combined dose from "a full cask array" or "several full cask arrays" would be acceptable to the public or to workers. For workers, in particular, the NRC needs to take into account the future cumulative effect of years of worker exposure resulting from inspections of the casks. The commenter disagreed that the projected 13 percent increase in "potential cask dose rates" does not constitute an increased risk to health and safety. The commenter noted that the highest projected dose is at "top center" of the cask, and would like to know, since dosimeters are not located there, what the real dose would be (from a full cask array right above the casks on the pad) for a surveillance worker who needs to check outlets at the top of the casks.

Response: The NRC disagrees with the comment. The increase in offsite dose at 1500 feet from an array of 68 VSC–24 casks with 5-year cooled spent fuel represents a conservative bounding estimate of the effect of BPRAs on offsite

doses. The actual offsite dose to the public from an Independent Spent Fuel Storage Installation (ISFSI) is affected by many factors, including the number of casks, specific placement of fuel assemblies within each cask, cask positioning, if the fuel is cooled beyond 5 years, and the presence of natural shielding features such as earthen berms and buildings that are not credited in design safety offsite dose calculations. Each ISFSI licensee is required to demonstrate that offsite public annual whole body doses remain below the § 72.104 limit of 25 mrem/year.

The NRC determined that the addition of BPRAs will result in an increase of approximately 7.5 percent in the calculated offsite direct and skyshine dose rate to the public as calculated and presented in Revision 0 of the SAR. The potential annual dose to the public at 1500 feet from an array of 68 VSC–24s loaded with 5-year cooled spent nuclear fuel would increase from 0.039 mSv/year to 0.042 mSv/year (3.9 mrem/year to 4.2 mrem/year), which remains well below the 0.25 mSv/year (25 mrem/year) limit in § 72.104. The estimated annual occupational exposure for routine activities such as visual surveillance of cask air inlets/outlets and radiation protection surveys on a cask filled to design capacity would be $7 \times 10 - 6$ person-Sv/year/cask (0.0007 person-rem/year/cask.) Based on these expected occupational activities, the NRC has reasonable assurance that individual exposures will be below the annual occupational limit of 0.05 Sv (5 rem) specified in § 20.1201.

Comment C.2: The commenter is concerned about where the dosimeters are placed in relation to the height of the casks. They should be placed at the "top height" where the dose is expected to be the highest. If the dosimeters are not placed in this position, the commenter would like an explanation.

Response: ISFSI licensees are required by § 72.104(a) to ensure that dose rates do not exceed 0.25 mSv/year (25 mrem/year) at the controlled area boundary. ISFSI licensees typically place radiation monitoring devices (dosimeters) at various locations around the ISFSI perimeter fence at approximately the chest height of an average worker standing at the ISFSI perimeter fence. This dosimetry is used to monitor the actual dose from the ISFSI and to determine the dose at the controlled area boundary. A dosimeter placed at the top of a cask would not provide useful information for the determination of dose to a member of the public or a worker. A worker that is within the ISFSI perimeter fence and performing an activity at the top of a cask would be subject to the licensees' 10 CFR part 20 Radiation Protection Program requirements, including controls to limit exposure and the placement (i.e., wearing) of personal dosimetry. [See also response to Comment No. C.1.]

Comment C.3: The commenter questioned why the maximum increase of cask dose rate is evaluated at the air inlets rather than at the outlets and top of the cask where the highest dose rate is expected. Also, the commenter asked about the increase in reflected radiation "from cask to cask in full cask array," and if it is still correct to assume a center-to-center distance of 15 ft.

Response: The maximum dose rate due to the inclusion of B&W 15x15 BPRAs in the VSC–24 was calculated for all locations on and around the VSC–24 storage cask, including the air outlets and the top of the cask. Although the dose rates also increased at the air outlets and top of the cask, the SER specifically delineated the increase in dose rate at the air inlets because this was the largest percent increase and is a significant contributor to worker doses during required daily air inlet/outlet surveillance of the VSC–24. The NRC determined that the increase in reflected radiation from cask-to-cask in a full 68 cask array was insignificant and that the existing center-to-center cask distance of 15 feet was acceptable.

Comment C.4: The commenter stated that to accommodate the added weight, changes have been made that reduce the safety margin and are inconsistent with ALARA. In particular, by reducing the MTC shielding, the potential occupational dose rate increases from 300 to 1932 mrem per hour. This should not be allowed because of the impact on workers. The commenter also questioned NRC's statement that workers are "not expected" to be in the area where they could receive an occupational dose of 1932 mrem/hr.

Response: The NRC disagrees in part with the comment. Although there is some increase in the potential dose to workers, the likelihood of such an exposure is very low. Operations for loading the MSB. placing it into the MTC, and loading the MSB into the VCC from the MTC do not involve the presence of workers in or around the bottom of the MTC. Under the requirements for movement of heavy loads such as the MTC, personnel are prohibited from the area directly below the load when it is lifted or being moved. ALARA ("as low as reasonably achievable") practices implemented by licensees include sound radiation protection principles and procedures for monitoring actual dose rates, using additional temporary shielding (when appropriate), and restricting the location and time of workers in various radiation fields to minimize doses.

Comment C.5: The commenter asked how BPRAs in the cask and worker dose are affected by the fact that drain down is necessitated before UT [ultrasonic testing] of structural welds is finished.

Response: Drain down of the cask has no effect on the BPRAs. [See also Comment No. D.4.] The issue of the effect of drain down on worker dose during the performance of UT on a structured weld is beyond the scope of the proposed rule.

D. Materials

Comment D.1: The commenter stated that a big concern is materials' interactions. Consequently, it is important to know what materials are present in the BPRAs and what interactions (chemical and physical) they could have with the materials in a VSC–24. In particular, the commenter would like to know what coating will be used in the sleeves holding the BPRA assemblies, the proximity of the coating to the materials in the BPRA, and the dimensions and density of the BPRA material versus regular fuel rods. The commenter asked for a full description of all the materials that comprise a BPRA because such a description does not exist in the documentation reviewed.

Response: BPRAs are composed of stainless steel hardware supporting sealed zircalloy rods containing aluminum oxide and boron carbide pellets. During normal nuclear power plant operation, some spent fuel assemblies operate with BPRAs inserted into their usually empty guide tubes. There are no coatings used in the zircalloy guide tubes of the B&W Mark B 15x15 fuel assemblies that would interact with the BPRA. No adverse interactions between the materials in a BPRA and the VSC–24 are expected. Description of a fuel assembly and a BPRA, including relevant dimensions, is contained within the SAR and its reference documents. These documents are available in the PDR.

Comment D.2: The commenter questioned if "all reactor BPRAs" are the same (materials, size, weight, susceptibility to corrosion, cracks, pinhole leaks, etc.) and if they should be treated genericlly. Further, the commenter asked what criteria (*i.e.*, TS) have been established for determining which BPRAs are to be allowed in the cask. This is based on concern over the storage of BPRAs that might be produced in the future. The commenter objected to the decision to accept BPRAs with cladding failures because of

concerns over depressurization including deterioration, collapse and "getting stuck," crumbling and clogging of spaces in other sleeves, reactions of decayed BPRAs with other cask materials (coatings).

Response: The only BPRAs approved for storage under this rulemaking are those to be stored in B&W Mark B 15x15 fuel assemblies. BPRAs with cladding failures were analyzed and determined to be acceptable for loading in the VSC–24. A failed BPRA loaded in the VSC–24 would be depressurized and actually present a lower MSB accident pressure than that of an intact BPRA. Any release from a failed BPRA would not have an adverse effect on the internals of the MSB or the fuel assemblies stored in the MSB. [See also Comment Nos. D.1 and D.3.]

Comment D.3: The commenter expressed concern about the possibility of leaks from a BPRA that is inserted inside a fuel assembly. Since BPRAs cannot be observed, the commenter wondered how leaks can be detected, how they react to vacuum drying of fuel rods, and if retainment of water (causing added weight and possible corrosion) could be a problem.

Response: The NRC evaluated the postulated accident assuming all 24 BPRAs in a VSC–24 MSB failed. This analysis showed that the maximum MSB pressure due to the simultaneous failure of all 24 BPRAs and all 24 stored spent nuclear fuel assemblies resulted in MSB stresses that remained below the American Society of Mechanical Engineers (ASME) Code allowable values and therefore, would not affect the MSB confinement boundary. A failed BPRA would release helium gas, which is already present, to the MSB internals. A BPRA would not present more problems in vacuum drying the MSB than the spent fuel assembly itself.

Comment D.4: The commenter asked how BPRAs change as they "dry out" and questioned whether any tests have been conducted regarding this issue. For example, could the materials lose their structural integrity which would cause a problem in unloading or shipping. This could be compounded by the effects of heat, radiation, and chemical reactions (e.g. with "pool water chemicals").

Response: Vacuum drying will not reduce the structural integrity of a BPRA. The BPRA will continue to maintain the same structural integrity as the fuel assembly in which it is secured.

Comment D.5: The commenter recommended that the next amendment should prohibit the use of "flammable plastic tube" and "duct tape" to prevent the release of hydrogen. In addition, the commenter recommended additional criteria that requires coatings that do not create hydrogen and stipulated the use of stainless steel. The commenter questioned how BPRAs could be affected by hydrogen generation.

Response: Comments on future amendments are beyond the scope of the proposed rule. [See Comment No. D.1 on material composition of BPRAs.] Regarding the question of hydrogen generation, the NRC staff determined that the potential presence of hydrogen gas during VSC–24 loading activities has an insignificant effect on the BPRAs.

Comment D.6: The commenter recommended the use of the term "carbon steel," rather than "steel" when it is appropriate.

Response: If there were different types of steel used in the VSC–24 design, the NRC would agree with the comment. The NRC typically specifies the variety or grade of a steel when presenting information if there is a potential for misunderstanding. However, all of the steel used in the VSC–24 design is of the carbon steel variety. [See also Comment No. D.1.]

E. Design

Comment E.1: The commenter stated that the amendment should be a site-specific design request and technical evaluation from Entergy for the Arkansas Nuclear One (ANO) ISFSI instead of a generic amendment. The commenter further stated that Entergy should be liable and responsible for future problems, but that apparently BNF [British Nuclear Fuel Limited] wants to be responsible. Although the NWPA calls for approval of generic cask designs "to the maximum extent practicable," the commenter believes the current action "calls for site-specific approval at each plant and is not practicable to be a generic amendment" "A generic cask CoC should not have to be amended to suit the site specific need of one licensee." In particular, the commenter is critical of the actions of ANO with respect to their use of the change process in § 72.48, and stated that ANO should have gotten [applied for] a site specific license "right from the beginning."

Response: The NRC does not agree that a site-specific approval is needed to store BPRAs in the VSC–24 cask design. The VSC–24 cask design was approved in a final rule (58 FR 17948; April 7, 1993) under the NRC's Part 72 regulations that implement Sections 218(a) and 133 of the NWPA. Section 218(a) directed the NRC to approve one or more spent fuel dry storage technologies for use at civilian nuclear power reactors "without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Therefore, the NRC believes that the VSC–24 cask design, and any amendments to the cask design (i.e., storage of BPRAs), may be used by all Part 72 general licensees without obtaining an additional NRC site-specific approval. [See also response to Comment No. A.5.]

The NRC understands that ANO is expected to be the first Part 72 general licensee to utilize the provisions of Amendment No. 1 to store BPRAs in a VSC–24 cask. However, irrespective of which Part 72 general licensees may wish to use this provision to store BPRAs, the certificate holder is ultimately responsible for the cask design and for submitting any applications to amend the cask design. In submitting such an application, the certificate holder must demonstrate to the NRC's satisfaction that the proposed amendment will not adversely affect public health and safety and the environment.

Comment E.2: The commenter questioned how the length of the B&W 15x15 assemblies fit in with BPRAs. In particular, if the cask design and procedures must accommodate a difference in length, what are the ramifications? The commenter also questioned if there are any problems in unloading BPRAs and stated that, perhaps, there should be "tests for BPRAs before the first loading at the plant."

Response: A BPRA is secured [located] within a fuel assembly so no additional space is required in a VSC–24 cask to store a spent fuel assembly with a BPRA. Consequently, handling operations such as loading or unloading of a spent fuel assembly containing a BPRA are not expected to present any more difficulty than for a spent fuel assembly without a BPRA. Licensee users are required to perform dry runs and training exercises of the cask loading and unloading activities before performing the actual operation.

Comment E.3: The commenter recommended that the information on hydraulic roller skids and skid openings be removed [from the cask design] since nobody uses them.

Response: The NRC disagrees with the comment. The applicant did not request an amendment to the information on the hydraulic roller skids and skid openings; therefore, this comment is beyond the scope of this rule and the information was not revised in this CoC amendment.

Comment E.4: The commenter asked whether the basket supports have been

evaluated (over time and when dry) for extra weight, size, and stress.

Response: The NRC reviewed the structural adequacy of the MSB including basket supports for the additional weight of the BPRAs and found that all stresses were less than the ASME Code allowable stress limits.

Comment E.5: The commenter asked if the BPRAs can be drained effectively and if tests have been done to confirm this.

Response: Vacuum drying the BPRA is not expected to present any more difficulty in vacuum drying the MSB than for the spent fuel assembly itself. The geometrical features of BPRAs that could retain water are equivalent to or less complex than the fuel assemblies themselves.

F. Miscellaneous

Comment F.1: The commenter asked why the CoC, EA [Environmental Assessment], and SER inconsistently reference the certificate holder. Is it SNC or PSNA?

Response: The entity that requested the CoC amendment was Sierra Nuclear Corporation (SNC). SNC is owned by Pacific Sierra Nuclear Associates (PSNA). PSNA is the registered owner of the VSC–24 design. The documents have been modified for consistency.

Comment F.2: The commenter asked how a plant reports what is placed in each cask because this documentation may be crucial in the future.

Response: The VSC–24 users are required to document pertinent information on each fuel assembly stored in the cask (including whether it contains a BPRA) under §§ 72.76, 72.78, and 72.212(b)(8)(i). This information is required to be maintained by the licensee user until termination of the license.

Comment F.3: The commenter asked about the process for notifying manufacturers, users, and potential users of problems in storing BPRAs in casks. This is important so that the same mistakes are not repeated. The commenter stated that the CoC holder should be held liable for not informing users of potential concerns.

Response: Certificate holders are required by the recently revised § 72.242(d) to notify the NRC of "a design or fabrication deficiency, for any spent fuel storage cask which has been delivered to a licensee, when the design or fabrication deficiency affects the ability of structures, systems, and components important to safety to perform their intended safety function." (64 FR 56114; October 15, 1999). The NRC expects that the certificate holder will provide a copy of this report to any affected licensees. If such a report is received by the NRC, the NRC can verify through inspections that all affected cask users are aware of the information.

Comment F.4: The commenter stated that the term "double-closure" weld, used in the EA, is not correct. In the commenter's opinion, it is not possible to count the shield lid as a closure weld because it is not UT tested. The CoC should be amended to say that there is only one closure weld (i.e., the structural lid weld).

Response: The NRC disagrees with the comment. VSC–24 cask users are required to perform nondestructive examination of both the shield lid to MSB shell weld and the structural lid to MSB shell weld. Both of these welds are considered closure welds. The CoC and TS require cask users to perform liquid penetrant examination of both of these welds.

Comment F.5: The commenter stated that the sabotage evaluations for dry casks are outdated and need to be redone because of the increased threat of terrorist activity.

Response: This comment is beyond the scope of the current rule.

Comment F.6: The commenter asked why the name of the valve manufacturer has now been deleted from the amendment and believed this should have been done long ago.

Response: The NRC agrees with the comment. The name of the valve manufacturer is not required for operational activities of the VSC–24 and has been deleted.

Comment F.7: The commenter questioned whether there will be specific "checks," documented in procedures, for boron concentration to eliminate potential confusion if a plant uses VSC casks to store both BPRAs and non-BPRAs.

Response: The storage of BPRAs in the VSC–24 cask does not require a change in the boron concentration of the water inside the MSB. Technical Specification 1.2.6 controls the boron concentration inside the MSB during loading and unloading operations.

Comment F.8: The commenter stated that "dry runs don't seem to be effective in troubleshooting," and asked what other actions need to be taken.

Response: Changes to the requirement to conduct dry runs of cask operations are beyond the scope of the proposed rule.

Comment F.9: The commenter asked what "wet helium" is and how tests can be conducted for it.

Response: The NRC does not recognize the term "wet helium," as used by the commenter; consequently, this comment is not addressed.

Summary of Final Revisions

Section 72.214 List of Approved Spent Fuel Storage Casks

Certificate No. 1007 is revised by adding the effective date of the initial certificate, the effective date of Amendment Number 1, and revising the title of the SAR submitted by PSNA to "Final Safety Analysis Report for the Ventilated Storage Cask System."

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51, the NRC has determined that this rule is not a major Federal action significantly affecting the quality of the human environment and therefore, an environmental impact statement is not required. This final rule amends the PSNA VSC–24 CoC, and accordingly revises the VSC–24 system listing within the list of approved spent fuel storage casks in § 72.214. Power reactor licensees can use these approved casks to store spent fuel at reactor sites without additional site-specific approvals from the Commission. The amendment modifies the present cask system design to permit a Part 72 licensee to store BPRAs in the VSC–24 system design along with the spent fuel. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Richard

Milstein, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–8149, email rim@nrc.gov.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid Office of Management and Budget control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC would revise the PSNA VSC–24 system design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72. The amendment provided for the storage of spent nuclear fuel in cask systems with the designs approved by the NRC under a general license. Any nuclear power reactor licensee can use cask systems with designs approved by the NRC to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On April 7, 1993 (58 FR 17948), the NRC issued an amendment to Part 72 that approved the VSC–24 design, added it to the list of NRC-approved cask designs in § 72.214, and issued CoC No. 1007. On December 30, 1998, the certificate holder (PSNA), submitted an application to the NRC to amend CoC No. 1007 to permit a Part 72 licensee to store BPRAs with B&W 15x15 spent fuel assemblies in the VSC–24 system.

This final rule will permit the storage of certain reactor core components (i.e., BPRAs) that do not contain fissile material in the VSC–24 system. The alternative to this action is to withhold approval of this amended cask system design and issue an exemption to each general license that proposes to use the casks to store BPRAs. This alternative would cost both the NRC and the utilities more time and money because each utility would have to submit a request for an exemption and NRC would have to review each request.

Approval of the final rule will eliminate the problem described above and is consistent with previous Commission actions. Further, the final rule will have no adverse effect on public health and safety. This final rule has no significant identifiable impact on or benefit to other Government agencies. Based on this discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the final rule are commensurate with the Commission's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory; and thus, this action is recommended.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and PSNA. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this final rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, and Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. Section 72.214, Certificate of Compliance No. 1007 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1007.

Initial Certificate Effective Date: May 7, 1993.

Amendment Number 1 Effective Date: May 30, 2000.

SAR Submitted by: Pacific Sierra Nuclear Associates.

SAR Title: Final Safety Analysis Report for the Ventilated Storage Cask System.

Docket Number: 72–1007.

Certificate Expiration Date: May 7, 2013.

Model Number: VSC–24.

* * * * *

Dated at Rockville, Maryland, this 12th day of April, 2000.

For the Nuclear Regulatory Commission.

Frank J. Miraglia, Jr.,

Acting Executive Director for Operations.

[FR Doc. 00–10392 Filed 4–26–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–56–AD; Amendment 39–11700; AD 2000–08–14]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires repetitive inspections or checks to detect broken H–11 steel bolts at the wing rear spar side-of-body on the lower chord splice plate and kick fitting; and corrective actions, if necessary. This AD also requires eventual replacement of the existing bolts with new Inconel bolts, which constitutes terminating action for the repetitive inspections. This amendment is prompted by a report of broken bolts at the wing rear spar side-of-body on the lower chord splice plate. The actions specified by this AD are intended to prevent cracking of the bolts due to stress corrosion, which could result in reduced structural integrity of the wing-to-body joint structure.

DATES: Effective June 1, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 1, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P. O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: 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 Boeing Model 747 series airplanes was published in the **Federal Register** on September 2, 1999 (64 FR 48120). That action proposed to require repetitive inspections or checks to detect broken H–11 steel bolts at the wing rear spar side-of-body on the lower chord splice plate and kick fitting; and corrective actions, if necessary.

Comments

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

Request To Reference Revised Service Bulletin

One commenter requests that the FAA revise paragraph (d) of the notice of proposed rulemaking (NPRM) to allow accomplishment of the terminating action in accordance with either the original issue of Boeing Alert Service Bulletin 747–57A2309, dated February 25, 1999 (which is referenced as the appropriate source of service information in the NPRM), or Boeing Service Bulletin 747–57A2309, Revision 1, dated December 22, 1999.

The FAA concurs with the commenter's request. Since the issuance of the NPRM, the FAA has reviewed and approved Boeing Service Bulletin 747–57A2309, Revision 1. The procedures specified in that service bulletin are substantially similar to those in the original issue. Among other things, Revision 1 of the service bulletin references kits with cadmium-plated nuts instead of passivated nuts and revises jacking instructions. The FAA finds that use of either the original issue or Revision 1 of the service bulletin is acceptable for compliance with all actions specified in this AD. Therefore, the FAA is revising paragraphs (a), (b), and (d), of this final rule to reference Revision 1, as well as the original issue of the service bulletin.

In addition, no new airplanes are added to the effectivity listing in Revision 1 of the service bulletin, but the effectivity listing does show changes in airplane operators. Therefore, for clarity, the applicability statement of this final rule has been revised to refer to airplanes listed in Revision 1 instead of the original issue of the service bulletin.

Request To Revise Paragraph (c)

One commenter requests that paragraph (c) of the proposed AD be revised to refer not only to paragraph (b), as specified in the proposal, but also to paragraph (d)(1). The commenter points out that paragraph (c) of the proposal only refers to cracks found during accomplishment of corrective action required by paragraph (b), but paragraph (d)(1) of the proposal also refers to accomplishment of necessary corrective actions in accordance with paragraph (c). The commenter recommends that paragraph (c) of this AD be revised to read as follows: "If any crack is detected during any corrective action required by paragraph (b) of this AD or during terminating action required by paragraph (d)(1) of this AD. * * *" The FAA concurs with the commenter's request, and has revised paragraph (c) of this final rule accordingly.

Request To Clarify Number of Fasteners

One commenter requests that the FAA revise paragraphs (d)(1) and (d)(2) of the proposed rule to accurately state the correct number of fasteners for all groups of airplanes listed in the service bulletin. The commenter points out that airplanes in Group 2 have only four high strength H–11 steel bolts common to the rear spar lower chord splice plate, while airplanes in Groups 1, 3, 4, and 5 have eight high strength H–11 steel bolts common to the rear spar lower chord splice plate.

The same commenter requests that the FAA revise paragraphs (d)(1) and (d)(2) of the proposed AD to also explicitly state that the number of high strength H–11 steel bolts listed in those paragraphs of the AD are the numbers for each side. The commenter states that this change is necessary for clarity.

The FAA partially concurs with the commenter's request. The FAA acknowledges that airplanes in Group 2 have only four high strength H–11 steel bolts common to the rear spar lower chord splice plate, while airplanes in

Groups 1, 3, 4, and 5 have eight high strength H–11 steel bolts common to the rear spar lower chord splice plate.

However, the FAA finds that revising paragraphs (d)(1) and (d)(2) of this AD to refer separately to airplanes in Group 2 and airplanes in Groups 1, 3, 4, and 5; and to specify that the numbers given are for each side of the airplane; would unnecessarily complicate these paragraphs. Paragraph (d) of this AD states that the actions required by paragraphs (d)(1) and (d)(2) of this AD are to be accomplished in accordance with Boeing Alert Service Bulletin 747–57A2309, or Boeing Service Bulletin 747–57A2309, Revision 1. Boeing Service Bulletin 747–57A2309, Revision 1, clarifies the difference in number of high strength H–11 steel bolts common to the rear spar lower chord splice plate between airplanes in Group 2 and airplanes in Groups 1, 3, 4, and 5. The correct number of bolts is shown in Figure 1 of the service bulletin. In addition, the accomplishment instructions in both the original issue and Revision 1 of the service bulletin make it clear that the number of fasteners are per fitting, and fittings are installed on both sides of the airplane.

In acknowledgement of the commenter's request, the FAA has revised paragraphs (d)(1) and (d)(2) of this final rule to delete references to specific numbers of bolts, and to instead refer to "all high strength H–11 steel bolts common to the rear spar lower chord splice plate and common to the wing rear spar lower chord kick fitting." The FAA finds that no further clarification is necessary in this regard.

Request To Base Compliance Times on Accumulated Flight Hours

One commenter requests that the FAA base compliance times for the proposed actions on the total number of flight hours an airplane has accumulated. (The FAA infers that the commenter is referring to the number of flight hours an airplane has accumulated as of the effective date of this AD.) The commenter requests one compliance time for airplanes with fewer than 45,000 total flight hours, and one for airplanes with more than 45,000 total flight hours. The commenter explains that, according to worldwide reports, the average number of flight hours for an airplane on which damage has been found is 45,000 flight hours. The commenter does not state what compliance times it would consider appropriate, nor does it provide any other technical justification for establishing separate compliance times.

The FAA does not concur with the commenter's request. The FAA finds no justification for the assumption that airplanes with fewer than 45,000 total flight hours will have fewer broken bolts than airplanes with 45,000 total flight hours or more. Indeed, the FAA has determined that broken bolts have been found on airplanes that have accumulated from 10,000 to 83,704 total flight hours. No change to the final rule is necessary in this regard.

Request To Increase Threshold for Initial Inspection

One commenter requests that the FAA revise paragraph (a) of the proposed rule to increase the threshold for the initial inspection from 12 months to 18 months. The commenter wants the initial inspection threshold to be the same as the repetitive inspection interval. The commenter provides no technical justification for its request.

The FAA does not concur with the commenter's request. In developing an appropriate compliance time for this action, the FAA considered not only the manufacturer's recommendation for the inspection threshold (one year), but also the safety implications for timely accomplishment of the initial inspection. In consideration of these items, the FAA has determined that 12 months represents an appropriate interval of time allowable wherein an acceptable level of safety can be maintained. No change to the final rule is necessary in this regard.

Request To Provide Repetitive Inspection Interval in Flight Hours

One commenter requests that the paragraph (a) of the proposed rule be revised to provide a repetitive inspection interval in flight hours instead of calendar time (18 months). The commenter explains that stress corrosion cracking is related to the H–11 material of the bolt, and the tension loads on the lower chord when the airplane is in the air. The commenter does not specify what flight hour interval it considers appropriate.

The FAA does not concur with the commenter's request. The repetitive inspection interval of 18 months is intended to make the inspections convenient for operators to accomplish at a regularly scheduled maintenance visit. No change to the final rule is necessary in this regard.

Request To Clarify Intent of Service Bulletin

One commenter requests that the FAA revise paragraph (b) of the proposal to clarify the inspection processes intended by the service bulletin, and to clarify that cracked bolts, as well as broken bolts, must be replaced. The commenter states that paragraph (b) should read, "If there is any indication of cracked or broken bolts as indicated by cracks in the sealant, sealant separated from the bolt or structure, gaps under the bolt head or nut, bolt movement[,]or fuel leaks, perform the ultrasonic inspection or torque check in accordance with [the service bulletin]. If indications of a cracked or broken bolt are confirmed by the ultrasonic inspection or torque check, replace the bolt with an Inconel 718 bolt in accordance with [the service bulletin], prior to further flight."

The FAA does not concur with the commenter's request. Paragraph (a) of this AD requires a detailed visual inspection or an ultrasonic inspection or torque check to detect broken bolts. That paragraph specifies the inspection is to be accomplished in accordance with the service bulletin. As specified in Notes (a) and (b) of Figures 3, 4, and 5 of the service bulletin, the detailed visual inspection includes inspections for cracks in the sealant, sealant separated from the bolt or structure, gaps under the bolt head or nut, bolt movement, or fuel leaks. Any of these discrepancies could indicate broken bolts. Paragraph (b) states that if there is any indication of a broken bolt, the applicable corrective action must be performed in accordance with the service bulletin. The FAA finds that, for the purposes of this AD, the work instructions specified in the service bulletin are sufficient, and it is not necessary to repeat such instructions in the text of the AD. In addition, the FAA notes that cracked bolts are only expected to be detected by an ultrasonic inspection. If an indication of a crack is found during the ultrasonic inspection, the service bulletin specifies that the bolt must be removed. In accordance with paragraph (e) of this AD, this AD does not allow installation of H–11 steel bolts; therefore, the cracked (or broken) bolt must be replaced. The FAA finds that no change to the final rule is necessary in this regard.

Request To Clarify Intent of Corrective Action

A commenter requests that the FAA revise paragraph (c) of the proposed rule to read, "If any crack in the splice is detected during the open hole high frequency eddy current inspection during any corrective action required by paragraph (b) of this AD; * * *" The commenter states that the inspection is intended to detect cracks in the fastener holes of the splice members, not cracks in the bolts.

The FAA does not concur with the commenter's request. The FAA finds

that it is appropriate for paragraph (c) of this final rule to continue to refer to "any crack detected during any corrective action * * *," because cracks may be detected in the splice fitting, kick fitting, skin, et cetera. No change to the final rule is necessary in this regard.

Request To Extend Compliance Time

One commenter requests that the compliance time for the bolt replacement proposed in paragraph (d) of the NPRM be revised from 48 months after the effective date of this AD to at the next "D" check. The commenter expresses concern that 48 months will not allow enough time to plan the bolt replacement and procure parts. Similarly, a second commenter (an operator) requests that the compliance time be extended to 72 months to coincide with that operator's "D" check interval. The commenter states that, with a compliance time of 48 months, the proposed bolt replacement would have to be accomplished on several airplanes during a "C" check, rather than a "D" check. The commenter notes that, to accomplish the proposed terminating action, the fuel tanks must be purged. The commenter explains that purging the fuel tanks is standard procedure during a "D" check, but not during a "C" check. The commenter states that draining the fuel tanks during a "C" check will have a serious impact on the downtime for the maintenance visit. Also, the commenter asserts that the area subject to this AD was not recognized as a potential critical area in AD 89–23–07, amendment 39–6376 (54 FR 43801, October 27, 1989), and AD 94–07–06, amendment 39–8864 (59 FR 15854, April 5, 1994).

The FAA does not concur with the commenters' request to extend the compliance time for accomplishment of the terminating action. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of accomplishing the required actions within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. The FAA finds that 48 months is an adequate amount of time for most operators to accomplish the modification at a scheduled heavy maintenance visit. Also, Revision 1 of the service bulletin quotes a lead time of 30 weeks for obtaining repair kits, so the FAA does not anticipate that operators will have difficulty getting the required parts within the 48-month compliance time.

With regard to the second commenter's remark that the area subject to this AD (in which H–11 steel bolts are installed) was not recognized as a potential critical area in other rulemaking actions, the FAA points out that one operator has reported four of the eight H–11 steel bolts broken. The manufacturer's analysis indicates that four broken bolts would result in the structure being unable to carry limit loads. The AD's that the commenter references did not take into consideration that multiple bolts may be broken. Additionally, the FAA notes that the wing rear spar side-of-body lower splice plate and kick fitting are primary structure. For all of these reasons, the FAA considers a compliance time of 48 months to be warranted for accomplishment of the terminating action, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety. No change to the final rule is necessary in this regard.

Request To Clarify "Spares" Paragraph

One commenter requests that the FAA revise paragraph (e) of the NPRM to change the words "on any airplane" to "on any Boeing 747 airplane that is listed in the effectivity of [Boeing Service Bulletin] 747–57A2309." The commenter states that an operator was confused about the meaning of the paragraph as it is phrased in the NPRM.

The FAA does not concur with the commenter's request. The applicability statement of all AD actions lists all models affected by that AD. All of the requirements stated in an AD are applicable only to the airplane models listed in the applicability. The FAA finds that there is no justification for making the change requested by the commenter. No change to the final rule is necessary in this regard.

Conclusion

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

Cost Impact

There are approximately 523 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 115 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required inspection, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $6,900, or $60 per airplane, per inspection cycle.

It will take approximately 13 (Groups 1, 3, 4, and 5 airplanes) and 10 (Group 2 airplanes) work hours per airplane to accomplish the open hole HFEC inspection and replacement, at the average labor rate of $60 per work hour. Required parts will cost approximately $4,500 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $5,280 (Groups 1, 3, 4, and 5 airplanes) and $5,100 (Group 2 airplanes) 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.

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:

2000–08–14 Boeing: Amendment 39–11700. Docket 99–NM–56–AD.

Applicability: Model 747 series airplanes, as listed in Boeing Service Bulletin 747–57A2309, Revision 1, dated December 22, 1999, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) 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 cracking of the high strength H–11 steel bolts on the wing rear spar side-of-body on the lower chord splice plate and kick fitting due to stress corrosion, which could result in reduced structural integrity of the wing-to-body joint structure, accomplish the following:

Repetitive Inspections

(a) Within 12 months after the effective date of this AD, perform a detailed visual inspection, or alternatively, an ultrasonic inspection or torque check, to detect broken H–11 steel bolts common to the rear spar lower chord splice plate and the H–11 steel bolts common to the wing rear spar lower chord kick fitting, in accordance with Boeing Alert Service Bulletin 747–57A2309, dated February 25, 1999, or Boeing Service Bulletin 747–57A2309, Revision 1, dated December 22, 1999. Thereafter, repeat the applicable inspection or torque check at intervals not to exceed 18 months, until accomplishment of the actions specified in paragraph (d) of this AD.

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

Corrective Actions

(b) If there is any detection or indication that any bolt is broken during the inspection required by paragraph (a) of this AD, prior to further flight, perform the applicable corrective action [*i.e.*, ultrasonic inspection, torque check, high frequency eddy current (HFEC) inspection, repair, and replacement] in accordance with Boeing Alert Service Bulletin 747–57A2309, dated February 25, 1999, or Boeing Service Bulletin 747–57A2309, Revision 1, dated December 22, 1999, except as provided in paragraph (c) of this AD. Replacement of a broken bolt with a new Inconel bolt in accordance with the service bulletin constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD for that bolt only.

(c) If any crack is detected during any corrective action required by paragraph (b) of this AD, or during the terminating action required by paragraph (d)(1) of this AD, and the service bulletin specifies to contact Boeing for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Terminating Action

(d) Within 48 months after the effective date of this AD, accomplish the actions required by paragraphs (d)(1) and (d)(2) of this AD in accordance with Boeing Alert Service Bulletin 747–57A2309, dated February 25, 1999, or Boeing Service Bulletin 747–57A2309, Revision 1, dated December 22, 1999. Accomplishment of the actions specified in this paragraph constitutes terminating action for the repetitive inspection requirements of this AD.

(1) Prior to accomplishing the replacement required by paragraph (d)(2) of this AD, perform an open hole HFEC inspection to detect cracks at the bolt hole location for all high strength H–11 steel bolts common to the rear spar lower chord splice plate and all high strength H–11 steel bolts common to the wing rear spar lower chord kick fitting. If any crack is detected, prior to further flight, perform applicable corrective actions in accordance with paragraph (c) of this AD.

(2) Replace all high strength H–11 steel bolts common to the rear spar lower chord splice plate and all high strength H–11 steel bolts common to the wing rear spar lower chord kick fitting with new Inconel bolts.

Spares

(e) As of the effective date of this AD, no person shall install an H–11 steel bolt having part number (P/N) BACB30MT ( ) * ( ) or BACB30TR ( ) * ( ), or any other H–11 steel bolt, in the locations specified in this AD, on any airplane.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Special Flight Permits

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

Incorporation by Reference

(h) Except as provided by paragraph (c) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–57A2309, including Appendix A, dated February 25, 1999, or Boeing Service Bulletin 747–57A2309, Revision 1, including Appendix A, dated December 22, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P. O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at

the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on June 1, 2000.

Issued in Renton, Washington, on April 18, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–10161 Filed 4–26–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

RIN 0703–AA58

Availability of Department of the Navy Records and Publication of Department of the Navy Documents Affecting the Public

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: This rule sets forth regulations pertaining to the Department of the Navy's Freedom of Information Act Program. This rule adds regulations regarding indexing, public inspection, and publication of documents affecting the public.

DATES: Effective April 27, 2000.

ADDRESSES: Office of the Judge Advocate General (Code 13), 1322 Patterson Avenue, Suite 3000, Washington Navy Yard, DC 20374–5066.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander James L. Roth, JAGC, USN, Head, Regulations & Legislation, FOIA/PA Branch, Administrative Law Division, Office of the Judge Advocate General (Code 13), 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone: (703) 604–8200.

SUPPLEMENTARY INFORMATION: Due to incorrect amendatory instructions, subpart E was inadvertently deleted from Part 701 when subparts A through D were revised on September 14, 1999 (64 FR 49850). Subpart E is being added back to Part 701 in its entirety. This rule is being published by the Department of the Navy for guidance and interest of the public in accordance with 5 U.S.C. 552(a)(1). It has been determined that invitation of public comment on this amendment would be impracticable and unnecessary, and it is therefore not required under the public rulemaking provisions of 32 CFR part 336 or Secretary of the Navy Instruction 5720.45, on which subpart E is derived. Interested persons, however, are invited to comment in writing on this amendment. All written comments received will be considered in making subsequent amendments or revisions to 32 CFR Part 701, subpart E, or the instruction on which it is based. Changes may be initiated on the basis of comments received. Written comments should be addressed to Lieutenant Commander James L. Roth, JAGC, USN, Head, Regulations and Legislation, FOIA/PA Branch, Administrative Law Division, Office of the Judge Advocate General (Code 13), 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, DC 20374–5066. It has been determined that this final rule is not a "significant regulatory action" as defined in Executive Order 12866.

List of Subjects in 32 CFR Part 701

Administrative practice and procedure, Freedom of Information, Privacy.

Accordingly, 32 CFR Part 701 is amended as follows:

PART 701—AVAILABILITY OF DEPARTMENT OF THE NAVY RECORDS AND PUBLICATION OF DEPARTMENT OF THE NAVY DOCUMENTS AFFECTING THE PUBLIC

1. The authority citation for Part 701 continues to read as follows:

Authority: 5 U.S.C. § 552

2. Part 701 is amended by adding subpart E as follows:

Subpart E—Indexing, Public inspection, and Federal Register Publication of Department of the Navy Directives and Other Documents Affecting the Public.

Sec.

701.61 Purpose.

This subpart implements 5 U.S.C. 552(a) (1) and (2) and provisions of Department of Defense Directive 5400.7 May 13, 1988 (32 CFR part 286, 55 FR 53104); Department of Defense Directive 5400.9, December 23, 1974 (32 CFR part 336, 40 FR 49111); and the Regulations of the Administrative Committee of the Federal Register (1 CFR chaps. I and II) by delineating responsibilities and prescribing requirements, policies, criteria, and procedures applicable to:

(a) Publishing the following Department of the Navy documents in the **Federal Register**:

(1) Certain classes of regulatory, organizational policy, substantive, and procedural documents required to be published for the guidance of the public;

(2) Certain classes of proposed regulatory documents required to be published for public comment prior to issuance; and

(3) Certain public notices required by law or regulation to be published;

(b) Making available, for public inspection and copying, certain classes of documents having precedential effect on decisions concerning members of the public;

(c) Maintaining current indexes of documents having precedential effect on decisions concerning members of the public, and publishing such indexes or making them available by other means;

(d) Receiving and considering petitions of members of the public for the issuance, revision, or cancellation of regulatory documents of some classes; and

(e) Distributing the **Federal Register** for official use within the Department of the Navy.

§ 701.62 Scope and applicability.

This subpart prescribes actions to be executed by, or at the direction of, Navy Department (as defined in § 700.104c of this chapter) components and specified headquarters activities for apprising members of the public of Department of the Navy regulations, policies, substantive and procedural rules, and decisions which may affect them, and for enabling members of the public to participate in Department of the Navy rulemaking processes in matters of substantial and direct concern to the public. This subpart complements subpart A, which implements Navy-wide requirements for furnishing documents to members of the the public upon request. That a document may be published or indexed and made available for public inspection and copying under this instruction does not affect the possible requirement under subpart A for producing it for examination, or furnishing a copy, in response to a request made under that subpart.

§ 701.53 Policy.

In accordance with the spirit and intent of 5 U.S.C. 552, the public has the right to maximum information concerning the organization and functions of the Department of the Navy. This includes information on the policies and the substantive and procedural rules used by the Department of the Navy in its dealings with the public. In accordance with Department of Defense policy described in 32 CFR part 336, 40 FR 4911, moreover, the public is encouraged to participate in Department of the Navy rulemaking when the proposed rule would substantially and directly affect the public.

§ 701.64 Publication of adopted regulatory documents for the guidance of the public.

(a) *Classes of documents to be published.* Subject to the provisions of 5 U.S.C. 552(b) which exempt specified matters from requirements for release to the public [see subpart B of this part], the classes of Department of the Navy documents required to be published on a current basis in the **Federal Register** are listed below.

(1) *Naval organization and points of contact*—description of the central and field organization of the Department of the Navy and the locations at which, the members or employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(2) *Methods and procedures for business with public*—statements of the general course and methods by which Department of the Navy functions affecting members of the public are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) *Procedural rules and forms*—rules of procedure for functions affecting members of the public, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations required to be submitted under such rules of procedures; and

(4) *Substantive rules and policies*—substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Department of the Navy. Such rules are commonly contained in directives, manuals, and memorandums.

(i) *"General applicability" defined.* The definition prescribed in 1 CFR 1.1 pertains to the classes of documents contemplated in § 701.64(b) (4).

(ii) *Internal personnel rules and internal practices.* In addition to other exemptions listed in 5 U.S.C. 552(b) and subpart B of this part, particular attention is directed to the exemption pertaining to internal personnel rules and internal practices.

(iii) *Local regulations.* It is unnecessary to publish in the **Federal Register** a regulation which is essentially local in scope or application, such as a directive issued by a base commander in the implementation of his responsibility and authority under subpart G of part 700 of this title for guarding the security of the installation or controlling the access and conduct of visitors or tradesmen. However, such publication may be authorized under extraordinary circumstances, as determined by the Chief of Naval Operations or the Commandant of the Marine Corps, as appropriate, with the concurrence of the Judge Advocate General.

(iv) *Incorporation by reference.* with the approval of the Director of the Federal Register given in the limited instances authorized in 1 CFR Part 51 and 32 CFR 336.5(c), the requirement for publication in the **Federal Register** may be satisfied by reference in the **Federal Register** to other publications containing the information which must otherwise be published in the **Federal Register.** In general, matters eligible for incorporation by reference are restricted to materials in the nature of published data, criteria, standards, specifications, techniques, illustrations, or other published information which are reasonably available to members of the class affected.

(b) *Public inspection.* when feasible, Department of the Navy and Department of Defense documents published in the **Federal Register** should be made available for inspection and copying, along with available indexes of such documents, in the same locations used for copying of the documents contemplated in § 701.65.

§ 701.65 Availability, public inspection, and indexing of other documents affecting the public.

(a) *Discussion.* Section 552(a) of title 5, United States Code, requires the Department of the Navy to make available for public inspection and copying documents which have precedential significance on those Department of the Navy decisions which affect the public. These documents must be kept readily available for public inspection and copying at designated locations, unless they are promptly published and copies are offered for sale. Additionally, documents issued after July 4, 1967, are required to be indexed on a current basis. These indexes, or supplements thereto, must be published at least quarterly in accordance with the provisions of this paragraph. In determining whether a particular document is subject to the requirements of this paragraph, consideration should be given to the statutory purposes and legal effect of the provisions.

(1) *Statutory purposes.* In general, the purpose of the requirement to provide members of the public with essential information is to enable them to deal effectively and knowledgeably with Federal agencies; to apprise members of the public of the existence and contents of documents which have potential legal consequences as precedents in administrative determinations which may affect them; and to permit public examination of the basis for administrative actions which affect the public.

(2) *Legal effect.* If a document is required to be indexed and made available under this paragraph, it may not be used or asserted as a precedent against a member of the public unless it was indexed and made available, or unless the person against whom it is asserted had actual and timely notice of its contents.

(b) *Classes of documents affected.* (1) Subject to the provisions of 5 U.S.C. 552(b) which exempt specified matters from the requirements of public disclosure, the following classes of Department of the Navy documents are included in the requirements of this paragraph:

(i) *Final adjudicative opinions and orders*—opinions (including concurring and dissenting opinions) which are issued as part of the final disposition of adjudication proceedings (as defined in 5 U.S.C. 551) and which may have precedential effect in the disposition of other cases affecting members of the public;

(ii) *Policy statements and interpretations*—statements of policy and interpretations of less than general applicability (i.e., applicable only to specific cases; organizations, or persons), which are not required to be published in the **Federal Register,** but which may have precedential effect in the disposition of other cases affecting members of the public;

(iii) *Manuals and instructions*—administrative staff manuals, directives, and instructions to staff, or portions thereof, which establish Department of the Navy policy or interpretations of policy that serve as a basis for determining the rights of members of the public with regard to Department of

the Navy functions. In general, manuals and instructions relating only to Internal management aspects of property or fiscal accounting, personnel administration, and most other "proprietary" functions of the department are not within the scope of this provision. This provision also does not apply to instructions for employees on methods, techniques, and tactics to be used in performing their duties; for example:

(A) Instructions or manuals issued for audit, investigation, and inspection purposes;

(B) Those which prescribe operational tactics; standards of performance; criteria for defense, prosecution, or settlement of cases; or negotiating or bargaining techniques, limitations, or positions; and

(C) Operations and maintenance manuals and technical information concerning munitions, equipment, and systems, and foreign intelligence operations.

(2) In determining whether a document has precedential effect, the primary test is whether it is intended as guidance to be followed either in decisions or evaluations by the issuing authority's subordinates, or by the issuing authority itself in the adjudication or determination of future cases involving similar facts or issues. The kinds of orders or opinions which clearly have precedential effect are those that are intended to operate both as final dispositions of the questions involved in the individual cases presented, and as rules of decision to be followed by the issuing authority or its subordinates in future cases involving similar questions. By contrast, many adjudicative orders and opinions issued within the Department of the Navy operate only as case-by-case applications of policies or interpretations established in provisions of manuals or directives and are not themselves used, cited, or relied on as rules of decision in future cases. In these instances, the underlying manual or directive provisions obviously would have precedential effect, but the orders and opinions themselves would not have. A recommendation by an official who is not authorized to adjudicate, or to issue a binding statement of policy or interpretation in a particular matter would not have precedential effect though an order, opinion, statement of policy, or interpretation issued by an authorized official pursuant to such recommendation might have that effect.

(c) *Deletion of identifying details.* (1) Although the exemptions from public disclosure described in 5 U.S.C. 552 and subpart B of this part are applicable to documents which are required to be indexed and made available for public inspection and copying under this paragraph, there is no general requirement that any segregable portions of partially exempt documents be so indexed and made available for public inspection and copying. As a general rule, a record may therefore be held exempt in its entirety from the requirements of this paragraph if it is determined that it contains exempt matter and that it is reasonably foreseeable that disclosure would be harmful to an interest protected by that exemption. An exception to this general rule does exist with regard to a record which would be exempt only because it contains information which, if disclosed, would result in a clearly unwarranted invasion of privacy.

(2) Where necessary to prevent a clearly unwarranted invasion of a person's privacy, identifying details should be deleted from a record which is required to be indexed and made available for public inspection and copying under this paragraph. In every such case, the justification for the deletion must be fully stated in writing in a manner which avoids creating inferences that could be injurious to the person whose privacy is involved. Usual reasons for deletion of identifying details include the protection of privacy in a person's business affairs, medical matters, or private family matters; humanitarian considerations; and avoidance of embarrassment to a person.

(d) *Publication of indexes.*—(1) *Form of indexes.* Each index should be arranged topically or by descriptive words, so that members of the public may be able to locate the pertinent documents by subject, rather than by case name or by a numbering system.

(2) *Time of publication.* Each component having cognizance of records required under this paragraph to be indexed shall compile and maintain an index of such records on a continually current basis. Each such index was required to initially be published by July 1, 1975. An updated version of each such index, or a current supplement thereto, shall be published by an authorized method at least annually thereafter.

(3) *Methods of publication.* The methods authorized for publication of the indexes contemplated in this paragraph are:

(i) Publication in the **Federal Register**;

(ii) Commercial publication, provided that such commercial publication is readily available to members of the public, or will be made available upon request, and payment of costs (if this method is utilized, information on the cost of copies and the address from which they may be obtained shall be published in the **Federal Register**); or

(iii) Furnishing internally reproduced copies upon request, at cost not to exceed the direct cost of duplication in accordance with subpart D of this part, provided that it is determined by an order published in the **Federal Register**, that the publication of the index by methods § 701.65(d) (3) (i) or (ii) would be unnecessary or impracticable. Such order shall state the cost of copies and the address from which they may be obtained. The Chief of Naval Operations (N09B30) is authorized to issue such an order in a proper case.

(4) *Public inspection of indexes.* In addition to publication by one of the foregoing methods, each index will be made available for public inspection and copying in accordance with § 701.65(e) at the locations where Department of the Navy records are available for public inspection.

(e) *Where records may be inspected.* Locations and times at which Department of the Navy records, and indexes thereof, are available for public inspection and copying are shown in § 701.32.

(f) *Cost.* Fees for copying services, if any, furnished at locations shown in § 701.32 shall be determined in accordance with subpart D of this part.

(g) *Records of the United States Navy-Marine Corps Court of Military Review.* The United States Navy-Marine Corps Court of Military Review is deemed to be "a court of the United States" within the meaning of 5 U.S.C. 551 and is therefore excluded from the requirements of 5 U.S.C. 552. Nevertheless, unpublished decisions of the United States Navy-Marine Corps Court of Military Review, although not indexed, are available for public inspection at the location shown in § 701.32(c).

§ 701.66 Publication of proposed regulations for public comment.

(a) *Discussion.* The requirements of this section are not imposed by statute, but are the implementation of policies and procedures created administratively in 32 CFR part 336. In effect, the pertinent provisions of 32 CFR part 336 establish, within the Department of Defense and its components, procedures that are analogous to the public rulemaking procedures applicable to some functions of other Federal agencies under 5 U.S.C. 553. While the administrative policy of encouraging the maximum practicable public participation in the Department of the Navy rulemaking shall be diligently followed, determinations by the

Department of the Navy as to whether a proposed regulatory requirement originated by it comes within the purview of this paragraph and the corresponding provisions of 32 CFR part 336, and as to whether inviting public comment is warranted, shall be conclusive and final.

(b) *Classes of documents affected.* Each proposed regulation or other document of a class described in § 701.64(a) (or a proposed revision of an adopted document of any of those classes) which would "originate" within the Department of the Navy a requirement of general applicability and future effect for implementing, interpreting, or prescribing law or policy, or practice and procedure requirements constituting authority for prospective actions having substantial and direct impact on the public, or a significant portion of the public, must be evaluated to determine whether inviting public comment prior to issuance is warranted. Documents that merely implement regulations previously issued by higher naval authorities or by the Department of Defense will not be deemed to "originate" requirements within the purview of this section. If a proposed document is within the purview of this section, publication to invite public comment will be warranted unless, upon evaluation, it is affirmatively determined both that a significant and legitimate interest of the Department of the Navy or the public will be served by omitting such publication for public comment, and that the document is subject to one or more of the following exceptions:

(1) It pertains to a military or foreign affairs function of the United States which has been determined under the criteria of an Executive Order or statute to require a security classification in the interests of national defense or foreign policy;

(2) It relates to naval management, naval military or civilian personnel, or public contracts (e.g. Navy Procurement Directives), including nonappropriated fund contracts;

(3) It involves interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(4) It is determined with regard to the document, for good cause, that inviting the pubic comment is impracticable, unnecessary, or contrary to the public interest.

(c) *Procedures*—(1) *Normal case.* Unless the official having cognizance of a proposed regulatory document determines under the criteria of § 701.66(b) that inviting public comment is not warranted, he or she shall cause it to be published in the **Federal Register** with an invitation for the public to submit comments in the form of written data, views, or arguments during a specified period of not less than 30 days following the date of publication. An opportunity for oral presentation normally will not be provided, but may be provided at the sole discretion of the official having cognizance of the proposed directive if he or she deems it to be in the best interest of the Department of the Navy or the public to do so. After careful consideration of all relevant matters presented within the period specified for public comment, the proposed document may be issued in final form. After issuance, the adopted document, and a preamble explaining the relationship of the adopted document to the proposed and the nature and effect of public comments, shall be published in the **Federal Register** for guidance of the public.

(2) *Where public comment is not warranted.* The official having cognizance of a proposed document within the purview of this paragraph shall, if he or she determines that inviting public comment concerning the document is not warranted under the criteria of § 701.66(b), incorporate that determination, and the basis therefor, in the document when it is issued or submitted to a higher authority for issuance. After issuance, such document shall be published in the **Federal Register** for the guidance of the public, if required under § 701.64(b).

§ 701.67 Petitions for issuance, revision, or cancellation of regulations affecting the public.

In accordance with the provisions of 32 CFR part 336, the Department of the Navy shall accord any interested person the right to petition in writing, for the issuance, revision, or cancellation of regulatory document that originates, or would originate, for the Department of the Navy, a policy, requirement, or procedure which is, or would be, within the purview of § 701.66. The official having cognizance of the particular regulatory document involved, or having cognizance of the subject matter of a proposed document, shall give full and prompt consideration to any such petition. Such official may, at his or her absolute discretion, grant the petitioner an opportunity to appear, at his or her own expense, for the purpose of supporting the petition, if this is deemed to be compatible with orderly conduct of public business. The petitioner shall be advised in writing of the disposition, and the reasons for the disposition, of any petition within the purview of this section.

Dated: April 12, 2000.

J.L. Roth,

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

[FR Doc. 00–10476 Filed 4–26–00; 8:45 am]

BILLING CODE 3180–FT–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–029]

RIN 2115–AE47

Drawbridge Operation Regulations: Merrimack River, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the drawbridge operation regulations for the Newburyport US1 Bridge, mile 3.4, across the Merrimack River between Newburyport and Salisbury, Massachusetts. The bridge owner asked the Coast Guard to change the regulations to allow the bridge to open only on the hour and half hour, from Memorial Day through Labor Day. This final rule is expected to help reduce vehicular traffic delays by scheduling bridge opening times while still meeting the reasonable needs of navigation.

DATES: This rule is effective May 30, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–99–029) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On January 7, 2000, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Merrimack River, Massachusetts, in the **Federal Register** (65 FR 1077). We received one comment letter in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

The Newburyport US1 Bridge, mile 3.4, across the Merrimack River has a vertical clearance of 35 feet at mean high water and 42 feet at mean low water in the closed position. The current regulations in 33 CFR 117.605(a) require the bridge to open on signal from May 1 through November 15, from 6 a.m. to 10 p.m. At all other times the draw must open on signal if at least a one-hour advance notice is given by calling the number posted at the bridge.

The bridge owner, the Massachusetts Highway Department (MHD), asked the Coast Guard to change the regulations to allow scheduled opening times to help alleviate vehicular traffic delays on Route 1 that occur from Memorial Day through Labor Day. During the summer months the bridge opens more frequently for vessel traffic. The traffic delays on Route 1 prompted the request to provide relief to help reduce the traffic delays during the summer months.

The Coast Guard, in response to the bridge owner's request for assistance, published a notice of temporary deviation from the operating regulations (64 FR 25438) on May 12, 1999. The purpose of the deviation was to test an alternate schedule for bridge openings for a period of 90 days from June 3, 1999, through August 31, 1999. The bridge operating schedule during the test period was:

Monday through Friday, from 6 a.m. to 10 p.m., the bridge opened once an hour, on the half hour.

Saturday and Sunday, from 11 a.m. to 3 p.m., the bridge opened once an hour, on the half hour. From 6 a.m. to 11 a.m. and 3 p.m. to 10 p.m., the bridge opened two times an hour, on the hour and half hour.

At all other times, the bridge opened on signal after a one-hour notice was given by calling the number posted at the bridge.

The Coast Guard evaluated the bridge opening log data for the past three years as well as the data collected during the 90 day test period in 1999. The data indicated that June, July and August are the months that have the greatest number of bridge openings with the greater percentage of the bridge openings occurring on the weekends.

TEST PERIOD 1999

Month	Total openings	Weekend openings	Percent on weekends
June	307	205	67
July	322	193	60
August ...	305	137	45

MONTHLY TOTAL BRIDGE OPENINGS

	1997	1998	1999
April	3	17	34
May	95	155	202
June	288	190	307
July	310	387	322
August ...	334	350	305
September	226	294	250
October	197	149	169

The Coast Guard has determined that scheduled bridge openings on the hour and half hour from Memorial Day through Labor Day, 6 a.m. to 10 p.m., should help alleviate the traffic delays on Route 1 and still meet the reasonable needs of navigation.

The time period for scheduled bridge openings, Memorial Day through Labor Day, was selected because it is the time period when vehicular traffic on Route 1 is the heaviest and the frequency of bridge openings are the greatest.

Discussion of Comments and Changes

The Coast Guard received one comment letter in response to the notice of proposed rulemaking and no changes have been made to this final rule. The comment letter questioned if the half-hour time interval between bridge openings would be enough time for the vehicular traffic to return to normal flow. The Coast Guard evaluated the bridge opening duration times and the traffic recovery time after bridge openings during the 90-day test in the summer of 1999. The average bridge opening time during the 1999, test period was five minutes with an additional four minutes to restore normal traffic flow over the bridge. We believe, as a result of the data and observations made during the test period, that openings on request, on the hour and half-hour, should reduce vehicular traffic delays on Route 1 and still meet the reasonable needs of navigation.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This conclusion is based on the fact that the bridge will still open on signal for marine traffic two times each hour, on the hour and half hour, from 6 a.m. to 10 p.m., Memorial Day through Labor Day.

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. "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 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 conclusion is based on the fact that the bridge opens only for large recreational sail boats and power boats. Most vessels can pass under the bridge without a bridge opening as a result of the high vertical clearance of 35 feet at mean high water and 42 feet at mean low water.

The owners of the larger vessels may be required, depending on the stage of the tide, to wait for bridge openings for up to 25 minutes in the event that they miss a scheduled bridge opening. The impacts are believed not to be significant because the bridge will still open on signal for marine traffic two times each hour, on the hour and half hour, 6 a.m. to 10 p.m., Memorial Day through Labor Day.

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's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have

taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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 (32)(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.605(a) is revised to read as follows:

§ 117.605 Merrimack River

(a) The draw of the Newburyport US1 Bridge, mile 3.4, shall operate as follows:

(1) From May 1 through November 15, from 6 a.m. to 10 p.m., the draw shall open on signal; except that, from Memorial Day through Labor Day, from 6 a.m. to 10 p.m., the draw shall open on signal only on the hour and half hour.

(2) At all other times the draw shall open on signal after at least a one-hour advance notice is given by calling the number posted at the bridge.

* * * * *

Dated: April 13, 2000.

Robert F. Duncan,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 00–10455 Filed 4–26–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–00–126]

Drawbridge Operation Regulations; Fort Point Channel, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation and request for comments.

SUMMARY: The Commander, First Coast Guard District has issued a temporary 90 day deviation from the existing drawbridge operation regulations for the Northern Avenue Bridge, mile 0.1, at Boston, Massachusetts. This deviation will require the bridge to open on signal from 6 a.m. to 8 p.m. and from 8 p.m. to 6 a.m. after a two-hour advance notice is given. The bridge presently does not open for vessel traffic between 8 p.m. and 6 a.m. This deviation is necessary in order to test an alternate drawbridge operation schedule.

DATES: This deviation is effective from June 7, 2000 through September 4, 2000. Comments must reach the Coast Guard on or before September 30, 2000.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, Bridge Branch, at 408 Atlantic Avenue, Boston, MA. 02110–3350, or deliver them at the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this notice by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this notice (CGD01–00–126), 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 if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Background and Purpose

The Northern Avenue Bridge, mile 0.1, across the Fort Point Channel has a vertical clearance of 7 feet at mean high water and 17 feet at mean low water in the closed position. The existing operating regulations in 33 CFR 117.599 require the bridge to open on signal from 6 a.m. to 8 p.m. From 8 p.m. to 6 a.m., the bridge need not open for the passage of vessels.

The Coast Guard received a request from a commercial vessel operator requesting a change to the operating regulations for the Northern Avenue Bridge. The commercial operator has a vessel that can not transit through the bridge without a bridge opening and would like the bridge to open for vessel traffic during the 8 p.m. to 6 a.m. time period when the bridge is normally closed.

Under the test deviation, the Northern Avenue Bridge, mile 0.1, across the Fort Point Channel at Boston, from June 7, 2000 through September 4, 2000, will continue to open on signal from 6 a.m. to 8 p.m. From 8 p.m. to 6 a.m., the bridge will open on signal if at least a two-hour notice is given by calling the number posted at the bridge.

It is expected that this deviation will meet the present needs of navigation.

This deviation from the normal operating regulations is authorized under 33 CFR 117.43.

Dated: April 18, 2000.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 00–10453 Filed 4–26–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–00–016]

Drawbridge Operation Regulations; Mianus River, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation and request for comments.

SUMMARY: The Commander, First Coast Guard District has issued a temporary 90 day deviation from the existing drawbridge operation regulations for the Metro-North Bridge, mile 1.0, at Greenwich, Connecticut. This deviation will require the bridge to open on signal, June 7, 2000 through September 4, 2000, from 9 p.m. to 5 a.m., after a four-hour advance notice is given by calling the number posted at the bridge. The bridge presently does not open for vessel traffic between 9 p.m. and 5 a.m., daily. This deviation is necessary in order to test an alternate drawbridge operation schedule.

DATES: This deviation is effective from June 7, 2000 through September 4, 2000. Comments must reach the Coast Guard on or before September 30, 2000.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, Bridge Branch, at 408 Atlantic Avenue, Boston, MA. 02110–3350, or deliver them at the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this notice by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this notice (CGD01–00–016), 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 if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Background and Purpose

The Metro-North Bridge, mile 1.0, across the Mianus River has a vertical clearance of 20 feet at mean high water and 27 feet at mean low water in the closed position. The existing operating regulations in 33 CFR 117.209 require the bridge to open on signal from 5 a.m. to 9 p.m., immediately for commercial vessels and as soon as practicable but no later than 20 minutes after the signal to open for the passage of all other vessels. When a train scheduled to cross the bridge without stopping has passed the Greenwich or Riverside stations and is in motion toward the bridge, the draw shall open as soon as the train has crossed the bridge. From 9 p.m. to 5 a.m., the draw need not be opened for the passage of vessels.

The Coast Guard received a request from a commercial vessel operator requesting a change to the operating regulations for the Metro-North Bridge. The commercial operator has five vessels that transit the Metro-North Bridge. One of the five vessels can not transit through the bridge without a bridge opening. The commercial operator would like the bridge to open for vessel traffic during the 9 p.m. to 5 a.m. time period. The commercial operator expects to make 30–40 night transits from May through October that will require bridge openings after 9 p.m., when the bridge is normally closed.

Under the deviation, the Metro-North Bridge, mile 1.0, across the Mianus River at Greenwich, from June 7, 2000 through September 4, 2000, will, from 5 a.m. to 9 p.m., open on signal immediately for commercial vessels and as soon as practicable, but no later than 20 minutes after the signal to open for the passage of all other vessels. When a train scheduled to cross the bridge without stopping has passed the Greenwich or Riverside stations and is in motion toward the bridge, the draw will open as soon as the train has crossed the bridge. From 9 p.m. to 5 a.m., the draw will open on signal if at least a four-hour advance notice is given by calling the number posted at the bridge.

It is expected that this test schedule will meet the present needs of navigation.

This deviation from the normal operating regulations is authorized under 33 CFR 117.43.

Dated: April 12 2000,

Robert F. Duncan,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 00–10452 Filed 4–26–00; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–6571–7]

RIN 2040–AD33

EPA Review and Approval of State and Tribal Water Quality Standards

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rule specifies that new and revised standards adopted by States and authorized Tribes after the effective date of today's rule become "applicable standards for Clean Water Act purposes" only when approved by EPA. To facilitate transition to this approach, standards in effect under State and Tribal law and submitted to EPA before the effective date of the new rule may still be used for Clean Water Act purposes, whether or not approved by EPA, until replaced by Federal water quality standards or approved State or Tribal standards.

EFFECTIVE DATE: May 30, 2000.

ADDRESSES: This rule's administrative record is available for review and copying from 9:00 to 4:00 p.m., Monday through Friday, excluding legal holidays, at the Water Docket, East Tower Basement, Room EB57, U.S. EPA, 401 M Street, SW, Washington DC. For access to materials, please call (202) 260–3027 to schedule an appointment.

The Clean Water Act Water Quality Standards dockets discussed in III.E.4 of the **SUPPLEMENTARY INFORMATION** below are available for viewing in the Regional Offices. Regional contacts, addresses, and phone numbers are included in the supplementary section of this preamble.

FOR FURTHER INFORMATION CONTACT: William Morrow, Office of Science and Technology, Standards and Applied Science Division, (202) 260–3657, morrow.william@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Potentially Affected Entities

Citizens concerned with water quality may be interested in this rulemaking. Entities discharging pollutants to waters of the United States could be indirectly affected by this rulemaking since water quality standards are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits. Potentially affected entities include:

Category	Examples of potentially affected entities
States, Tribes, and Territories	States, Territories, and Tribes authorized to administer water quality standards.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. 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.

II. Background

Section 303(c) of the Clean Water Act requires States, which as defined include Territories and authorized Tribes, to review their water quality standards periodically, to adopt new or revised standards as needed, and to submit their standards for EPA review. Authorized Tribes are Tribes that have approved CWA section 303 authority pursuant to 40 CFR 131.8. EPA will approve or disapprove any such new or revised standards. Section 303(c)(3) states that "If the Administrator, within sixty days after the date of submission of the revised or new standard, determines that such standard meets the requirements of this Act, such standard shall thereafter be the water quality standard for the applicable waters." If the Administrator determines that the new or revised standard does not meet those requirements, she shall take specified steps to ensure that an adequate standard is in place. (See preamble to proposed rule (64 FR 37072 (July 9, 1999)) for a more detailed description of the statutory background.)

Notwithstanding this statutory language, EPA's 1983 water quality standard regulations set out an interpretation of the Act which allowed State and Tribal standards to go into effect for CWA purposes as soon as they were adopted and effective under State or Tribal law, and to remain in effect unless and until replaced by another standard. The 1983 rule reflected an Agency interpretation which dated back at least to 1977. See Opinion of the General Counsel No. 58, Issue 2, In re Bethlehem Steel Corporation, March 29, 1977. On July 8, 1997, the district court issued an opinion in *Alaska Clean Water Act Alliance* v. *Clark*, No. C96–1762R (W.D. Wash.) holding that the plain meaning of the Clean Water Act was that new and revised state water quality standards were not effective for Clean Water Act purposes until approved by EPA. The parties to the lawsuit entered into a settlement agreement under which EPA agreed to propose revisions to 40 CFR 131.21(c) consistent with the Court's opinion no later than July 1, 1999, and to take final action within nine months of the proposal. Today's final rule is issued in accordance with this settlement agreement.

The proposed rule was published in the **Federal Register** on July 9, 1999, with a 45 day comment period. The public comments on the proposed rule are available in the docket for this rule.

III. Summary of Final Rule and Response to Major Comments

A. General Approach

Like the proposal, the final regulation sets out a general rule that if a State or authorized Tribe adopts a WQS that goes into effect after the effective date of this rule, that standard becomes the applicable WQS for purposes of the CWA when EPA approves it, unless or until EPA has promulgated a more stringent Federal WQS for the State or authorized Tribe. For example, where EPA has previously promulgated a more stringent Federal standard, the newly approved State or Tribal standard will go into effect for CWA purposes after EPA removes the Federal rule. Another example is where EPA approves a State or Tribal standard and at a later date, based on new information, determines that a new or revised standard is necessary. If the State or Tribe does not revise the previously approved standard, EPA would promulgate a Federal standard to supercede the previously approved standard. EPA clarified this in today's final rule by changing the heading in the table at § 131.21(c) from "unless" to "unless or until."

As discussed in section III.C., in response to comments, today's final rule modifies the proposed transition provision (referred to in the proposal as a grandfather provision) allowing standards which went into effect prior to the effective date of today's rule to be used for CWA purposes. The final rule also establishes an approach to integrate the requirements of CWA sections 303 and 510 that is different than the proposal. The following discussion summarizes the major comments, and explains why EPA did or did not modify the proposal in response to these comments. A complete response to comments is in the administrative record for this rule—see **ADDRESSES.**

The comments were divided on the general approach in the proposal. A number of commenters, especially environmental groups, strongly supported the proposal in general as mandated by the Clean Water Act and as ensuring that only standards which meet the requirements of the CWA would be used for CWA purposes (although some objected to the exceptions provided for standards adopted before the effective date of the final rule and for new, not less stringent standards). Other commenters indicated that the new approach would be acceptable if steps were taken to address delays in EPA approval of standards (*e.g.*, provide for default approvals if EPA did not act in a timely fashion). Finally, a number of commenters expressed support for retaining the current approach; particular commenters questioned the legal basis for the new approach or felt that it infringed on States' rights; or expressed concerns that the new approach would create a confusing system of dual standards and/or result in gaps when a State repealed an old standard.

The final rule retains the general approach of the proposed rule. EPA agrees that this approach (that is, standards are not effective for CWA purposes until approved by EPA)

reflects the plain language of CWA section 303(c)(3). While the commenters have raised various practical issues concerning the implementation of the proposed approach, EPA believes that these problems can generally be addressed and do not justify a different interpretation of the language of section 303(c)(3). EPA does not believe that the final rule infringes on State or Tribal rights. States and authorized Tribes will continue to have the flexibility to adopt new and revised standards whenever deemed appropriate or necessary. Today's final rule does not affect the basis for EPA review and approval/disapproval. The substantive requirements of the CWA and EPA's implementing regulations remain unchanged. Today's final rule only affects the timing of the effectiveness, for CWA purposes, of State and Tribal revisions to standards.

Many commenters noted that EPA has not always been able to meet its CWA deadlines when reviewing and taking action on (*i.e.*, approving and/or disapproving) WQS submissions and expressed concern that such delays would cause problems under the new rule. EPA acknowledges this concern and is working with its EPA Regional offices and States and authorized Tribes to streamline the EPA review and approval/disapproval process. For example, EPA has identified Endangered Species Act (ESA) consultations as one source of delay in EPA approval actions. EPA is working with both the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) to streamline the consultations. One key outcome of these discussions will be the finalization of the Memorandum of Agreement (MOA) that EPA, NMFS, and FWS solicited public comment on in January of 1999 (see 64 FR 2741). EPA, NMFS, and the FWS believe the final MOA will provide a framework for streamlining consultations in the Regional and Field offices. EPA is also discussing with States and authorized Tribes how they can assist EPA in assuring that the needs of threatened and endangered species are addressed in the development of State and Tribal standards. Although consultation under the ESA is EPA's obligation, in discussions with EPA, States have acknowledged they have a role in assuring that State standards adequately protect aquatic life and the environment, including threatened and endangered species.

EPA is also working with States and authorized Tribes to determine if it needs to further clarify the WQS program requirements in 40 CFR Part 131 (see 63 FR 36742). At a minimum, EPA will jointly develop guidance with States and authorized Tribes to improve the current State and Tribal adoption and EPA review and approval/disapproval process. EPA believes that, once completed, this guidance will inform EPA Regional offices and States and authorized Tribes on how to identify and resolve concerns early in the process, so that when new or revised State and Tribal WQS are submitted to EPA, there are no unexpected issues and EPA can act in a timely fashion. In addition, EPA will continue to provide technical assistance and training for the water quality standards program. Such training and workshops will reflect the joint strategy developed by EPA, States and authorized Tribes in the aforementioned guidance.

Several commenters expressed concern that when States adopt new or revised standards, the old ones expire as a matter of State law. They wanted to know how the old standards can be used for CWA purposes when the new or revised standards are the only standards in effect for State purposes. The old standards remain the applicable CWA standards and will be retained in the CWA WQS docket until EPA approves the State or Tribal revisions, or until EPA promulgates a more stringent standard (see also section 131.21(e) of today's final rule). There are several things States and authorized Tribes can do to avoid or minimize using such old standards pending EPA action on their replacement. First and foremost, States and authorized Tribes should submit new and revised standards to EPA for review and approval/disapproval as soon as duly adopted into State or Tribal law. Such a submission, meeting the requirements of 40 CFR 131.6, will start EPA's 60/90 day clock for review and approval/disapproval respectively under the CWA. Secondly, States and Tribes should coordinate with EPA's Regional Offices early in the State and Tribal standards development process. This will help avoid any confusion as to what is "approvable." EPA believes that early and frequent communication will help ensure that States and authorized Tribes submit standards revisions that are scientifically defensible and consistent with the CWA, thus avoiding a disapproval once officially submitted to EPA. For more information on coordinating State and Tribal actions with EPA's CWA review see section E. Starting (and completing) EPA's review process as quickly as possible will minimize the number of regulatory actions a State or authorized Tribe is likely to take prior to a new or revised standard being approved by EPA. In addition, States and authorized Tribes may consider changing their procedures so that a revision to a State or Tribe's standard is not effective under State or Tribal law until after EPA approves or after a period of time—such as 90 days—that provides an opportunity for submittal and completion of EPA review while the old standard remains on the State or Tribal books. In addition, some States and authorized Tribes may decide to delay any regulatory actions (*e.g.*, draft NPDES permits) until EPA approval of revised standards.

In the (hopefully rare) event that a State or authorized Tribe does need to take a regulatory action before EPA review of a revision is complete, there are several options available. Some States or authorized Tribes may propose regulatory actions based on newly adopted standards not yet approved by EPA. For example, a State might develop a draft permit based on new or revised, less stringent standards. If the revised standards are not approved by EPA by the end of the permit review period, then EPA could object to the proposed permit, or the State could decide to withdraw and re-propose the permit based on the previous standards. Alternatively, the State could develop, and take public comment on, limits calculated from both the old and new standards with the final limits contingent on EPA's standards approval decision. This approach may avoid the need to withdraw and reissue the permit if EPA disapproves the changes to the water quality standards. EPA believes that, as a practical matter, these timing issues will only apply to new and revised standards that are less stringent than the previous standard. If the State or authorized Tribe's new and revised standard is equal to, or more stringent than the previous standard, both standards would be satisfied by implementing the more stringent standard pusuant to State or Tribal law.

B. Integration With CWA Section 510

1. Proposed Rule

Section 131.21(f) of the proposed rule specified that State or Tribal water quality standards which are not less stringent than the "applicable water quality standards" (that is, not less stringent than approved (or grandfathered) standards may be adopted and enforced within the boundaries of the adopting State or authorized Tribe. The preamble also specified that, under CWA sections 301(b)(1)(C) and 510, NPDES permits within the State or Tribe in question were required to assure compliance

with such a "510 standard" even prior to EPA approval.

2. Major Comments and Responses

The comments were almost uniformly critical of the proposed § 131.21(f) and the interpretation of section 510 which it reflected, although the nature of the objections varied.

Comment: Several commenters argued that even "not less stringent" standards required EPA approval before they could be used in any way under the CWA. EPA interprets these comments to argue that section 510 did not preempt EPA's section 303(c) approval requirement in such cases but simply made it clear that an approved standard could be more stringent than a minimum requirement established by the CWA. Some of these commenters also argued that the district court had already rejected the approach set out in the proposal. Others who argued that all standards needed approval before being used assumed that EPA could disapprove a "more stringent" standard as unjustified; and these commenters wanted EPA approval as a pre-requisite for any standard going into effect to ensure that overly stringent standards did not become effective. Commenters in both camps were concerned that making stringency determinations could be difficult, time-consuming, or open to abuse.

Response: The preamble to the proposed rule implicitly assumed that section 510 effectively waived the requirement that State and Tribal water quality standards be approved before they were used as CWA standards as long as they were "not less stringent." Section 510 is a savings provision. However, as some commenters pointed out, section 510 starts with the words, "Except as expressly provided in this Act." Since section 303(c)(3) expressly specifies that new or revised standards do not become the effective standards until approved by EPA, it is reasonable to read section 510 as meaning that EPA cannot disapprove a standard simply for being overly stringent, rather than that more stringent standards are effective whether or not approved by EPA. If section 510 is read this way, the reference in section 301(b)(1)(C) to standards "established under State law under authority preserved under section 510" is to approved standards which are more stringent than required, not—as in the proposal—to unapproved "not less stringent" standards. EPA agrees that this is a reasonable construction of the relevant provisions of the Act, and one that better serves the purposes of the Act.

Under this reading, one avoids the problems associated with determining whether a new or revised standard is "not less stringent" (under the proposal, unapproved "not less stringent" standards had to be reflected in a permit). If standards are not required to be used for CWA purposes until approved, there is no need to make comparative judgments of stringency. At the time of approval, the test is whether the new or revised standards meet the requirements of the CWA and EPA's implementing regulations, not whether they are more or less stringent than predecessor standards. Once such standards are approved, they are the applicable water quality standards for CWA purposes regardless of relative stringency.

Comment: Some commenters argued that "more stringent" standards should never need EPA review and approval.

Response: EPA does not believe that it is reasonable to interpret section 510 to dispense altogether with EPA review of such standards. Section 303(c) clearly requires States and authorized Tribes to submit all new or revised standards to EPA for review and approval or disapproval. Since section 510 begins "Except as expressly provided in this Act," the authority preserved under section 510 is limited by, and does not override, the requirements for EPA review set out in section 303(c).

Comment: Many commenters argued that the proposal would lead to confusion and be difficult to implement since it would not always be obvious whether a new or revised standard was more stringent. Some of these commenters suggested that this confusion could be eliminated by having EPA review and approve or disapprove all new or revised standards regardless of stringency.

Response: EPA agrees that it is not always easy to determine whether a new or revised standard is more stringent than its predecessor, and that under the proposal there could have been a need to decide the relative stringency of a new or revised, but not yet approved, WQS. Because the proposal regarded unapproved "not less stringent" standards as standards adopted under authority preserved by section 510 standards, such standards would have been required to be implemented in NPDES permits under section 301(b)(1)(C) prior to approval. Accordingly, States, authorized Tribes, and the regulated public would have been forced to determine the relative stringency of as-yet-unapproved standards in pending NPDES permit proceedings to know whether permits had to assure compliance with such standards. As discussed previously in response to the first comment, the final rule addresses this issue.

Comment: Under the proposal, stringency comparisons were to be made between the new or revised standard and the previous "applicable water quality standard" (*i.e.,* approved or "grandfathered" standard). The final rule should also allow new or revised standards to be used prior to approval if they are at least as stringent as EPA's corresponding section 304(a) ambient water quality criteria, or whenever there are no corresponding section 304(a) criteria, even if the new or revised standards are less protective than the previous applicable standard in the CWA docket.

Response: As discussed above. the final rule requires that all new or revised standards be approved by EPA, regardless of stringency, before they are required to be used under the CWA. Therefore, the issue of how to make stringency comparisons is moot.

3. Final rule

The final rule deletes proposed 131.21(f). As discussed in response to previous comments, the proposal was based on an overly broad reading of CWA section 510 and would have led to substantial confusion.

However, EPA does not want to leave the impression that States and authorized Tribes will have no means to achieve the objectives of more stringent criteria while awaiting EPA approval. In the case of a proposed State or Tribal NPDES permit, as long as the permit assures compliance with approved water quality standards, EPA would not object to it as not meeting the requirements of the Act (*e.g.,* section 301(b)(1)(C)) merely because the State or authorized Tribe included effluent limitations which also meet an as-yet unapproved but more stringent State or Tribal standard. (Similarly, EPA would not disapprove a TMDL on the grounds that it was more stringent than needed to meet the applicable water quality standard.) In the case of a federally issued NPDES permit, EPA's obligation would be to include permit conditions which assured compliance with approved standards and with any conditions in a State or Tribal section 401 certification. As part of a section 401 certification, if a State or authorized Tribe includes not only water quality-based effluent limits (WQBELs) required under section 301(b)(1)(C) but also conditions needed to meet "other appropriate requirement[s] under State law" under section 401(d), EPA would also include those supplemental conditions in the permit. Finally, as

EPA improves the timeliness of its water quality standards actions (*i.e.*, approval and/or disapproval), more stringent standards will become the applicable standards sooner after adoption.

C. EPA Transition Strategy

1. Proposed Rule

Under the proposal, State and Tribal standards in effect (under EPA's 1983 rule) before the effective date of this new final rule would remain in effect until superseded by a standard approved or promulgated by EPA. Under the proposal, this transitional provision (referred to as "grandfathering" in the proposal) applied to all such pre-existing standards, whether or not they had been submitted to EPA, and, if submitted, whether or not they had been disapproved or were merely awaiting EPA approval/disapproval. This reflected the fact that under the 1983 rule such distinctions did not affect the effectiveness of State and Tribal standards.

2. Major Comments and Responses

Comment: Such a transition provision is necessary if EPA proceeds with the general approach, given EPA's backlog and the difficulty in "resurrecting" the previous approved standards.

Response: EPA agrees. After reviewing all the comments, EPA believes that its original conclusion—that, given the previous implementation of section 303(c), identifying and resurrecting the previous approved standards would often be difficult and in some cases impossible—is still correct. Furthermore, if no such previous standard could be identified, there could be a gap in standards to apply. None of the commenters seriously disputed those conclusions. Given the current backlog in unapproved and disapproved standards and the state of previous record keeping (*e.g.*, no CWA WQS docketing system), the only practicable way to put the new rule into effect at this time without causing serious disruption is to provide a transition provision. Moreover, some commenters mentioned their reliance on the old rule. Furthermore, the effort that would be expended in identifying previously approved water quality standards would likely detract from EPA's ability to promptly review new and revised standards submissions and to promulgate Federal water quality standards where needed.

Comment: The transition provision is inconsistent with CWA section 303(c)(3) as interpreted by the court.

Response: EPA now accepts the court's interpretation of section 303(c)(3), and also does not take the position that section 303(c)(3) itself establishes a transition provision. However, logically, that does not foreclose the use of a limited transition provision when implementing a new or revised regulation. Today's rule is not written on a blank slate. EPA believes that in revising its regulation to reflect the court's interpretation of section 303(c)(3), EPA has some discretion in constructing a transition from its longstanding previous approach. Significantly, many of the commenters who objected to the transition provision as proposed, citing its inconsistency with section 303(c)(3), nonetheless recognized the need for some transition and were accepting of, as one put it, "a limited accommodation in light of past practices," *e.g.*, a grandfather or transition provision with a defined end date. However, by making such alternative suggestions, these commenters are implicitly acknowledging that having a transition provision is not *per se* illegal. For the reasons discussed in the preambles to the proposed and final rules, EPA believes that such a transition provision is needed here and that the transition provision in the final rule is a reasonable exercise of such discretion.

The water quality standards being grandfathered or transitioned are a small fraction of all State and Tribal standards currently in effect (*i.e.*, most existing standards have been approved). Further, the absolute numbers will decrease over time as EPA completes its review and takes action on (*i.e.*, approves/disapproves) backlogged submissions or, in the case of backlogged disapprovals, obtains satisfactory revisions from the State or promulgates superseding Federal standards. Most States and Territories have had their base program in place and approved by EPA for many years now. EPA is current in its review and approval of standards revisions for 19 States, 14 Tribes, 4 Territories, and the District of Columbia. EPA's backlog of unapproved standards in the remaining States consist primarily of recent refinements made by States to keep up with the latest science (*e.g.*, site-specific criteria, changes to designated uses for specific waterbodies) and to tailor standards to specific watersheds. Accordingly, EPA believes that in practice the transition provision will be fairly narrow in scope relative to approved State and Tribal standards, and that it will expire over time as EPA completes its review of the outstanding standards.

Comment: The grandfather provision should be more limited, *e.g.*, should not apply to disapproved standards or to standards which have never been submitted to EPA, should apply only to standards which were submitted more than 3 years ago, or should expire 6 months after the effective date of the rule.

Response: EPA considered ways to narrow the transition provision. EPA agrees with the suggestion that the grandfather provision be limited to standards which have been submitted to EPA as of the effective date of the final rule, and has modified the rule accordingly. As revised, the transition provision will eliminate any incentive for States and authorized Tribes not to submit pre-existing standards to EPA for review. 40 CFR 131.20(c) currently requires States and authorized Tribes to submit standards containing new or revised provisions within 30 days of adoption. If States or authorized Tribes do not comply with this requirement, EPA's review of those standards may be delayed. EPA believes it is inappropriate for States and authorized Tribes to have those standards covered by the transition policy because of their failure to submit the standards to EPA. States or authorized Tribes who have made timely submissions will not be affected by this change from the proposal.

EPA also considered whether to exclude disapproved standards from the transition provision. However, the practical difficulties in resurrecting the previous approved standard are just as likely to arise in the case of a disapproved standard as in the case of a standard for which EPA review is incomplete. In addition, because of evolving science, the previous approved standard—even if identical—may not necessarily be significantly more protective than the recently disapproved standard. Moreover, it is EPA's judgment that in the long run its resources would be better spent resolving disapprovals (either by helping the State remedy the problem or by promulgating a Federal standard) than by a time-consuming and perhaps fruitless search for the previous approved standard. It is EPA's expectation that the number of disapproved standards covered by the grandfather provision will diminish and ultimately disappear as States make acceptable revisions to the disapproved standards or EPA promulgates superseding Federal standards. While EPA acknowledges that this approach leaves inadequate standards in place temporarily, EPA believes that, on balance and considering all the factors

discussed above, this approach is the one best calculated to obtain the ultimate goal—timely approval or replacement of all new and revised water quality standards.

EPA also considered whether to provide a sunset for the transition provision. Commenters suggested times ranging from 60 days to 2 years. One commenter said EPA has not demonstrated the need for an unlimited grandfather provision for submitted but not-yet-reviewed standards, arguing that there are only 60 or so submissions awaiting EPA action, and for about half of those EPA has completed its review and is waiting for ESA consultation to conclude, and that EPA has not shown that it cannot muster the resources to complete the job in a relatively short time, such as 60 days. EPA agrees that the standards which will be covered by the transition provision are limited and believes that fact helps make the provision reasonable. However, it does not follow that a 60-day limit should be placed in the provision. EPA hopes to have a substantial part of the backlog of pending submissions dealt with by the effective date of this rule. For this reason, EPA expects the practical effect of the grandfather provision to be limited. However, it is unrealistic to expect the backlog to be eliminated entirely within the 60 days suggested by the comment. The remaining items are more complicated, *e.g.,* situations where more information is needed from the State or authorized Tribe to evaluate the adequacy of the standard or where the standard in question raises novel and unique National issues that EPA has not spoken to before (*i.e.,* precedent setting). Moreover, the 60 submissions referred to by the commenter are simply those on which EPA action is overdue; EPA staff are also engaged in reviewing more recent submissions, as well as working on resolution of previously disapproved items, where rulemaking procedures take longer than 60 days. Under the circumstances, it is impractical to specify a date certain by which all the backlogs will be completely resolved.

Comment: If the final rule contains a transition provision, it should not apply to pending water quality standards that create exceptions, variances, or exemptions from other standards. In this situation, there is no problem identifying what would be in place in lieu of the pending standard.

Response: While in theory this suggestion has some appeal, in practice implementing it would not be so simple. Water quality standards changes are not always as clear-cut or obvious as the comment suggests. Variances and other exceptions from standards are not always labeled as such. In addition, some standards submissions which create variances and exceptions from standards also modify the underlying standard (*e.g.,* add a variance process as quid pro quo for making a standard more stringent). If the applicability of the transition provision depends on subjective judgments—as opposed to an objective comparison of dates—then resources which should be spent reviewing standards would be diverted into resolving the applicability of the transition provision and suggested exception to the transition provision would be counterproductive. It is EPA's judgment that a relatively simple transition provision will in the long run result in the most expeditious and efficient elimination of the backlog.

3. Final Rule

The final rule retains a transition provision for standards adopted prior to the effective date of today's rule, but modifies it by requiring that standards must have also been submitted to EPA, that is, submitted to EPA pursuant to and consistent with the submission requirements of 40 CFR Part 131.6, by May 30, 2000 in order to qualify. A State or Tribal standard must be (1) Duly adopted, (2) in effect under State or Tribal law, and (3) submitted to EPA by May 30, 2000 in order to be in effect for CWA purposes prior to EPA approval. All three eligibility criteria must be met in order to be covered by the transition provision contained in today's rule at 131.21(c).

D. Delay Related Comments

1. Default Approval/Disapproval

A number of commenters suggested that EPA modify the final rule to specify that State and Tribal water quality standards submissions be deemed approved if EPA does not act within the 60 or 90 days required by the CWA. There were variations on the suggested default time period, and some commenters suggested a "conditionally approved" or "interim approval" label, but the general approach advocated in several of the comments was a "default approval" if EPA fails to take timely action. In such instances, it was suggested that the State submittal could serve as the record of decision for EPA's "approval." Commenters were concerned about having to comply with outdated standards while EPA was in a prolonged review. Several commenters suggested that the "conditionally approved" status would allow new and revised State and Tribal standards to be used for CWA purposes unless and until subsequently disapproved by EPA. Alternatively, some commenters suggested that EPA could use its discretionary authority later on to remedy standards that it would have disapproved if it had had the resources to review and approve them on time. Conversely, a few commenters suggested that if EPA fails to act within 90 days, the WQS should be "constructively disapproved."

EPA acknowledges the commenters' concerns regarding the timeliness of EPA's approval action. However, the concept of a default approval of State and Tribal WQS submissions is not consistent with section 303 of the CWA. Section 303(c)(3) requires EPA to make an affirmative finding that standards revisions submitted to EPA are consistent with the CWA. EPA has responsibility to determine that State and Tribal standards revisions are protective of human health and the environment. EPA must explain its approval actions; such actions are judicially reviewable. Any type of default approval approach would result in approval actions that EPA could not justify or explain. Similarly, EPA rejects any type of default disapproval approach. Disapprovals trigger other CWA requirements for the State or authorized Tribe to rectify the disapproval and for EPA to act if the State or authorized Tribe takes no action to revise the disapproved standards. Triggering these actions by a "default" disapproval would cause much more confusion than any type of potential delay on EPA's part. EPA believes that section 303(c) of the CWA requires it to make an affirmative finding on whether or not a State or Tribal standard is consistent with the CWA.

The commenters advocating default approaches did so out of concern about EPA's ability to make timely WQS approvals. As explained in the preamble to the proposed rule (see 64 FR 37078), EPA has initiated a number of activities to improve the timeliness of its review and approval actions. EPA will be working closely with States and authorized Tribes over the next year to develop guidance for improving coordination between EPA and States and Tribes. Such coordination will also involve the National Marine Fisheries Service and the Fish and Wildlife Service (collectively, the Services). As explained in III.D.2., the Services have a key role in assisting EPA in timely WQS approval actions. In addition, as suggested by some commenters, EPA can always partition State or Tribal submissions and approve the unquestionable portions while continuing to address any contested or difficult issues. EPA also agrees with

comments that encouraged EPA to work with states during their promulgation process and to speak with one voice. One commenter noted that feedback on what is "approvable" varies depending on which EPA office is contacted. EPA is evaluating its internal coordination process as part of its overall efforts to streamline EPA review and approval of Standards submissions. EPA will work to ensure that its feedback is both timely and coordinated.

2. Integration With the Endangered Species Act

As discussed in the preamble to the proposed rule, EPA's approval of new and revised State and Tribal water quality standards is a Federal action subject to the consultation requirements of section 7 of the Endangered Species Act (ESA) (see 64 FR 37078 for further discussion). Commenters were particularly concerned with EPA's ability to make timely WQS approval/disapproval decisions in light of its ESA obligations. Several commenters suggested that in instances where the delay is attributable to the ESA consultation, EPA approve the WQS submission "subject to" successful completion of ESA consultation. Another commenter encouraged EPA to streamline the ESA consultation process.

EPA agrees with commenters that, in many instances, ESA consultation delays EPA's CWA approval of water quality standards revisions. EPA and the Services (NMFS & FWS) are engaged in discussions to finalize the draft Memorandum of Agreement between the Agencies to establish a clear set of guidelines for conducting ESA consultations. EPA also agrees with the comments suggesting that EPA consider utilizing "subject to ESA" approvals where ESA concerns cannot be resolved in a timely manner. EPA is committed to fulfilling its obligations under the ESA, and, as articulated in the draft MOA, will work with the Services early in the State and Tribal standards adoption process to ensure that the needs of threatened and endangered species are addressed when new or revised standards are being contemplated. This early coordination should help streamline the review and approval/disapproval process once the standards revisions are officially submitted to EPA for review and approval/disapproval under the CWA.

E. Other Issues

1. Integration With TMDL/NPDES Program

EPA advocates that States and authorized Tribes refine their water quality standards to more precisely reflect site-specific conditions and local species (see 63 FR 36741). Sometimes such refinements take place concurrently with the development of a Total Maximum Daily Load (TMDL) for a specific water body or when issuing a National Pollution Discharge Elimination System (NPDES) permit for a discharge to a specific water body. In these instances the regulatory authority may obtain information that can be used to more precisely define the appropriate standard. For example, a State may be establishing a TMDL for a water body with a fish advisory and after reviewing ambient water quality data realize that a site-specific criterion is necessary to address accelerated bio-magnification occurring at the site. In this example, the regulatory authority could revise the standard concurrently with establishment of the TMDL. By law, TMDLs must be reviewed and approved by EPA. The CWA specifies 30 days for EPA to review and approve TMDLs and 60 days for EPA to review and approve standards revisions. When EPA receives a WQS revision to review and approve/disapprove in conjunction with its review and approval of a TMDL, EPA expects to complete both reviews within 30 days which will satisfy the CWA requirements for both actions. In these situations, it will be particularly important for the State or authorized Tribe to coordinate with EPA early in the development process to ensure approval of the revised water quality standard because the TMDL must be established for the "applicable" water quality standard, which is the approved water quality standard. Similarly, in the context of drafting an NPDES permit, a regulatory authority may obtain information that shows a particular aquatic life species protected by the current criteria is absent, and as a result, adopt site-specific criteria that better reflect the indigenous aquatic life. In such instances, the regulatory authority could adopt the site-specific criteria concurrently with public notice of the draft NPDES permit. In such a case, EPA should review the site-specific criteria during the same time frame in which it reviews the draft permit. If EPA disapproves the criteria, it could also object to the permit. During the 90 day period allowed by CWA § 402(d), the State or authorized Tribe could then modify the permit to reflect the previously approved WQS, or fix the criteria to address the disapproval and modify the permit to reflect the newly revised criteria. If a State or authorized Tribe submits a draft permit based on site-specific criteria, but does not submit the criteria itself, EPA may object to the permit. Again, early coordination with EPA will expedite review and approval when the final standard is officially submitted to EPA.

Today's rule applies to the Great Lake States as well as to the rest of the nation. In 1995, EPA promulgated the Great Lakes Water Quality Guidance at 40 CFR Part 132. In that rulemaking, EPA, among other things, indicated that States and authorized Tribes may adopt variances concurrently with development of an NPDES permit and have the permit reflect the variance. Under today's rule, such variances, like other standards revisions, must be approved by EPA before they are relied on in final NPDES permits or other CWA purposes, in the Great Lakes basin as well as anywhere else.

2. Coordination Between Federal and State and Tribal Processes

EPA acknowledges the concerns expressed by some States and authorized Tribes regarding EPA's ability to make approval/disapproval decisions in the CWA time frames. However, in addition to EPA's efforts to expedite its review, States and authorized Tribes can also facilitate more timely action by EPA. For example, States and authorized Tribes are encouraged to submit advance copies of new or revised water quality standards as soon as they are considered final, even though the State or Tribe may still need time to complete certain administrative requirements (*e.g.*, Attorney General certification). These advance copies of revised standards should be sent directly to the Regional Water Quality Standards Coordinators (see table in section III.E.4). Submission of advance copies will not trigger the CWA timeframes for EPA action; however, it will allow EPA to initiate its substantive review of the new or revised standard before the complete package is officially submitted. States and authorized Tribes should also consider adopting new or revised standards with delayed effective dates, or with an effective date keyed off of EPA approval or the CWA 60 day timeframe for EPA approval. All these measures will allow closer synchronization between the transition from one standard to another under State or Tribal law and under the CWA.

As a general matter, States and authorized Tribes should also examine their administrative and rulemaking

procedures to identify opportunities by which their adoption of criteria, as well as EPA's approval, can be streamlined. One way to do this is through State or Tribal adoption of a "performance-based" approach. A performance-based approach relies on adoption of a process (*i.e.*, a criterion derivation methodology) rather than a specific outcome (*i.e.*, concentration limit for a pollutant) consistent with 40 CFR 131.11 & 131.13. When such a "performance-based" approach is sufficiently detailed and has suitable safeguards to ensure predictable, repeatable outcomes, EPA approval of such an approach can also serve as approval of the outcomes as well. If a particular State or Tribe's approach is not sufficiently detailed or lacks appropriate safeguards, then EPA review of a specific outcome is still necessary. However, even a more general performance-based approach would still help guide EPA review of specific outcomes.

The "performance-based" approach is particularly well suited to the derivation of site-specific numeric criteria and for interpreting narrative criteria into quantifiable measures. Proper construction and implementation of such an approach can result in consistent application of State and Tribal narrative water quality criteria and defensible site-specific adjustments to numeric ambient water quality criteria. Changes to a designated use (including temporary changes, *e.g.*, variances) do not lend themselves to a "performance-based" approach. Designated use changes and variances differ from criteria changes in that they modify the intended level of protection. In contrast, site specific translations of narrative water quality criteria and site-specific adjustments to numeric ambient water quality criteria take additional information into account while protecting the designated use. As such the intended level of protection is no way modified. In addition, making use changes and issuing variances must include an evaluation of "attainability" of a designated use, taking into account factors such as natural conditions or economic and social impacts. See 40 CFR 131.10(g).

A "performance-based" approach relies on the State or authorized Tribe specifying implementation procedures (methodologies, minimum data requirements, and decision thresh holds) in its water quality standards regulation. Adopting implementation procedures into State and Tribal regulations establishes a structure or decision-making framework that is binding, clear, predictable, and transparent. During the adoption of the detailed procedures, all stakeholders and EPA have an opportunity to make sure that important technical issues or concerns are adequately addressed in the procedures. The State or Tribal implementation procedures must also consider any special needs of federally listed threatened or endangered species or their critical habitat. Under section 7 of the ESA, EPA would have to consult with the Services on the detailed implementation procedures as part of its approval process if EPA's approval may affect a listed species. State and authorized Tribal water quality standards programs which include appropriate performance-based approaches for water quality criteria could benefit the authorized Tribe or State by better positioning them to tailor standards to specific watersheds and ecosystems by streamlining administrative processes associated with refining criteria necessary to protect designated uses. This approach is particularly useful for criteria which are heavily influenced by site-specific factors such as nutrient criteria or sediment guidelines. Such procedures must include a public participation step to provide all stake-holders and the public an opportunity to review the data and calculations supporting the site-specific application of the implementation procedures. The State or Tribe would need to maintain a publically available, comprehensive list of all site-by-site decisions made using the procedures; however, such decisions would not, as a Federal matter, have to be codified in State or Tribal regulation. Although the State or authorized Tribe would not need to obtain separate EPA approval for criteria derived through an approved performance-based approach, such criteria would nonetheless need to be provided to EPA for inclusion in the CWA WQS Docket. When EPA reviews the results of a State or authorized Tribes' triennial review, EPA expects to evaluate a representative subset of the site-specific decisions to ensure that the State or authorized Tribe is adhering to the EPA approved procedure.

Since the procedures would be adopted into State or Tribal regulation, the State or authorized Tribe would be bound by the decision-making framework contained therein. Any water quality criteria which were not derived in accordance with the approved implementation procedures would need separate approval from EPA to be the applicable CWA standard. If a State or authorized Tribe failed to follow those procedures and did not obtain separate EPA approval of the criteria, EPA would have a basis for disapproving a TMDL or objecting to an NPDES permit for not deriving from or complying with applicable standards (see 40 CFR 122.44(d)). Both TMDL development and NPDES permit issuance have mandatory public participation, which provides further safeguards over implementation of a performance-based approach.

EPA used this approach to ensure consistency in future ambient water quality criteria development among the eight Great Lakes States in the Great Lakes Initiative (see 40 CFR Part 132). EPA, the eight Great Lake States, and stakeholders (*e.g.*, regulated community, general public, environmental groups) developed detailed criteria methodologies that States and authorized Tribes in the Great Lakes basin are required to adopt and utilize for criteria derivation. These methodologies ensure scientific integrity and transparency in decision-making among the Great Lakes States as new or revised criteria are derived. EPA also authorized this approach in the National Toxics Rule (see 57 FR 60848). States in the NTR are allowed to modify the Federal criteria site-specifically using EPA's Water Effects Ratio (WER) methodology. EPA's WER methodology is sufficiently detailed so that its site-specific application is formulaic and predictable.

In sum, the key to a "performance-based" WQS program is adoption of implementation procedures of sufficient detail, and with suitable safeguards, so that additional oversight by EPA would be redundant. EPA will be developing more detailed guidance on "performance-based" water quality standards programs in the near future.

3. Standards Subject to Today's Rule

The preamble to the proposed rule stated that State and Tribal implementation policies and procedures are subject to EPA review and approval/disapproval and should be included in the CWA WQS docket. Many commenters claimed this exceeded EPA's statutory authority. Commenters asserted that this was a change and not appropriate because it would capture guidance that was never intended to be regulatory under State law. Some commenters did acknowledge that implementation procedures help determine the effectiveness of the standards.

EPA's reference to including policies and procedures in the CWA docket was intended only to reflect the existing requirements at 40 CFR 131.11 and 131.13, which have been in EPA's regulations since 1983. EPA's regulations at 40 CFR 131.11(a)(2)

provide that where a State adopts narrative criteria for toxic pollutants to protect designated areas, the State must provide information identifying the method by which the State intends to regulate point source discharges based on such narrative. Section 131.13 provides that, if States or authorized Tribes include in their standards policies generally affecting the application and implementation of standards (such as policies on mixing zones, low flows, and variances), those policies are subject to EPA review. EPA's intent is not to assert that all State and Tribal guidance is regulatory, but rather to lock in policies and procedures that were approved as part of a standards submission. EPA will coordinate with State and authorized Tribes individually to determine which implementation policies and procedures should be included in the CWA WQS docket. EPA's approval practice will determine what is or is not "locked in" as a WQS, and the CWA WQS docket will reflect that.

Some commenters were concerned that including mixing zone procedures in the docket would mean that site-specific application of the mixing zone procedure would be considered a form of site-specific standard subject to EPA review and approval. This is not EPA's intent. Mixing zone procedures must be included in the standards because otherwise a permit with a mixing zone would not assure compliance with the standards. However, once mixing zones are authorized through such an approved procedure, the calculation of permit limits consistent with such procedures does not change the water quality standard and does not need approval under CWA section 303(c). Individual mixing zones are reviewable under the NPDES process to ensure, among other things, that all applicable standards, including any procedures, have been followed.

It should be noted that in the case of variances both a State or Tribe's variance policy and its adoption of specific variances are subject to EPA review and will be included in the CWA WQS docket. A variance is a short term, facility-specific modification of the underlying standard and must be supported by a facility-specific analysis demonstrating that one of the six reasons at 40 CFR Part 131.10(g) apply. Hence, each variance is a change to standards (see 48 FR 51400).

EPA will be developing more detailed guidance with States and authorized Tribes on the types of modifications that require specific approval by EPA and the level of detail necessary to incorporate into State and Tribal standards. However, the bottom line is that today's rule does not change which State and Tribal policies and procedures need to be submitted for review and approval under 40 CFR 131.11 and 131.13.

4. CWA WQS Docket

a. Proposed Rule

Under the proposal, EPA proposed discontinuing its annual **Federal Register** publication of approval actions by deleting the annual reporting requirement at 40 CFR 131.21(d). EPA explained that the formation of a CWA WQS docket would eliminate the need for the annual **Federal Register** notice. (See 64 FR 37077 for further discussion.)

b. Major Comments and Responses

In general, most commenters supported the establishment of a CWA docket. Most supported the eventual transfer to the Internet. Comments were mixed with respect to EPA's proposed deletion of its annual **Federal Register** notice, with some comments supporting that and others advocating that EPA maintain FR notices.

Comment: Keeping a paper docket is the most effective way to make the information available in the short term; however, commenter supports effort to move towards putting the information on the Internet. There is no reason to continue EPA's annual **Federal Register** notice of approved State and Tribal water quality standards.

Response: EPA agrees with the comment, and will have a paper CWA docket available as of the effective date of this rule. EPA recognizes that paper CWA WQS dockets in the Region require some effort to access (*e.g.*, phone calls, mailings), though such effort is not any more burdensome than what would be required to obtain a copy from the State or authorized Tribe. Actually, it would be more efficient because the CWA WQS docket also contains any applicable Federal standards (*e.g.*, Federal criteria contained in the National Toxics Rule, 40 CFR Part 131.36) whereas the State or authorized Tribe may or may not supply applicable Federal standards. EPA agrees with the comment that the annual **Federal Register** notice of approved State and Tribal water quality standards is unnecessary in light of the CWA WQS docket. The CWA WQS docket is far more informative than a listing of EPA approval actions. In addition, the CWA WQS docket will be updated on a continual basis as opposed to annually EPA also agrees with the commenter that publication on the Internet would increase access to the CWA WQS docket. EPA has begun work on an electronic version of the CWA WQS docket and is designing a website for easy public access. EPA is designing the electronic CWA WQS docket to be user friendly. For example, users will be able to perform basic text searches to locate specific provisions. Over time, as EPA receives feedback from users of the electronic CWA WQS docket, EPA will revise the system to support increased search capabilities and a higher degree of organization and automation. EPA expects to publish the first version of the electronic docket on the Internet in the Spring of 2001. EPA will announce the availability of the electronic docket in the **Federal Register** at that time. The paper docket will be available in the meanwhile.

Comment: EPA's CWA WQS docket should warn people there may be other applicable standards (CWA section 510 or groundwater) which need to be addressed and direct them to the State or authorized Tribe.

Response: EPA agrees. The CWA WQS docket is intended to capture applicable water quality standards adopted pursuant to CWA section 303(c). EPA recognizes that there may be other requirements applicable to a waterbody under State or Tribal law. EPA's CWA WQS docket will identify the scope of the docket and include instructions for contacting the appropriate State or Tribal official for information regarding the applicability of additional State or Tribal requirements.

Comment: EPA should publish the initial CWA WQS docket in the **Federal Register** to facilitate public comment and scrutiny.

Response: EPA disagrees. EPA assembled a draft CWA WQS docket and solicited public comments on its content as part of the proposal for today's final rule (see 64 FR 37077). In addition, EPA consulted with States and authorized Tribes individually to confirm the contents of EPA's draft CWA WQS docket. As part of finalizing the draft CWA WQS docket, EPA is working with States and authorized Tribes to include any State or Tribal revisions that have occurred since the proposal. EPA believes that the current CWA WQS docket contains all applicable standards that have been adopted, are in effect, and have been submitted to EPA for review and approval/disapproval. Maintaining the docket will be an ongoing process for EPA because States and authorized Tribes will continue to revise their standards as part of the triennial review process, and in order to keep up with

scientific advances. The public is encouraged to provide comments or questions on the contents of the docket at any time. The utility of the docket depends on its completeness and accuracy. Additional comments or questions regarding the contents of the CWA WQS docket should be directed to the appropriate Regional contact listed in section III.E.4.c. below.

Comment: EPA should wait until the electronic CWA WQS docket is up and running before discontinuing the annual **Federal Register** notice of approvals.

Response: EPA disagrees. EPA believes its **Federal Register** notice of approvals is redundant with the paper CWA WQS docket. The CWA WQS is more informative and comprehensive than the **Federal Register** notice of approvals. However, there will be one additional **Federal Register** notice reporting all of the approval actions that occurred up to May 30, 2000. EPA expects to publish this last report later this summer.

c. Final Rule

Today's final rule deletes EPA's annual reporting requirement of approval actions. As explained above, EPA believes that the formation of a CWA WQS docket eliminates the need for the annual **Federal Register** notice. Anyone interested in viewing the docket for a particular State or authorized Tribe should contact one of the EPA Regional offices listed below to make arrangements.

EPA is in the process of converting this hardcopy docket into an electronic format so that it can be published on the Internet. EPA is designing the electronic CWA WQS docket to be user friendly. For example, users will be able to perform basic text searches to locate specific provisions. Over time, as EPA receives feedback from users of the electronic CWA WQS docket, EPA will revise the system to support increased search capabilities and a higher degree of organization and automation. EPA expects to publish the first version of the electronic docket on the Internet in the Spring of 2001. EPA will announce the availability of the electronic docket in the **Federal Register** at that time. In the meantime, hardcopy CWA WQS dockets for local State and Tribal standards are available in the following EPA Regional offices during normal business hours.

State	EPA regional office	EPA contact
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.	EPA Region 1, 1 Congress Street, Suite 1100, CWQ, Boston, MA 02114–2023.	Bill Beckwith, 617–918–1544.
New Jersey, New York, Puerto Rico, Virgin Islands	EPA Region 2, 290 Broadway, New York, NY 10007.	Wayne Jackson, 212–637–3807
Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.	EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029.	Denise Hakowski, 215–814–5726.
Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.	EPA Region 4, Water Division—15th Floor, Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, GA 30303.	Fritz Wagener, 404–562–9267.
Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.	EPA Region 5, Water Division, 77 West Jackson Boulevard, Chicago, IL 60604–3507.	David Pfeifer, 312–353–9024.
Arkansas, Louisiana, New Mexico, Oklahoma, Texas.	EPA Region 6, Water Division, 1445 Ross Avenue, First Interstate Bank Tower, Dallas, TX 75202.	Russell Nelson, 214–665–6646.
Iowa, Kansas, Missouri, Nebraska	EPA Region 7, 726 Minnesota Avenue, Kansas City, KS 66101.	Ann Jacobs, 913–551–7930.
Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.	EPA Region 8, 999 18th Street, Suite 500, Denver, CO 80202–2466.	Bill Wuerthele, 303–312–6943.
Arizona, California, Hawaii, Nevada, American Samoa, Guam.	EPA Region 9, Water Division, 75 Hawthorne Street, San Francisco, CA 94105.	Phil Woods, 415–744–1997.
Alaska, Idaho, Oregon, Washington	EPA Region 10, Water Division, 1200 Sixth Avenue, Seattle, WA 98101.	Lisa Macchio, 206–553–1834.

IV. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business according to RFA default definitions for small business (based on SBA size standards); (2) a small governmental jurisdication that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any requirements on small entities.

Under the CWA water quality standards program, States (and Tribes) must adopt water quality standards for their waters that must be submitted to EPA for approval. These State or Tribal standards (or EPA-promulgated standards) are implemented through various water quality control programs, including the NPDES program which limits discharges to navigable waters in compliance with an EPA permit or permit issued under an approved State or Tribal NPDES program. The CWA requires that all NPDES permits include any limits on discharges that are necessary to meet State or Tribal water quality standards. A State or Tribe has discretion in deciding how to achieve compliance with its water quality standards and in developing discharge limits as needed to meet the standards. For example, in circumstances where there is more than one discharger to a water body that is subject to a water quality standard, a State or Tribe has discretion in deciding which dischargers will be subject to permit discharge limits necessary to meet the revised standards.

As explained earlier, this rule merely defers the effectiveness of State or Tribal

water quality standards pending EPA approval. Under existing NPDES regulations, where a State or Tribe has, as a matter of State or Tribal law, modified an existing water quality standard, a State or Tribal Authority may not modify existing NPDES permit limits to take account of the revised standard until EPA has approved the standard. As a result, until EPA approves the revised standard and a State or Tribe has decided how it will implement the revised standard among the dischargers on that water body, each discharger must continue to comply with its permit limits that were designed to meet the more stringent standard. Moreover, just as under the previous rule, there is no certainty that, even after EPA approval of the revised standard, the permitting agency will necessarily amend a particular discharger's permit to modify its limitation. Instead, a State or Tribe may choose to allocate the loading associated with the less stringent standard to a new or different discharger. Given these circumstances, the impact of today's rule on individual dischargers will depend on State or Tribal actions that EPA neither controls nor can predict.

Courts have consistently held that the RFA imposes no obligation on an agency to prepare a small entity analysis of effects on entities it does not regulate. *Motor & Equip. Mrfrs. Ass'n* v. *Nichols*, 142 F.3d 449, 467 & n.18 (D.C. Cir. 1998)(quoting *United States Distribution Companies* v. *FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996); see also *American Trucking Association, Inc.* v. *EPA*, 175 F.3d 1027 (D.C. Cir. 1999). This final rule will have a direct effect only on States and authorized Tribes which are not small entities under the RFA. The rule establishes requirements that are applicable to water quality standards submitted by States and authorized Tribes to EPA for approval. The rule defers the effective date for CWA purposes of any new or less-stringent, revised water quality standard until EPA has approved the standard. Individual dischargers, including small entities, are not directly subject to the requirements of the rule. Moreover, because of State and Tribal discretion in adopting and implementing their water quality standards, EPA cannot assess the extent to which the promulgation of this rule may subsequently affect any dischargers, including small entities. Consequently, certification under section 605(b) is appropriate. *State of Michigan, et al.* v. *U.S. Environmental Protection Agency*, No. 98–1497 (D.C. Cir. Mar. 3, 2000), slip op. at 41–42.

V. Unfunded Mandates Reform Act

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

Today's final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. The final rule does not affect the process by which State or Tribal water quality standards are adopted under State or Tribal law, but simply specifies when a State or Tribal adoption will be recognized as the applicable water quality standard for general CWA purposes. The rule imposes no enforceable duty on any State, local or Tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA's final rule will only address a single administrative aspect of the water quality standards approval process (*i.e.*, the timing of the "effectiveness" of State or Tribal standards under the CWA). There will be no revisions to existing submission requirements and no revisions to EPA's standards for review. Thus, this final rule is not subject to the requirements of section 203 of UMRA.

VI. Regulatory Planning and Review, Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

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

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

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

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

VII. Federalism, Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule merely specifies when new or revised State or Tribal-adopted standards will be recognized as the applicable WQS for CWA purposes, as mandated by section 303(c)(3) of the CWA. It does not address the process by which States and Tribes adopt standards, nor does it alter the grounds for approving or disapproving such new or revised standards. States and Tribes continue to have the primary responsibility for deciding when and in what way to revise their standards. If a State or Tribe fails to promulgate a needed standard or to revise a standard which has been disapproved by EPA, EPA will, as under the previous rule, exercise its authority to promulgate a Federal standard. This rule will not impose substantial direct compliance costs on State or local government, nor will it preempt state law. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with representatives of State and local governments early in the process of developing the proposed regulation to permit them to have meaningful and timely input into its development. Since the court's ruling in 1997, EPA has met with State government representatives on several occasions in various forums and discussed implications for State programs. From those discussions, EPA learned that States are primarily concerned with EPA streamlining its review and approval process to avoid delays after this rule goes final. EPA believes that today's rule is necessary to conform Part 131 to the court's opinion and to section 303(c)(3), but agrees that streamlining the review and approval process will facilitate implementation of the rule. EPA has already taken steps to reduce the backlog pending at the time of proposal. In addition, EPA is considering modifying its regulations to clarify Federal WQS requirements in greater detail (see 63 FR 36742), and at a minimum will be jointly developing with State representatives guidance to improve the current State and Tribal adoption and EPA review and approval process. EPA believes that, once completed, this guidance will inform EPA Regional offices and States on how to get concerns identified and resolved early in the process so that, when revised State WQS are submitted to EPA, there are no unexpected issues and EPA can act in a timely fashion.

VIII. Consultation and Coordination With Indian Tribal Governments, Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's final rule does not significantly or uniquely affect the communities of Indian tribal governments, nor does it impose substantial direct compliance costs on them. Today's final rule only addresses a single administrative aspect of the WQS approval process (*i.e.*, the timing of the "effectiveness" of State and Tribal WQS under the CWA). There will be no revisions to existing submission requirements and no revisions to EPA's standards for review. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Paperwork Reduction Act

This action requires no new information collection activities. Thus, this rule is not subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

X. Protection of Children From Environmental Health Risks and Safety Risks, Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental health Risks and Safety Risks" (62FR19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to Executive Order 13045 because it is not economically significant as defined under Executive Order 12866. Further, it does not concern an environmental health or safety risks that EPA has reason to believe may have a disproportionate effect on children. This rule merely defers the effectiveness of State or Tribal water quality standards pending EPA approval.

XI. National Technology Transfer and Advancement Act

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

This final rule does not involve technical standards. Therefore, EPA did

not consider the use of any voluntary consensus standards.

XII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective May 30, 2000.

List of Subjects in 40 CFR Part 131

Environmental protection, Indians-lands, Intergovernmental relations, Water pollution control, Water quality standards.

Dated: March 30, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR Part 131 is amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for Part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart C—[Amended]

2. Existing 131.21 is amended by revising paragraphs (c) and (d) and by adding paragraphs (e), and (f) to read as follows:

§ 131.21 EPA review and approval of water quality standards.

* * * * *

(c) *How do I determine which water quality standards are applicable for purposes of the Act?* You may determine which water quality standards are applicable water quality standards for purposes of the Act from the following table:

If—	Then—	Unless or until—	In which case—
(1) A State or authorized Tribe has adopted a water quality standard that is effective under State or Tribal law and has been submitted to EPA before May 30, 2000...	...the State or Tribe's water quality standard is the applicable water quality standard for purposes of the Act...	...EPA has promulgated a more stringent water quality standard for the State or Tribe that is in effect...	...the EPA-promulgated water quality standard is the applicable water quality standard for purposes of the Act until EPA withdraws the Federal water quality standard.
(2) A State or authorized Tribe adopts a water quality standard that goes into effect under State or Tribal law on or *after* May 30, 2000...	...once EPA approves that water quality standard, it becomes the applicable water quality standard for purposes of the Act...	...EPA has promulgated a more stringent water quality standard for the State or Tribe that is in effect...	...the EPA promulgated water quality standard is the applicable water quality standard for purposes of the Act until EPA withdraws the Federal water quality standard.

(d) *When do I use the applicable water quality standards identified in paragraph (c) above?*

Applicable water quality standards for purposes of the Act are the minimum standards which must be used when the CWA and regulations implementing the CWA refer to water quality standards, for example, in identifying impaired waters and calculating TMDLs under section 303(d), developing NPDES permit limitations under section 301(b)(1)(C), evaluating proposed discharges of dredged or fill material under section 404, and in issuing certifications under section 401 of the Act.

(e) *For how long does an applicable water quality standard for purposes of the Act remain the applicable water quality standard for purposes of the Act?*

A State or authorized Tribe's applicable water quality standard for purposes of the Act remains the applicable standard until EPA approves a change, deletion, or addition to that water quality standard, or until EPA promulgates a more stringent water quality standard.

(f) *How can I find out what the applicable standards are for purposes of the Act?*

In each Regional office, EPA maintains a docket system for the States and authorized Tribes in that Region, available to the public, identifying the applicable water quality standards for purposes of the Act.

[FR Doc. 00–8536 Filed 4–26–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 20

[CC Docket No. 99–301; FCC 00–114]

Local Competition and Broadband Reporting; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of April 12, 2000 (65 FR 19675) final rules in 47 CFR 1, Subpart U, concerning data collection. As such, the document, as published, inadvertently assigned portions of the final rules to subpart U that already exists. The purpose of this correction is to reassign the rules to a new subpart V.

DATES: Effective April 27, 2000.

FOR FURTHER INFORMATION CONTACT: Gregory Guice, Industry Analysis Division, Common Carrier Bureau at (202) 418–0095.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a report and order and final rules in the **Federal Register** of April 12, 2000 (65 FR 19675). As published, the final rules, § 1.6000 through § 1.6002 inadvertently assigned the final rules to an existing subpart. This correction redesignates the subpart U as subpart V. We further make conforming edits to § 20.15.

In rule FR Doc. 00–9187 published on April 12, 2000 (65 FR 19675), make the following corrections:

1. On page 19684, in the third column, amendatory instruction 2 of Part 1—Practice and Procedures,

"subpart U" is corrected to read "subpart V."

2. On the same page, in the same column, the subpart heading, "subpart U" is corrected to read "subpart V".

3. On the same page, in the same column, the table of contents is corrected to read as follows:

Sec.
1.7000 Purpose.
1.7001 Scope and content of filed reports.
1.7002 Frequency of reports.

4. On the same page, in the same column, the section heading "§ 1.6000 Purpose." is corrected to read "§ 1.7000 Purpose."

5. On the same page, in the same column, the section heading "§ 1.6001 Scope and content of filed reports." is corrected to read "§ 1.7001 Scope and content of filed reports."

6. On page 19685, in the second column, the section heading, "§ 1.6002 Frequency of reports." is corrected to read "§ 1.7002 Frequency of reports."

7. On the same page, in the same column, in § 1.6002, lines 2, 11, and 16, "§ 1.6001" is corrected to read "§ 1.7001."

8. On page 19685, in the second column, in paragraph (b)(1) of § 20.15:

a. In line 8, "§ 1.6001(a)" is corrected to read "§ 1.7001(a)";

b. In line 10, "§ 1.6000" is corrected to read "§ 1.7000"; and

c. In line 12, "§§ 1.6001(b)" is corrected to read "§§ 1.7001(b)."

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Group Manager.

[FR Doc. 00–10492 Filed 4–26–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MM Docket Nos. 98–204 and 96–16; FCC 00–20]

Revision of Broadcast and Cable EEO Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Commission adopted new broadcast Equal Employment Opportunity (EEO) rules and policies and amended its cable EEO rules and policies. Certain rules contained new and modified information collection requirements and were published in the **Federal Register** on February 15, 2000. This document announces the effective date of these published rules.

EFFECTIVE DATE: The amendments to §§ 73.2080; 73.3526; 73.3527; 76.75; 76.77; 76.79; 76.1702; and 76.1802, published at 65 FR 7448 (February 15, 2000) became effective on April 18, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Boyce, Mass Media Bureau, EEO Staff. (202) 418–1450.

SUPPLEMENTARY INFORMATION: On April 18, 2000, the Office of Management and Budget (OMB) approved the information collection requirements contained in §§ 73.2080; 73.3526; 73.3527; 76.75; 76.77; 76.79; 76.1702; and 76.1802 pursuant to OMB Control Nos. 3060–0212 and 3060–0349. Accordingly, the information collection requirements contained in these rules became effective on April 18, 2000.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–10541 Filed 4–26–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211040–0040–01; I.D. 042400A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for Pacific cod by catcher vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the portion of the 2000 total allowable catch (TAC) of Pacific cod allocated to catcher vessels using trawl gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 24, 2000, until 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The portion of the TAC of Pacific cod allocated to catcher vessels using trawl gear in the BSAI was established by the Final 2000 Harvest Specifications for Groundfish for the BSAI (65 FR 8282, February 18, 2000) as 41,953 metric tons (mt). See § 679.20(c)(3)(iii) and § 679.20(a)(7)(i)(B).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the portion of the TAC of Pacific cod allocated to catcher vessels using trawl gear in the BSAI will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 37,953 mt, and is setting aside the remaining 4,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is closing directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the 2000 TAC of Pacific cod allocated to catcher vessels using trawl gear in the BSAI. A delay in the effective date is impracticable and contrary to the public interest. The Pacific cod directed fishing allowance established for catcher vessels will soon be reached. Further delay would only result in overharvest which would disrupt the FMP's objective of providing sufficient Pacific cod to support bycatch needs in other anticipated groundfish fisheries throughout the year. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

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

Dated: April 24, 2000.

George H. Darcy,

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

[FR Doc. 00–10513 Filed 4–24–00; 1:23 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 82
Thursday, April 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.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 25

RIN 0503–AA20

Rural Empowerment Zones and Enterprise Communities

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule contains the policy and procedures pertaining to 20 new rural enterprise communities designated by the Secretary of the U.S. Department of Agriculture (USDA) (Secretary) as authorized by the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 1999 (Agriculture Appropriations Act 1999) (Round IIS). These new Round IIS rural enterprise communities are supplemental to the second round of rural empowerment zone designations authorized by the Taxpayer Relief Act of 1997 (Round II). This rule also contains the policies and procedures for implementing a new grant program for Round II empowerment zones and Round IIS enterprise communities authorized by section 766 of the Agriculture Appropriations Act 1999 (USDA EZ/EC grants). Additionally, this rule clarifies post-designation procedures that rural empowerment zones and enterprise communities must follow to maintain their standing.

DATES: Written or email comments must be submitted on or before June 26, 2000 The comment period for information collections under the Paperwork Reduction Act of 1995 continues through June 26, 2000.

ADDRESSES: Submit written comments in duplicate. Comments sent via the U.S. Postal Service should be addressed to the Regulations and Paperwork Management Branch, Attention: Cheryl Thompson, Rural Development, U.S. Department of Agriculture, STOP 0742, 1400 Independence Ave., SW, Washington, DC 20250–0742. Comments sent via Federal Express Mail, or via another mail courier service requiring a street address, should be addressed to the same attention at 300 E Street, SW, 3rd Floor, Washington, DC 20546. Also, comments may be submitted via the Internet by addressing them to "comments@rus.usda.gov" and must contain the word "Enterprise" in the subject line. All written comments will be available for public inspection during regular work hours at the 300 E Street, SW, address listed above.

FOR FURTHER INFORMATION CONTACT: Deputy Administrator for Community Development, USDA Rural Development, Office of Community Development, Reporters Building, Room 701, STOP 3203, 300 7th Street, SW, Washington, DC 20024–3203, telephone 1–800–851–3403, or by sending an Internet e-mail message to "ocd@ocdx.usda.gov". For hearing-and speech-impaired persons, information concerning this program may be obtained by contacting USDA's TARGET Center at (202) 720–2600 (Voice and TDD).

SUPPLEMENTARY INFORMATION:

Classification

This rule has been reviewed under E.O. 12866 and has been determined to be a significant regulatory action, as that term is defined in Executive Order 12866, and has been reviewed by OMB.

Programs Affected

The Catalog of Federal Domestic Assistance Program number assigned to this program is 10.772.

Program Administration

The program is administered through the Office of Community Development within the Rural Development mission area of USDA, and delivered via the USDA Rural Development state directors in those states which have designated rural empowerment zones and enterprise communities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, USDA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

The information collection requirements contained in 7 CFR part 25 are comprised of one-time application requirements (Application burden) and ongoing reporting requirements (Reporting burden). For Round IIS, the Secretary designated the 20 additional rural enterprise communities from applications received in response to the notice inviting applications published April 16, 1998 in the **Federal Register** at 63 FR 19143.

The Application burden paperwork package approved by OMB under control no. 0570–0026 covered the Round II application effort. No additional Application paperwork requirements were associated with the Round IIS designations. USDA will, however, seek to amend the Reporting burden paperwork reduction package approved by OMB under control no. 0570–0027 to reflect the reporting requirements contained in this rule, as described in part 25, §§ 25.400, 25.403, 25.405(b)(2), attributable to 20 additional rural enterprise communities, and to reflect the requirements relating to the new 7 CFR part 25, subpart G imposed by §§ 25.603, 25.604(b) and 25.607(c), which requirements are imposed on Round II empowerment zones and Round IIS enterprise communities. Accordingly, USDA asks for comments regarding the information collections contained in the sections of this rule and elsewhere in 7 CFR part 25 stated above. The Secretary has submitted an information collection to OMB for approval.

Comments on these information collections should refer to the proposal by name or OMB control number. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C.; Attention: Desk Officer for Rural Development, U.S. Department of Agriculture.

Written comments may also be submitted via the U.S. Postal Service to Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, Rural Development, U.S. Department of Agriculture, STOP 0742, 1400 Independence Ave., SW, Washington, DC 20250–0742. Mail courier service deliveries requiring a street address should be sent to the same attention at

300 E Street, SW, 3rd Floor, Washington, DC 20546.

Specifically, comments are solicited 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.

The following table identifies the components of the information collection:

Type of collection	Section of 7 CFR part 25 affected	Number of respondents	Frequency of response	Estimate average response time (hours)	Annual burden (hours)
Periodic Reporting (all ECs and EZs)	25.400(a) 25.400(b) 25.403	57	2	10	1,140
Grant related paperwork burden (Round II EZs, Round IIS ECs only).	25.603(a)	25	1	3	75
	25.603(b)	25	1	3	75
	25.603(c)	25	1	1	25
	25.604(b)	25	1	1	25
Response to designation warning letter	25.405(b)(2)	1	1	1	1
Response to notice of grant suspension	25.607(c)	1	1	1	1

Total Burden in each Reporting Year, Years 1 through 10: 1,342 hours

Environmental Impact Statement

It is the determination of the Secretary that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, an Environmental Impact Statement is not required.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, USDA must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires USDA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for state, local, and tribal governments or the private sector. Therefore this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act is intended to encourage Federal agencies to utilize innovative administrative procedures in dealing with individuals, small businesses, small organizations, and small governmental bodies that would otherwise be unnecessarily adversely affected by Federal regulations. The provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, no regulatory flexibility analysis under the Regulatory Flexibility Act is necessary.

Executive Order 13132, Federalism

The policies contained in this rule do not have any 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. Nor does this rule impose substantial direct compliance costs on state and local governments. This rule is intended to foster cooperation between the Federal Government and the states and local governments, and reduces, where possible, any regulatory burden imposed by the Federal Government that impedes the ability of states and local governments to solve pressing economic, social and physical problems in their state.

I. Background

The Empowerment Zone/Enterprise Community program confers upon rural distressed American communities the opportunity to design and implement programs to create jobs, support their residents in becoming skilled and able to earn a livable income and establish other strategies for creating opportunity and building a brighter future.

On April 16, 1998, the Secretary published an interim final rule and notice inviting applications for 5 newly authorized Round II rural empowerment zone designations. The deadline for applications was October 9, 1998. One hundred sixty eligible applications were received. On October 21, 1998, the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act 1999 was signed into law, authorizing an additional 20 rural enterprise communities. These Round II rural empowerment zones and Round IIS rural enterprise communities are in addition to the 3 rural empowerment zones and 30 rural enterprise

communities designated on December 21, 1994, by the Secretary pursuant to Title XIII of the Omnibus Budget Reconciliation Act of 1993 (Round I).

Designation

The statutory deadline by which Round II rural empowerment zones must be designated was January 1, 1999. There is no deadline for Round IIS rural enterprise community designations. On December 24, 1998 the Secretary designated 5 Round II rural empowerment zones and 20 Round IIS rural enterprise communities from the pool of over 160 eligible applications received for Round II. Notice to this effect was published on May 25, 1999 in the **Federal Register** at 64 FR 28152.

The nomination process for designation requires applicant communities to take stock of their assets and problems, create a vision for the future, and structure a strategic plan for achieving their vision. The amount of time and effort which an applicant community exerts in developing a strategic plan is considerable. USDA is of the opinion that a quality strategic plan (required as part of the application process) takes at least 6 months to develop. Town meetings are held and cross sections of the community are brought together to decide how they wish to develop as a community and how best to achieve those goals.

In Round II, over 160 communities took on this monumental task and expended a great deal of time, effort and money in bringing together their citizens and creating a strategic plan for their communities in applying for 5 authorized designations. The 160 eligible applications reflect a cross section of 38 states; 22 or more applications include reservation land or were submitted by Native American tribal communities. Nineteen Round I enterprise communities submitted applications for Round II empowerment zone designation. Also, Round IIS follows closely on the heels of the October 9, 1998, application deadline for Round II. The Round II applications were current for purposes of Round IIS as well.

Eligibility

Part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986 contains the eligibility criteria for Round IIS rural enterprise communities. The Secretary elected in his discretion to apply the criteria as modified for additional designations under section 1391(g) of the Internal Revenue Code, the same criteria which apply to Round II rural empowerment zones. These criteria are more inclusive than the original Round I EC eligibility criteria; they represent the latest version of eligibility criteria legislated for the program, including modifications to allow reservation land to be incorporated in the applications for designation and an outmigration criteria to be substituted for the poverty rate test defined in item 4 below:

To be eligible for designation as a Round IIS rural enterprise community an area must:

1. Have a maximum population of 30,000;
2. Be one of pervasive poverty, unemployment, and general distress;
3. Not exceed one thousand square miles in total land area;
4. Demonstrate a poverty rate that is not less than:
   a. 20 percent in each census tract or census block numbering area (BNA); and
   b. 25 percent in 90 percent of the census tracts and BNAs within the nominated area;
5. Be located entirely within no more than 3 contiguous states; if it is located in more than one state, the area must have one continuous boundary; if located in only one state, the area may consist of no more than 3 noncontiguous parcels;
6. Show that each nominated parcel independently meets the two poverty rate requirements;
7. Be located entirely within the jurisdiction of the unit or units of general local government making the nomination; and
8. Not include any portion of a central business district as defined in the Census of Retail Trade unless the poverty rate for each Census tract is at least 35 percent.

Benefit Comparison

During the time period from April 16, 1998 (publication of the notice inviting Round II applications) to October 9, 1998 (the deadline for applications), no direct federal funding from any appropriation source was in place for Round II designees. However, prospective applicant communities were made aware that future authorization of direct funding was possible. Effective October 21, 1998, section 766 of the Agriculture Appropriations Act 1999 appropriated a total of $15,000,000 in grant funds to implement a second round of empowerment zone and enterprise communities, $10,000,000 for the 5 Round II rural empowerment zones and $5,000,000 for the 20 newly authorized Round IIS rural enterprise communities. In the notice designating Round II and Round IIS rural empowerment zones and enterprise communities published on May 25, 1999, the Secretary announced his intent to award equal grants of $2,000,000 to the Round II rural empowerment zones, and equal grants of $250,000 to each of the new Round IIS rural enterprise communities. An additional $15,000,000 was appropriated on October 20, 1999, for Round II rural empowerment zones and enterprise communities (P.L. 106–74). It is the Secretary's intent to similarly allocate this appropriation.

The authorizing legislation provides that none of the tax benefits that are in effect for all other rural empowerment zones or enterprise communities accrue to Round IIS rural enterprise communities. Targeted federal financial assistance specific to enterprise community status is limited, in the case of Round IIS rural enterprise communities, to the newly authorized USDA EZ/EC grants.

RURAL ENTERPRISE COMMUNITIES BENEFIT COMPARISON TABLE

[Subject to change in the event of legislation enacted subsequent to this rulemaking]

	Round I	Round IIS
Period	In most cases, ten full calendar years following the Designation Date (December 21, 1994).	In most cases, ten full calendar years following the Designation Date (December 24, 1999).
Title XX of the Social Security Act Appropriations.	1 grant equal to $2.9 million (rounded)	None.
Title VII of the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 1999.	None	$250,000 per EC.

RURAL ENTERPRISE COMMUNITIES BENEFIT COMPARISON TABLE—Continued

[Subject to change in the event of legislation enacted subsequent to this rulemaking]

	Round I	Round IIS
Title II of the Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000.	None	$250,000 per EC.
Tax Exempt Bonds	A new category of tax-exempt private activity bonds was authorized for certain zone facilities. Issues are subject to state private activity bond cap levels on total issuances, and special limits on issue size.	Round IIS EC facilities do not have any special status, nor do the ECs have any special status relating to tax exempt bonding authority.
Work Opportunity Tax Credit (not exclusive to ECs or EZs; note: as of 11/1/99 this tax code provision had expired 6/30/99 but legislation to retroactively extend it was under consideration).	40% of qualified first-year wages paid to a member of a targeted group, where first-year wages taken into account may not exceed $6,000. Targeted employees include high risk youth residents of EZs and ECs, food stamp and SSI recipients, vocational rehabilitation referrals and others.	This benefit does not attach to youth residents of Round IIS ECs, per se, however, they may qualify under the other identified targeted groups.
Internal Revenue Code 26 U.S.C. 179 Expensing	Capital costs of some kinds of business property which must otherwise be capitalized and depreciated over time may be deducted in the year incurred under section 179. For a zone business, the annual expensing allowance for section 179 property is increased by the lesser of (1) $20,000 or (2) actual cost of property placed in service during the year. Eligible types of property do not include buildings. The phaseout provision of section 179 that would otherwise apply to eligible 179 property is reduced for zone property.	Not applicable.
Brownfields Deductible Expense (not exclusive to EZs and ECs).	Certain environmental remediation expenditures that would otherwise be capitalized into the cost of the land may be deducted if the costs are paid or incurred prior to January 1, 2001.	No special status accrues to Round IIS ECs.
Qualified Zone Academy Bonds (A national limitation across all empowerment zones and enterprise communities of up to $400 million each year for years 1998 and 1999).	Tax credit bonds whereby certain financial institutions (*i.e.*, banks, insurance companies, and corporations actively engaged in the business of lending money) that hold "qualified zone academy bonds" are entitled to a nonrefundable tax credit in an amount equal to a credit rate (set by the Treasury Department) multiplied by the face amount of the bond. They may or may not be interest bearing; if so, the interest is taxable. The credit is effective for obligations issued after December 31, 1997. The statute does not expressly provide for an allocation to rural empowerment zones or enterprise communities.	This benefit does not attach to rural IIS ECs *per se*, however, Round IIS academies may qualify under the subsidized school lunch criteria.

II. Program Description

Use of Grant Funds

The authorizing statute is silent on the purposes for which Round IIS grant funds may be used. In the interest of uniformity in administering program benefits and efficiency in administering the program, the Secretary has elected in his discretion to provide that the purposes for which Round II and Round IIS grant funds may be used shall correspond to the purposes legislated for Round I federal funding, namely, those purposes contained in section 2007(a) of the Social Security Act (42 U.S.C. 1397(f)) for social services block grants awarded to Round I empowerment zones and enterprise communities (EZ/EC SSBG funds). Further guidance on the purposes for which EZ/EC SSBG grant funds may be used may be found in Appendix C to the notice inviting applications for Round II, published on April 16, 1998 at 63 FR 19147.

Funding of Grants

Round IIS of the program will be administered by USDA as a Federal-local-private partnership, with a minimum of red tape. This rule proposes that the designated lead managing entity, as identified in the Memorandum of Agreement executed by the designee (see below), is to be the recipient, or "primary grantee" of the USDA EZ/EC grant funds.

Modification of Strategic Plans

The pool from which the 20 new rural enterprise communities were designated was comprised of those which applied for Round II empowerment zone status. The strategic plans were developed with assumed spending levels higher than what direct federal funding levels authorized by the 1999 Agriculture Appropriations Act would support. Accordingly, this rule proposes that the plans incorporated in the applications be adjusted to reflect spending levels commensurate with actual appropriation levels for both Round II

empowerment zones and Round IIS enterprise communities. This requirement is imposed on the Round II and Round IIS designees only, it is not a modification of the Round II application process.

Memorandum of Agreement

The notice inviting applications published April 16, 1998 at 63 FR 19143 includes as an appendix a form of Memorandum of Agreement (MOA). Round I designees were asked to sign comparable MOAs. Round II and Round IIS applicants were given notice that they, too, will be required to sign comparable MOAs. A revised model MOA is included as an appendix to the notice of designation published in the **Federal Register**.

List of Subjects in 7 CFR Part 25

Community development, Economic development, Empowerment zones, Enterprise communities, Housing, Indians, Intergovernmental relations, Reporting and recordkeeping requirements, Rural development, Strategic planning.

In accordance with the reasons set out in the preamble, 7 CFR part 25 is proposed to be amended as follows:

PART 25—RURAL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

1. The authority citation for part 25 is revised to read as follows:

Authority: 5 U.S.C. 301; 26 U.S.C. 1391; Sec. 766, Pub. L. 105–277, 112 Stat. 2681.

Subpart A—General Provisions

§ 25.1 [Amended]

2. Amend § 25.1 by revising paragraph (a) to read as follows:

§ 25.1 Applicability and scope.

(a) *Applicability.* This part contains policies and procedures applicable to rural empowerment zones and enterprise communities, authorized under the Omnibus Budget Reconciliation Act of 1993, title XIII, subchapter C, part I (Round I), the Taxpayer Relief Act of 1997, title IX, subtitle F (Round II), and the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 1999 (Public Law 105–277) (Round IIS).

* * * * *

§ 25.3 [Amended]

3. Amend § 25.3 by revising the definitions of "brownfield", "designation", and "designation date" and by adding in alphabetical order definitions for "designation period", "funding official", "Office of Community Development", "Round IIS", "state director" and "USDA EZ/EC grant program" to read as follows:

Brownfield means a "qualified contaminated site" meeting the requirements of section 941 of the Taxpayer Relief Act of 1997, (26 U.S.C. 198(c)), where the site is located in an empowerment zone or enterprise community.

Designation means the process by which the Secretary designates rural areas as empowerment zones or enterprise communities pursuant to eligibility criteria established by subchapter U of the Internal Revenue Code (26 U.S.C. 1391 *et seq.*).

Designation date means December 21, 1994, in the case of Round I designations, and December 24, 1998, in the case of Round II and Round IIS designations.

Designation period means the lesser of ten years or such time as has elapsed from the designation date to the effective date of an applicable notice of revocation pursuant to 7 CFR 25.405(e).

Funding official means the state director in the state where the designated rural area is located, or if the designated rural area is located in more than one state, the state where the headquarters office of the lead managing entity is located.

Office of Community Development or *OCD* means the office of the Deputy Administrator, Community Development, as identified in 7 CFR 2003.26(b)(4).

Round IIS identifies designations of rural enterprise communities pursuant to section 766 of the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act 1999 (Public Law 105–277).

State director means the state director for the Rural Development mission area within USDA, as identified in 7 CFR 2003.10.

USDA EZ/EC grant program means the grant program authorized by section 766 of the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 1999 (Public Law 105–277) for the benefit of Round II empowerment zones and Round IIS enterprise communities.

§ 25.4 [Amended]

4. Amend § 25.4 by revising paragraphs (a) and (b)(2) and adding paragraphs (b)(3) and (b)(4) to read as follows:

§ 25.4 Secretarial review and designation.

(a) *Designation.* The Secretary will review applications for the designation of nominated rural areas to determine the effectiveness of the strategic plans submitted by applicants; such designations of rural empowerment zones and enterprise communities as are made shall be from the applications submitted in response to the notice inviting applications or other applicable notice published in the **Federal Register**. The Secretary may elect to designate as champion communities those nominated areas which are not designated as either a rural empowerment zone or enterprise community and whose applications meet the criteria contained in § 25.301.

(b) * * *

(2) *Round II.* The Secretary may, prior to January 1, 1999, designate up to five rural empowerment zones in addition to those designated in Round I.

(3) *Round IIS.* The Secretary may designate up to 20 rural enterprise communities in addition to those designated in Round I.

(4) *Champion communities.* The number of champion communities is limited to the number of applicants which are not designated empowerment zones or enterprise communities.

* * * * *

Subpart B—Area Requirements

§ 25.103 [Amended]

5. Amend § 25.103 by revising the introductory text of paragraphs (b)(2) and (b)(3) to read as follows:

§ 25.103 Area size and boundary requirements.

* * * * *

(b) * * *

(2) For purposes of applying paragraph (a)(1) of this section to Round II and Round IIS designations:

* * * * *

(3) For purposes of applying paragraph (a)(2) of this section to Round II and Round IIS designations, the following shall not be treated as violating the continuous boundary requirement nor the limit on the number of noncontiguous parcels:

* * * * *

§ 25.104 [Amended]

6. Amend § 25.104 as follows:

a. Amend the headings of paragraphs (a)(2) and (b)(2) by adding "and Round IIS".

b. Revise the introductory text of paragraphs (a), (b) and (c), and revise paragraph (c)(2) to read as follows:

§ 25.104 Poverty rate.

(a) *General.* Eligibility of an area on the basis of poverty shall be established in accordance with the following

poverty rate criteria specific to Round I, Round II and Round IIS nominated areas:

* * * * *

(b) *Special rules.* The following special rules apply to the determination of poverty rate for Round I, Round II and Round IIS nominated areas:

* * * * *

(c) *General rules.* The following general rules apply to the determination of poverty rate for Round I, Round II and Round IIS nominated areas.

* * * * *

(2) *Noncontiguous parcels.* Each such parcel (excluding, in the case of Round II and Round IIS, up to 3 noncontiguous developable sites not exceeding 2,000 acres in the aggregate) must separately meet the poverty criteria contained in this section.

* * * * *

Subpart C—Nomination Procedure

§ 25.202 [Amended]

7. Amend § 25.202 by revising paragraph (b)(7) to read as follows:

§ 25.202 Strategic plan.

* * * * *

(b) * * *

(7) Include such other information as required by USDA in the notice inviting applications or other applicable notice.

* * * * *

§ 25.203 [Revised]

8. Revise § 25.203 to read as follows:

§ 25.203 Submission of applications.

General. A separate application for designation as an empowerment zone or enterprise community must be submitted for each rural area for which such designation is requested. The application shall be submitted in a form to be prescribed by USDA in the notice inviting applications or other applicable notice as published in the **Federal Register** and must contain complete and accurate information.

Subpart D—Designation Process

§ 25.300 [Amended]

9. Amend § 25.300 by revising paragraphs (a) and (b) to read as follows:

§ 25.300 USDA action and review of nominations for designation.

(a) *Establishment of submission procedures.* USDA will establish a time period and procedure for the submission of applications for designation as empowerment zones or enterprise communities, including submission deadlines and addresses, in a notice inviting applications or other applicable notice, to be published in the **Federal Register**.

(b) *Acceptance for processing.* USDA will accept for processing those applications as empowerment zones and enterprise communities which USDA determines have met the criteria required under this part. USDA will notify the states and local governments whether or not the nomination has been accepted for processing. The application must be received by USDA on or before the close of business on the date established by the notice inviting applications or other applicable notice published in the **Federal Register**. The applications must be complete, inclusive of the strategic plan, as required by § 25.202, and the certifications and written assurances required by § 25.200(b).

* * * * *

Subpart E—Post-Designation Requirements

§ 25.404 [Amended]

10. Amend § 25.404 as follows:

a. Redesignate paragraph (a) as (c) and paragraph (b) as (d).

b. Add new paragraphs (a) and (b) to read as follows:

§ 25.404 Validation of designation.

(a) *Maintaining the principles of the program.* The empowerment zone, enterprise community or champion community (the designated community) must maintain a process for ensuring ongoing broad-based participation by community residents consistent with the approved application and planning process outlined in the strategic plan.

(1) *Continuous improvement.* The designated community must maintain a process for evaluating and learning from its experiences. It must detail the methods by which the community will assess its own performance in implementing its benchmarks, the process it will use for reviewing goals and benchmarks and revising its strategic plan.

(2) *Participation.* The designated community must develop as part of its strategic plan a written plan for assuring continuous broad-based community participation in the implementation of the strategic plan and the means by which the strategic plan is implemented, including board membership in the lead entity and other key partnership entities.

(b) *Administration of the strategic plan.* The strategic plan must be administered in a manner consistent with the principles of the program contained in § 25.202(a).

(1) *Lead Entity.* The lead entity must have legal status and authority to receive and administer funds pursuant to Federal, state and other government or nonprofit programs.

(2) *Capacity.* The lead entity must have the capacity to implement the strategic plan, as demonstrated by audited financial statements as of the most recent fiscal year or other documentation that may be requested by USDA.

(3) *Board membership.* The membership of the board must be representative of the entire socio-economic spectrum in the designated community including business, social service agencies, health and education entities, low income and minority residents. Board membership may be determined by either broad-based election or by appointment to meet this diversity requirement; however, not more than 45 percent of board members may be selected by appointment. Elections of community residents to the board may be done by any locally acceptable process; however, at least one board member from each of the designated community's census tracts must be elected and representative of the low income residents in their census tract.

(4) *Partnerships.* The relationship between the designated community's lead entity board and local governments and other major regional and community organizations operating in the same geographic area is critical to the community's success in implementing its strategic plan. Every effort should be made to identify and maintain relationships with local partners. Documentation including, but not limited to, minutes of meetings, benchmark activity reports and annual reports of the lead entity must reflect the contributions of local partnership entities.

(5) *Public information.* The designated community must have written procedures in place describing the means by which citizens of the community and partnership organizations will be kept informed of the community's activities and progress in implementing the strategic plan, consistent with the principal objective of community based partnerships pursuant to § 25.202(a)(2). These procedures must be kept current and compliance with them documented on an ongoing basis.

* * * * *

11. Subpart G of part 25, consisting of §§ 25.600 through 25.999 is added to read as follows:

Subpart G—Round II and Round IIS Grants

Subpart G— Round II and Round IIS Grants

§ 25.600 Purpose.

This subpart outlines USDA policies and authorizations and contains procedures for the USDA EZ/EC grant program.

§ 25.601 Delegation of authority.

(a) *Program administration.* The Deputy Administrator, Office of Community Development, shall be responsible for the overall development of policy and administration of the USDA EZ/EC grant program.

(b) *Funding official.* Unless otherwise provided, the state director is responsible for implementing the authorities in this subpart, consistent with the guidance issued by the Office of Community Development. Except for grant approval and environmental determination authorities, state directors may re-delegate their duties to qualified staff members.

(c) *Environmental review determinations.* The funding official is responsible for making environmental review determinations.

(d) *Authority to issue regulations.* The Under Secretary, Rural Development, may promulgate regulations under this part.

§ 25.602 Eligible recipients.

(a) *General.* The grants made under this subpart shall be made to the lead managing entities on behalf of the Round II rural empowerment zones and Round IIS rural enterprise communities, respectively, in accordance with an approved strategic plan. Such grants shall be available to successor entities approved in writing by USDA.

(b) *Exception.* The funding official, with the approval of the Office of Community Development, may elect to award all or part of the available grant funds to an alternate grantee.

(c) *Subrecipients.* The grantee shall relay funds to subrecipients, as provided in the approved strategic plan, as soon as practicable.

§ 25.603 Grant approval and obligation of funds.

Grants may be made at such time as the nominated area has been designated and such other prerequisites as USDA shall determine have been met, including but not limited to:

(a) The empowerment zone or enterprise community has entered into a memorandum of agreement satisfactory to USDA;

(b) The empowerment zone or enterprise community has conformed its strategic plan to be consistent with the level of federal grant aid available and such conforming amendments (if any) have met with the approval of the Office of Community Development and the funding official;

(c) Completion of the environmental review process, including all appropriate public notices;

(d) The proposed grantee has agreed, in form and substance satisfactory to the Office of Community Development, to any funding conditions imposed by USDA;

(e) The grantee has submitted a request for obligation of funds, in form and substance satisfactory to the Office of Community Development, inclusive of the following certification:

> "The grantee certifies that it and all direct or substantial subrecipients are in compliance and will continue to comply with all applicable laws, regulations, executive orders and other generally applicable requirements, including those contained in 7 CFR parts 25, 3015, 3016, 3017, 3018, 3019 and 3052, and any agreement to meet funding conditions, in effect at the time of the grant or as subsequently amended."

§ 25.604 Disbursement of grant funds.

(a) The funding official will determine, based on 7 CFR parts 3015, 3016 and 3019, as applicable, whether disbursement of a grant will be by advance or reimbursement.

(b) A "request for advance or reimbursement," in form and substance satisfactory to USDA, must be completed by the grantee on behalf of itself and all applicable subrecipients and submitted to the funding official.

(c) Requests for advance or reimbursement must identify:

(1) The amount requested for each benchmark activity;

(2) The cumulative amount advanced to date (not inclusive of the current amount requested) for each benchmark activity;

(3) The total USDA EZ/EC grant obligated for each benchmark activity;

(4) The total approved budget for the applicable project or program (inclusive of non USDA EZ/EC grant program sources);

(5) An estimated percentage of completion or progress made in accomplishing the benchmark goal associated with each benchmark activity;

(6) Certification that the lead managing entity and the subrecipients (where applicable) are in compliance with all applicable laws and regulatory requirements; and

(7) Such other information as the funding official may require.

(d) Requests for advance or reimbursement may include only activities or projects which are identified in an approved strategic plan.

§ 25.605 Grant program reporting requirements.

Grantees may incorporate grant reporting requirements in the reports submitted pursuant to § 25.400, or submit them separately. In complying with the requirements of 7 CFR parts 3015, 3016, or 3019, as applicable, grantees must submit, in lieu of the forms prescribed therein, the equivalent of such forms prescribed by the Office of Community Development pursuant to this subpart as such may be adapted to the USDA EZ/EC grant program and which may be submitted and retained in electronic form.

§ 25.606 Financial management and records.

(a) In complying with the requirements of 7 CFR parts 3015, 3016, or 3019, as applicable, grantees must submit, in lieu of the forms prescribed in those parts, the equivalent of such forms prescribed by the Office of Community Development pursuant to this subpart as such may be adapted to the USDA EZ/EC grant program and which may be submitted and retained in electronic form.

(b) Grantees must retain financial records, supporting documents, statistical records and all other records pertinent to the grant for a period of at least 3 years after the end of the designation period, except that the records shall be retained beyond the 3 year period if audit findings have not been resolved or if directed by the United States. Records may be retained and submitted in electronic form if allowed by Generally Accepted Government Accounting Principles.

§ 25.607 Suspension or termination of grant funds.

(a) Grants under this subpart, may be suspended or terminated by the funding official, in all or in part, in accordance

with this subpart and the applicable provisions of 7 CFR parts 3015, 3016 and 3019, as applicable.

(b) The funding official may elect to suspend or terminate the entirety of a grant, or funding of a particular benchmark activity, but nevertheless fund the remainder of a request for advance or reimbursement, where the funding official has determined:

(1) That grantee or subrecipient of the grant funds has demonstrated insufficient progress toward achieving the related benchmark goal or in any other way failed to comply with the strategic plan;

(2) There is reason to believe that other sources of joint funding have not been or will not be forthcoming on a timely basis;

(3) The strategic plan, as amended, calls for a revised use of the grant funds; or

(4) Such other cause as the funding official identifies in writing to the grantee (including but not limited to the use of federal grant funds for ineligible purposes).

(c) The funding official shall notify the grantee in writing within 30 days of the official's decision to suspend or terminate all or part of the grant. This notice shall identify what is being suspended or terminated, whether such decision is revocable, and such requirements as may be a precondition to reconsideration of the decision.

§§ 25.608–25.619 [Reserved]

§ 25.620 Eligible grant purposes.

Eligible grant purposes are:

(a) Services directed at the goals of—

(1) Achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;

(2) Achieving or maintaining self sufficiency, including reduction or prevention of dependency;

(3) Preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating or reuniting families;

(b) Projects and activities identified in the strategic plan for the area; and

(c) Activities that benefit residents of the area for which the grant is made.

§ 25.621 Ineligible grant purposes.

Grant funds may not be used:

(a) As a source of local matching funds required for other federal grants;

(b) To fund political activities;

(c) To duplicate current services or replace or substitute for financial support provided from other sources. If the current service is inadequate, however, grant funds may be used to augment financial support or service levels beyond what is currently provided;

(d) To pay costs of preparing the application package for designation under this part;

(e) To pay costs of a project which were incurred prior to the execution date of the applicable memorandum of agreement;

(f) To pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;

(g) To pay any judgment or debt owed to the United States;

(h) To assist in the relocation of businesses;

(i) To support or promote gambling; or

(j) For political lobbying.

§ 25.622 Other considerations.

(a) *Civil rights compliance requirements.* All grants made under this subpart are subject to Title VI of the Civil Rights Act of 1964 and part 1901, subpart E, of this title.

(b) *Environmental review.* All grants made under this subpart are subject to the environmental requirements in effect for the water and environmental programs of the Rural Utilities Service at 7 CFR part 1794. The threshold levels of environmental review, for projects funded by the USDA EZ/EC grant program (or EZ/EC SSBG funds where the Secretary is authorized to execute the responsibilities under the National Environmental Policy Act of 1969), which projects, by their nature, would qualify for assistance under any program administered by the Rural Housing Service or Rural Business Service within USDA, shall be determined in accordance with 7 CFR 1940 Subpart G as follows:

(1) Projects meeting the descriptions found at 7 CFR 1940.310(b), (c), (d) and (e) shall be considered categorically excluded (without an environmental report) for purposes of 7 CFR 1794.21.

(2) Projects meeting the descriptions found at 7 CFR 1940.311 shall be considered categorically excluded (with an environmental report) for purposes of 7 CFR 1794.22.

(3) Projects meeting the description found at 7 CFR 1940.312 shall require the preparation of an environmental assessment (EA) for purposes of 7 CFR 1794.23.

(4) Projects which would normally require the preparation of an environmental impact statement (EIS) for purposes of 7 CFR 1940.313 shall require an EIS for purposes of 7 CFR 1794.25.

(c) *Other USDA regulations.* The rural empowerment zone and enterprise community program is subject to the provisions of the following regulations, as applicable:

(1) 7 CFR part 3015, "Uniform Federal Assistance Regulations";

(2) 7 CFR part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments";

(3) 7 CFR part 3017, "Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)";

(4) 7 CFR part 3018, "New Restrictions on Lobbying";

(5) 7 CFR part 3019, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations; and

(6) 7 CFR part 3052, "Audits of States, Local Governments, and Non-Profit Organizations."

§ 25.623 Programmatic changes.

Prior approval from USDA is required for all changes to the scope or objectives of an approved strategic plan or benchmark activity. Failure to obtain prior approval of changes to the strategic plan or benchmarks, including changes to the scope of work or a project budget may result in suspension, termination, and recovery of USDA EZ/EC grant funds.

§ 25.624 Exception authority.

The Deputy Administrator, Office of Community Development, may, in individual cases, grant an exception to any requirement or provision of this subpart which is not inconsistent with any applicable law, provided the Deputy Administrator determines that application of the requirement or provision would adversely affect USDA's interest.

§§ 25.625–25.999 [Reserved]

Dated: April 14, 2000.

Dan Glickman,

Secretary.

[FR Doc. 00–10138 Filed 4–26–00; 8:45 am]

BILLING CODE 3410–07–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–067]

RIN 2115–AE47

Drawbridge Operation Regulations; Gowanus Canal, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating rules for four New York City bridges across the Gowanus Canal; the Ninth Street Bridge, at mile 1.4, the Third Street Bridge, at mile 1.8, the Carroll Street Bridge, at mile 2.0, and the Union Street Bridge, at mile 2.1, all in Brooklyn, New York. The bridge owner asked the Coast Guard to change the regulations to require a two-hour advance notice for openings. This action will relieve the owner of the bridge from the requirement to crew these bridges at all times by using a roving crew of drawtenders and still meet the reasonable needs of navigation.

DATES: Comments must reach the Coast Guard on or before June 26, 2000.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, Bridge Branch, at 408 Atlantic Avenue, Boston, MA. 02110–3350, or deliver them to the same address between 7 a.m. and 3 p m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District, Bridge Branch, 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 First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except, Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD-01–99–067), 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 if 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.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Ninth Street Bridge

The Ninth Street Bridge, at mile 1.4, across the Gowanus Canal at Brooklyn, has a vertical clearance of 5 feet at mean high water and 9 feet at mean low water. The existing operating regulations for the Ninth Street Bridge require the bridge to open on signal at all times.

Third Street Bridge

The Third Street Bridge, at mile 1.8, across the Gowanus Canal at Brooklyn, has a vertical clearance of 10 feet at mean high water and 14 feet at mean low water. The existing operating regulations in 33 CFR 117.787, require the draw to open on signal at all times; except that, from May 1 through September 30, the draw shall open on signal after six-hour advance notice is given to the New York City Highway Department's Radio (Hotline) Room.

Carroll Street Bridge

The Carroll Street Bridge, at mile 2.0, has a vertical clearance of 3 feet at MHW and 7 feet at MLW. The existing regulations require the draw to open on signal at all times; except that, from May 1 through September 30, the draw shall open after a six-hour advance notice is given to the New York City Highway Department's Radio (Hotline) Room.

Union Street Bridge

The Union Street Bridge, at mile 2.1, has a vertical clearance of 9 feet at MHW and 13 feet at MLW. The existing regulations require the draw to open on signal at all times; except that, from May 1 through September 30, the draw shall open after a six-hour advance notice is given to the New York City Highway Department's Radio (Hotline) Room.

The owner of all four bridges, the New York City Department of Transportation (NYCDOT), submitted bridge opening log data to the Coast Guard for review.

	1991	1992	1993	1994	1995	1996	1997	1998	1999
Ninth	864	984	927	836	0	0	0	0	423
Third	410	549	663	732	432	256	149	107	244
Carroll	517	627	669	704	432	245	142	114	228
Union	502	547	657	713	432	236	144	104	245

The bridge owner plans to operate these bridges with a roving crew of drawtenders. A review of the monthly breakdown of the opening data did not identify any months that had a significantly higher number of openings that would make the roving crew concept unworkable. The waterway users are all commercial vessels which operate year round. They presently provide a six-hour advance notice May 1 through September 30 at all the above bridges except the Ninth Street Bridge which is required to open on signal. The bridge owner has requested that all four bridges open after a two-hour advance notice is given year round. This advance notice requirement will allow the bridge owner to use a roving crew of drawtenders to operate these bridges. The Coast Guard believes this proposed rule is reasonable based upon the fact that three of the bridges presently open after a six-hour notice May 1 through September 30, which is greater than the proposed two-hour notice during those five months. The Coast Guard believes that the two-hour advance notice October 1 through April 30 is reasonable because the bridges will still open on signal provided the two-hour notice is given. The commercial vessel transits on Gowanus Canal are scheduled in

advance. Providing a two-hour notice for bridge openings for the additional seven months of the year, October 1 through April 30, should not prevent vessels from transiting the waterway in a timely manner. The reduction from six-hours advance notice to two-hours advance notice during the remaining five months of the year, May 1 through September 30, should make vessel transits easier to schedule during that time period. This proposed rule is expected to relieve the bridge owner of the burden of crewing each bridge continually, establish a consistent bridge operating schedule for the bridges listed in this rulemaking, and still meet the reasonable needs of navigation.

Discussion of Proposal

The Coast Guard proposes to revise the operating regulations for the Gowanus Canal at 33 CFR 117.787 as follows:

Ninth Street Bridge

Add operating regulations for the Ninth Street Bridge, mile 1.4, Across the Gowanus Canal to require that the draw shall open on signal, if at least a two-hour advance notice is given.

Third Street Bridge

Revise the operating regulations for the Third Street Bridge, mile 1.8, across the Gowanus Canal to require that the draw shall open on signal, if at least a two-hour advance notice is given.

Carroll Street Bridge

Revise the operating regulations for the Carroll Street Bridge, mile 2.0, across the Gowanus Canal to require that the draw shall open on signal, if at least a two-hour advance notice is given.

Union Street Bridge

Revise the operating regulations for the Union Street Bridge, mile 2.1, across the Gowanus Canal to require that the draw shall open on signal, if at least a two-hour advance notice is given.

Notice for bridge openings shall be given to the NYCDOT Hotline or NYCDOT Bridge Operation Office.

The bridge owner plans to use two crews of drawtenders to operate the Gowanus Canal bridges. The use of two crews is expected to provide bridge openings in a timely manner. The Hamilton Avenue Bridge, mile 1.2, also across Gowanus Canal was not included in the roving drawtender plan because the frequency of bridge openings were considerably higher than the other bridges on this waterway.

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 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, Feb. 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based upon the fact that three of the bridges presently open after a six-hour notice May 1 through September 30, which is greater than the proposed two-hour notice during those five months. The Coast Guard believes that the two-hour advance notice October 1 through April 30 is reasonable because the bridges will still open on signal provided the two-hour notice is given. The commercial vessel movements on Gowanus Canal are scheduled in advance by the commercial operators. Providing two-hours notice for bridge opening for the additional seven months of the year, October 1 through April 30, should not prevent vessels from still transiting the waterway in a timely manner.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed 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 section 5 U.S.C. 605(b), for reasons discussed in the Regulatory Evaluation section above, that this proposed rule would not have a significant economic impact on a substantial number of small entities. This conclusion is based upon the fact that three of the bridges presently open after a six-hour notice May 1 through September 30, which is greater than the proposed two-hour notice during those five months. The Coast Guard believes that the two-hour advance notice October 1 through April 30 is reasonable because the bridges will still open on signal provided the two-hour notice is given. The commercial vessel transits on Gowanus Canal are scheduled in advance by the commercial operators. Providing two-hours notice for bridge openings for the additional seven months of the year, October 1 through April 30, when the bridge formerly opened on signal, should not prevent vessels from still transiting the waterway in a timely manner.

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

Collection of Information

This proposed 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 proposed 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 proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety

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

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations have been found not to have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.787 is revised to read as follows:

§ 117.787 Gowanus Canal.

The draws of the Ninth Street Bridge, mile 1.4, the Third Street Bridge, mile 1.8, the Carroll Street Bridge, mile 2.0, and the Union Street Bridge, mile 2.1, at Brooklyn, shall open on signal if at least a two-hour advance notice is given to either the New York City Department of Transportation (NYCDOT) Radio Hotline or the NYCDOT Bridge Operations Office.

Dated: April 12, 2000.

Robert F. Duncan,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 00–10454 Filed 4–26–00; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 414

HCFA–1084–P

RIN 0938–AJ82

Medicare Program; Payment for Upgraded Durable Medical Equipment

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Medicare regulations to permit Medicare suppliers to furnish upgraded durable medical equipment (DME) on an assignment basis. Medicare payment would be made to the supplier as if the DME were non-upgraded DME; and the beneficiary purchasing or renting the upgraded DME would pay the supplier an amount equal to the difference between the supplier's charge for the DME upgrade and the amount paid by Medicare for the non-upgraded DME. This proposed rule would also require the following consumer protection safeguards: determination of fair market prices, proof of full disclosure of the availability and cost of non-upgraded DME, and sanctions against suppliers who engage in coercive or abusive sales practices.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on June 26, 2000.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address only: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1084–P, P.O. Box 8013, Baltimore, MD 21244–8013.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses (If you choose to mail your comments to one of the following addresses, we may be delayed receiving them, which could result in us considering those comments late.):

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, or

Room C5–16–03, 7500 Security Boulevard, Baltimore, MD

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1084–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's office at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: William Long, (410) 786–5655.

SUPPLEMENTARY INFORMATION:

I Background

A. Durable Medical Equipment

Durable medical equipment (DME) is medical equipment furnished by a supplier or a home health agency that is primarily and customarily used to serve a medical purpose. DME is able to withstand repeated use and is generally not useful to an individual in the absence of a sickness or an injury. To be covered by Medicare, DME must be appropriate for use in a beneficiary's home or in an institution that is used as a home. A hospital, or a critical access hospital may not be considered an institution that is used as a home for this purpose. Similarly, a Medicare-certified SNF or other institution that is primarily engaged in providing skilled care to its residents may not be considered an institution that is used as a home.

While Medicare will pay for DME that is adequate and effective to meet the medical needs of the beneficiary, it will not pay extra for convenience or luxury features nor more than the applicable fee schedule amount.

B. Payment for DME

Payment for DME furnished under Part B of the Medicare program (Supplementary Medical Insurance) is made through contractors known as Medicare carriers. Section 1834(a) of the Social Security Act (the Act) provides that Medicare payment for DME is equal to 80 percent of the lesser of the actual charge for the DME or the fee schedule amount for the DME. Section 1834(a) of the Act classifies DME into the following payment categories:

- Inexpensive or other routinely purchased DME.
- DME requiring frequent and substantial servicing.
- Customized DME.
- Supplies and accessories used with DME
- Oxygen and oxygen equipment.
- Other items of DME (capped rental items).

There is a specific methodology for determining the fee schedule payment amount for each category of DME. In addition, for each of these categories there are restrictions governing

payment. For example, inexpensive or other routinely purchased DME may be rented or purchased. However, oxygen and DME requiring frequent and substantial servicing may only be rented and not purchased. Customized items and other supplies may only be purchased. Capped rental items, other than electric wheelchairs, may initially only be rented; however, the rental payments can be applied to the purchase of the item if the beneficiary selects the purchase option after the tenth rental month.

The fee schedules for DME are calculated using average reasonable charges from 1986 and 1987 and are generally adjusted annually by the change in the Consumer Price Index for all Urban Consumers (CPI–U) for the 12-month period ending June 30, of the preceding year. In addition, the fee schedules for DME are limited by a ceiling (upper limit) and floor (lower limit). The ceiling and floor are equal to 100 percent and 85 percent, respectively, of the median of the local (Statewide) fee amounts. The local fee schedule amounts for areas outside the continental United States are not included in the calculation of the ceiling and floor limits, nor are they subject to the ceiling or floor limits. This fee schedule payment methodology is stated in 42 CFR part 414, subpart D.

C. Medicare's Assignment Rules

An assignment is an agreement between a supplier and a Medicare beneficiary whereby the beneficiary transfers to the supplier his or her right to collect benefits for furnished covered services. The supplier in return agrees:

- To accept, as full charge for the service, the amount approved by the Medicare carrier as the basis for determining the Medicare Part B payment.
- To collect from the beneficiary only the difference between the Medicare-approved amount and the Medicare Part B payment, that is, any deductible and coinsurance amounts. A violation of the assignment occurs if the supplier collects from the beneficiary or anyone else any amount in excess of the approved amount.

If the supplier does not accept assignment, payment is made by the carrier directly to the beneficiary less any deductible and copayment and the beneficiary is then responsible to the supplier for the entire amount. Also, without assignment the supplier is not limited in his charges, and the beneficiary may have to pay more than he or she would have paid if the claim had been assigned. The rules governing assignment are stated in 42 CFR part 424, subpart D.

D. Current Payment Process for Upgraded DME

An item of DME may have certain convenience or luxury features that make it more expensive than non-upgraded DME however, these features are not necessary to adequately meet the medical needs of the beneficiary. Medicare does not cover medically unnecessary upgrades. If a supplier accepts assignment, it must accept the Medicare-approved amount as full payment for the upgraded DME.

The Medicare-approved payment amount for the more expensive DME cannot exceed the payment amount for the non-upgraded DME. If a beneficiary purchases or rents DME that has more expensive features than his or her condition requires, the supplier accepting assignment for the DME may not charge or collect any amount in excess of the Medicare-approved amount for the non-upgraded DME.

Currently, a supplier that wishes to charge and collect a greater price for upgraded DME must submit an unassigned claim. The carrier then pays the beneficiary an amount equal to the Medicare payment, less the deductible and coinsurance. The beneficiary is then responsible to the supplier for the full payment price of the upgraded DME. The current procedures for Medicare payment of assigned and unassigned DME claims are stated in 42 CFR part 414, subpart D.

II. Provisions of the Balanced Budget Act of 1997

On August 5, 1997, the Congress passed the Balanced Budget Act of 1997 (BBA). Section 4551(c) of the BBA added a second paragraph 1834(a)(17) to the Act, authorizing the Secretary to issue regulations under which an individual may purchase or rent upgraded DME from a supplier, and Medicare payment would be made to the supplier as if the upgraded DME were non-upgraded DME if the supplier presented an assigned claim.

Section 1834(a) second (17)(B) of the Act provides that (i) In the case of the purchase or rental of upgraded DME, the supplier shall receive payment for that upgraded DME as if the DME was non-upgraded DME; and (ii) the individual purchasing or renting the DME shall pay the supplier an amount equal to the difference between the allowed Medicare payment for the non-upgraded DME and the supplier's charge for the upgraded DME. In no event may the supplier's charge for the upgraded DME exceed the applicable fee schedule amount (if any). In the event that the upgraded DME is not on any fee schedule, the supplier's charge for the DME upgrade shall not exceed the fair market price to its other customers for the same DME. Our authority for this determination is section 1834(a) second (17)(B)and (C)(v) of the Act. Under section 1834(a) second (17)(B) of the Act, these rules only apply to assigned claims. Conversely, they do not apply to unassigned claims.

Section 1834(a) second (17)(C) of the Act requires that any regulations under section 1834(a) second (17)(A) must provide for consumer protection standards with respect to the furnishing of upgraded DME. These regulations must provide for the following:

(1) A determination of the fair market prices for upgraded DME.

(2) Full disclosure by the supplier of the availability and price of non-upgraded DME and proof of receipt of this disclosure information by the beneficiary before furnishing upgraded DME to the beneficiary.

(3) Conditions of participation for suppliers in the billing arrangement.

(4) Sanctions (including exclusion) on suppliers who we determine have engaged in coercive or abusive practices.

(5) Other safeguards that we determine are necessary.

This amendment to the Act would apply to purchases and rentals made after the effective date of the final regulations. Under section 1834(a) second (17)(B) of the Act, these rules only apply to assigned claims.

III. Provisions of This Proposed Regulation

We propose to add the acronym "DME" for durable medical equipment at § 414.202.

We propose to add a new § 414.231 that would permit suppliers to sell or rent upgraded DME on an assigned basis to a beneficiary and charge the beneficiary the difference between the supplier's charge for the upgraded DME and the allowed Medicare amount for the non-upgraded DME, provided that all consumer protection safeguards are met. Medicare's payment for the upgraded DME would be the same allowed amount as if the upgraded DME was non-upgraded DME.

In § 414.231(a), we propose to add the definition of upgraded DME.

We propose to add in § 414.231(c), the requirements that suppliers must meet before they are allowed to sell upgraded DME to Medicare beneficiaries on an assigned basis. These qualification rules address: (1) Disclosure of information, (2) Charge limitations, (3) Billing requirements, (4) Returns of upgraded

DME by dissatisfied beneficiaries, and (5) Conditions of participation.

We propose to add § 414.231(c)(1) to describe the disclosure information that the supplier must provide to the beneficiary. It is our intention to design a prescribed disclosure form that must be used by suppliers who sell upgraded DME and who accept assignment.

This section would also identify who is responsible for obtaining the signed disclosure form acknowledging that the beneficiary or representative was given, and understood, all of the required information. This signed disclosure form must also be signed by the supplier and must attest that the supplier informed the beneficiary that non-upgraded DME is available and medically adequate for the beneficiary's needs; and informed the beneficiary of the name of the manufacturer that made the upgraded DME, the manufacturer's model number for the upgraded DME, the manufacturer's suggested retail price for the upgraded DME, the supplier's usual or customary charge for the upgraded DME, the estimated charge for the DME without the upgraded features, the beneficiary's out-of-pocket cost for the DME without the upgraded features, the supplier's charge to the beneficiary for the upgraded DME, and the beneficiary's out of pocket cost for the upgraded DME. A copy of the completed disclosure form must be sent by the DME supplier to the physician prescribing the DME, if the beneficiary elects to notify the prescribing physician. The supplier must also retain the signed disclosure form in its file and upon request submit the disclosure form to the Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) carrier. We would require this signed statement under the authority of section 1834(a) second (17)(C)(v) of the Act, which provides for such other safeguards as the Secretary determines are necessary.

We propose that a beneficiary who receives an upgraded DME and is dissatisfied with the DME upgrade may return the upgraded DME within thirty days and receive a full refund for the upgraded portion of the DME from the DME supplier. The DME supplier would be required to furnish a non-upgraded item of DME to the beneficiary.

We propose, under the authority of section 1834(a) second (17)(C)(i) of the Act, to add § 414.231(c)(2) to prohibit the supplier's charge for any upgraded DME from exceeding the Medicare fee schedule amount. If there is no applicable fee schedule amount, the supplier's charge may not exceed the lower of its customary charge to the general public, or the manufacturer's suggested retail price.

We propose to add § 414.231(c)(3) to require a supplier to submit claims, with code modifiers, that indicate when upgraded DME was furnished to a Medicare beneficiary.

Section 1834(a) second (17)(B) requires that for upgraded DME, the Medicare payment amount must be based on the payment amount for non-upgraded DME. We propose to require suppliers to submit claims for upgraded DME as if the DME was non-upgraded DME. The rules governing the payment methodology contained in part 414, subpart D for non-upgraded DME, would apply to upgraded DME.

We believe that section 1834(a) second (17)(B)(i) precludes us from paying for the upgraded DME as an upgrade but requires that we pay as if the DME was non-upgraded DME. Therefore, we would use the same payment methodology for the upgraded DME as for the non-upgraded DME. This would be less administratively cumbersome, and would efficiently utilize the safeguards built into the current payment methodology.

For example, if a beneficiary wanted to upgrade capped rental DME and instead, obtain an upgraded DME that is in the routinely purchased payment category, the supplier would submit a claim for, and the payment would be based on, the non-upgraded capped rental DME. The supplier also would be required to use a code modifier on the claim form to indicate that upgraded DME had been furnished. The rules governing the capped rental payment category would therefore apply to the routinely purchased DME. Thus, the supplier would be required to submit rental claims, even if the upgraded DME was a routinely purchased DME, in accordance with the capped rental requirements. Likewise, the supplier would be required to offer the purchase option during the tenth rental month as if the upgraded DME were in the capped rental payment category. Finally, the supplier would also be required to comply with the capped rental maintenance and servicing requirements.

We propose to add § 414.231(c)(4) to require suppliers furnishing upgraded DME to comply with the supplier standards for Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) at § 424.57.

Finally, we propose to add § 414.231(d) to require that the sanctions found in part 402 apply to any supplier that engages in coercive or abusive practices. These regulations also would allow us to sanction a supplier for failure to submit the documentation that we would require in § 414.231(c).

This new provision would change the nature of Medicare assignment in the context of DME, and the protection it has historically afforded beneficiaries from being charged extra for equipment or features of equipment that are not medically necessary. In light of this legislative departure from Medicare's long-established rules relating to assignment and in light of the statutory requirement for the Secretary to include such other safeguards as the Secretary determines are necessary, we are especially interested in receiving comments about the adequacy of the beneficiary protections proposed in this rule as well as the breadth of potential additional approaches to beneficiary protection. For example, it may be important to distinguish between an upgraded item that might be covered as medically necessary for a particular beneficiary from a slightly different item for which there was no Medicare fee schedule amount. In the former case, the beneficiary would have the advantage of Medicare payment for the item with additional features while in the latter case Medicare would pay only for the item without features and the beneficiary would pay, fully at their own expense, for the difference between the supplier's charge for the upgraded item and the Medicare payment for the non-upgraded item. Or, it might be appropriate to consider whether upgrade covers minor variations in an item of DME where the same code is used to bill for the item as the standard item. Therefore, we ask for comment about manageable ways to look at and quantify the extent of variation in DME that would constitute an upgrade and what might be the differences between non upgraded DME and upgraded DME. Because our experience in capturing these distinctions for purposes of payment is limited, we welcome suggestions relating to potential beneficiary protections which may need to be introduced in this rule. For example, we ask for comment about an approach that might phase-in the provision, focusing initially on certain kinds of DME which we believe from conversations with the industry to be the items for which there may be the greatest demand, and evaluating impacts before expanding application of the provision. We request comment about particular categories of DME, such as ultra light wheelchairs or total electric hospital beds, to which the provision might initially be applied if we were to pursue a targeted approach.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the "DATES" section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Collection of Information Requirements

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

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

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

Section 414.231 Upgraded durable medical equipment.

Section 414.231 (c) requires that the supplier of DME give to the beneficiary (or the beneficiary's representative renting or purchasing the DME on the beneficiary's behalf) a disclosure form, indicating (1) the supplier informed the beneficiary (or beneficiary's representative) that a non-upgraded DME was available and explained that the non-upgraded DME met the beneficiary's medical needs, (2) the supplier provided the beneficiary or beneficiary's representative with the estimated cost for both the non-upgraded DME and the additional out-of-pocket cost for the upgraded DME.

This information would be provided by the DME supplier on a one-time basis for each sale of upgraded DME. We would require the DME supplier to retain the disclosure form and submit it to the DMEPOS carrier upon request. The DME supplier would also be required to furnish a copy of the disclosure form to the prescribing physician, if the beneficiary elects to notify the prescribing physician. Our best estimate is that it would take 15 minutes or less for each sale of upgraded DME.

Section 414.231(c)(3)(ii) requires that the supplier use a code modifier, when submitting a claim, that indicates that the upgraded DME was furnished to a Medicare beneficiary.

The burden that would be added as a result of this reporting requirement is minimal over that already approved, through July 31, 2000, under OMB approval number 0938–0008, which is the approval number for the Medicare common claim form (HCFA 1500). That form currently has a field for a code modifier, further diminishing the burden of entering the modifier.

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirement described above. This requirement is not effective until it has been approved by OMB.

If you comment on this information collection, please mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850. ATTN: Julie Brown, HCFA–1084–P, and Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office building, Washington, DC 20503 Attn: Allison Eydt, HCFA Desk Officer

V. Regulatory Impact Analysis

We have examined the impacts of this proposed rule as required by Executive Order (EO) 12866, the Unfunded Mandates Act of 1995, and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects of $100 million or more annually. Since we believe that this proposed rule would have no significant effect on program expenditures, we do not consider this to be a major rule. We have not prepared an RIA.

Section 1102(b) of the Act requires us to prepare a RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural impact analysis since we have determined that this proposed rule would not have a significant economic impact on operations of a substantial number of small rural hospitals.

The Unfunded Mandates Reform Act of 1995 also requires (in section 202) that agencies perform an assessment of anticipated costs and benefits before proposing any rule that may result in expenditures, in any given year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. This rule would not have any effect on the Medicare expenditures or the solvency of the Medicare Trust Fund. The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most hospitals and most other providers and suppliers are small entities, either by virtue of their nonprofit status or by having revenues of $5 million or less annually. Intermediaries and carriers are not considered to be small entities.

While we have estimated the time required to complete the required form as 15 minutes, we are unable to quantify the "burden" this imposes because we cannot predict the number of forms individual suppliers will be completing. A DME supplier has two options when a beneficiary seeks to purchase upgraded DME. One option is simply to sell the beneficiary the item and allow the beneficiary to submit an unassigned claim. This option imposes no burden on the supplier and the beneficiary is not required to complete the form. The second option is to accept assignment and to complete and submit the form. Given the resources at our disposal, we cannot determine the number of DME suppliers that would accept either option.

We believe that beneficiaries may use the upgrade provision to obtain only a relatively few categories of equipment. We also believe that this provision might be used mostly by more active beneficiaries who desire wheelchairs that contain features suited to their active lifestyles, such as upgrading from standard wheelchairs to ultra light

weight wheelchairs. Although there are perhaps 100 large DME suppliers, there is a total of more than 100,000 dealers. It is impossible to estimate the distribution of assigned claims that involve upgraded DME across either the smaller or the larger group. Based on the industry's own assertions, however, we do not believe that any one supplier will incur a significant burden. If we receive additional information as a result of this proposed rule, we would revisit the idea of calculating the burden arising from this provision.

We are not preparing an analysis for section 1102(b) of the Act because this rule is not a major rule as defined at 5 U.S.C. 804(2), nor will it have a significant economic impact on the operations of a substantial number of small rural hospitals.

We have reviewed this proposed rule under the threshold criteria of Executive Order 13132, Federalism. We have determined that it does not significantly affect the rights, roles and responsibility of States. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions. Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

For the reasons stated in the preamble, the Health Care Financing Administration proposes to amend 42 CFR part 414 as follows:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

1. The authority citation for part 414 continues to read as follows:

Authority: 42 U.S.C. 1302, and 1395hh.

2. Add the acronym "DME" to the definition of durable medical equipment in § 414.202 to read as follows:

§ 414.202 Definitions.

* * * * *

Durable medical equipment (DME) means equipment, furnished by a supplier or a home health agency that—

* * * * *

3. Add § 414.231 to subpart D to read as follows:

§ 414.231 Upgraded durable medical equipment.

(a) *Definition. Upgraded durable medical equipment* means DME that contains features that are not reasonable and necessary for the treatment of an illness or an injury, or to improve the functioning of a malformed body member.

(b) *General rules:* (1) HCFA pays for DME that meets the coverage requirements in § 410.38.

(2) For upgraded DME, HCFA pays a supplier an amount equal to the Medicare-approved amount that it pays for DME that does not contain upgraded features under § 414.210, less any applicable beneficiary deductible and coinsurance.

(3) If a beneficiary purchases or rents upgraded DME, the beneficiary is responsible for the difference in the payment between the supplier's charge for the upgraded DME and the Medicare-approved amount for the DME without the upgraded features, in addition to any applicable beneficiary deductible and coinsurance.

(c) *Rules for suppliers*—(1) *Disclosure of information.* Before furnishing upgraded DME to a beneficiary, a supplier must meet the following requirements:

(i) Give to the beneficiary (or the representative renting or purchasing the DME on the beneficiary's behalf) a disclosure form prescribed by HCFA containing the following information:

(A) The DME without the upgraded features effectively meets the beneficiaries medical needs and is as available as the upgraded DME.

(B) The name of the manufacturer that made the upgraded DME.

(C) The manufacturer's model number for the upgraded DME.

(D) The manufacturer's suggested retail price for the upgraded DME.

(E) The supplier's usual or customary charge for the upgraded DME.

(F) The estimated charge, and the beneficiary's out-of-pocket costs for the DME without the upgraded features.

(G) The supplier's charge to the beneficiary for the upgraded DME and the beneficiary's out-of pocket cost for the upgraded DME.

(ii) The supplier must obtain the beneficiary's or representative's signature on the disclosure form, attesting that the beneficiary or representative has read and understands the information provided on the form.

(iii) The supplier must furnish a copy of the signed disclosure form to the prescribing physician, provided the beneficiary elects to notify the prescribing physician, retain the signed disclosure form in its file and, upon request, submit the signed disclosure form to the DMEPOS carrier.

(2) *Charge limitations.* The suppliers charge for upgraded DME must not exceed the applicable Medicare fee schedule amount (if any) for the upgraded DME. If there is no fee schedule amount for the upgraded DME, the supplier's charge for the upgraded DME must not exceed the lower of its customary charge to the general public, or the manufacturer's suggested retail price.

(3) *Billing requirements.* A supplier must meet the following billing requirements:

(i) Follow the payment and billing requirements for the DME without the upgraded features.

(ii) Submit a claim, with a code modifier indicating that upgraded DME was furnished to a Medicare beneficiary.

(4) *Returns of upgraded DME.* (i) A supplier must refund any payments made by a beneficiary, for the upgraded portion of an item of upgraded DME if the beneficiary, or representative, returns the upgraded DME to the supplier within 30 days of receiving the upgraded DME.

(ii) The supplier must furnish the DME without the upgrade to the beneficiary at no additional cost.

(5) *Conditions of participation.* Suppliers submitting claims for upgraded DME must comply with the special payment rules for DMEPOS suppliers at § 424.57 of this chapter.

(d) *Supplier sanctions.* If a supplier engages in coercive or abusive practices regarding the sale or rental of upgraded DME, HCFA may apply to the supplier the same sanctions found in part 402 of this subchapter that it may apply to a physician.

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

Dated: January 24, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Approved: March 17, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–10482 Filed 4–26–00; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA–00–890, MM Docket No. 00–68, RM–9854]

Digital Television Broadcast Service; Norfolk, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by WTKR-

TV, Inc. licensee of station WTKR-TV, NTSC Channel 3, Norfolk, Virginia, requesting the substitution of DTV Channel 40 for station WTKR-TV's assigned DTV Channel 58. DTV Channel 40 can be allotted to Norfolk, Virginia, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 36–48–56 N. and 76–28–00 W. As requested, we propose to allot DTV Channel 40 to Norfolk with a power of 1000 (kW) and a height above average terrain (HAAT) of 313 meters.

DATES: Comments must be filed on or before June 12, 2000, and reply comments on or before June 27, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Arthur B Goodkind, Koteen & Naftalin, L.L.P., 1150 Connecticut Avenue, NW, Suite 1000, Washington, DC 20036 (Counsel for WTKR-TV, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–68, adopted April 19, 2000, and released April 21, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–10542 Filed 4–26–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[PP Docket No. 00–67; FCC 00–137]

Compatibility Between Cable Systems and Consumer Electronics Equipment

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission has adopted a *Notice of Proposed Rulemaking* (NPRM) on compatibility between cable television systems and consumer electronics equipment. The NPRM is designed to resolve outstanding compatibility issues, in particular requirements for labeling digital television (DTV) receivers to describe their capabilities to operate with digital cable television systems and questions regarding licensing terms for copy protection technology. Resolving these issues will not only insure that consumers make informed purchasing decisions with respect to DTV equipment but also promote the overall transition from analog to digital television.

DATES: Comments must be received on or before May 24, 2000, and reply comments on or before June 8, 2000. Written comments by the public on the proposed information collections are due May 24, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before June 26, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW, Washington, DC 20503 or via the Internet to edward.springer@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Jonathan Levy (202–418–2030), Office of Plans and Policy. For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: *This Notice of Proposed Rulemaking,* adopted April 13, 2000 and released April 14, 2000, addresses compatibility between cable television systems and digital television receivers, set top boxes, and other consumer electronics equipment, in accordance with Section 624A of the Communications Act of 1934, 47 U.S.C. 544A. The NPRM seeks comment on two issues: How to label digital television receivers with different features, including the proper designation for receivers providing two-way interactive capability; and licensing terms for copy protection technology.

The NPRM recognizes that DTV receivers both with and without the IEEE 1394 two-way connector will be able to access an array of cable services. Hence the labeling challenge is to provide descriptions that are informative to consumers, rather than to distinguish among receivers that are and are not "cable-ready." The NPRM does not propose specific nomenclature, but simply asks for comment on appropriate equipment labeling terminology, in accordance with the requirements of Section 624A. The NPRM also asks for comment on whether the transition from analog to digital requires any changes in Commission requirements for cable operators to offer supplemental equipment to subscribers to enable them to use special features of their television receivers (*e.g.*, picture-in-picture).

With respect to copy protection technology licensing, the NPRM asks if there are unresolved hardware issues that might prevent consumer electronics manufacturers from designing DTV receivers that will operate with cable systems delivering copy protected digital content. The NPRM also seeks comment on an issue related to the Commission's navigation devices rules. Whether the inclusion of copy protection technology provisions in question of whether certain proposed copy protection technology licensing terms violate the Commission's navigation devices rules.

Pursuant to the navigation devices rules, cable operators are required by July 1, 2000 to offer separate security modules for use with commercially-available navigation devices, including television receivers and set top boxes. *See* 47 CFR 76.1200–1210. In order to build a DTV receiver that can receive and display encrypted cable

programming by means of a cable-supplied security module, consumer electronics manufacturers need a license for the security module technology so they can incorporate it in the interface that they build into the DTV receiver. Commission rules in essence forbid cable operators from imposing conditions on licensees of their security technology that prohibit those licensees from offering navigation devices that do not perform conditional access or security functions. It has been argued that licensing terms for security modules that impose obligations relating to copy protection, as opposed to conditional access, violate Commission rules. The NPRM seeks comment on this issue in order to ascertain whether any revision or clarification of those rules is needed.

In order to ensure that consumers have clear information about the capabilities of DTV receivers on the market and in order to encourage the transition from analog to digital video delivery, it is important that the labeling and copy protection technology licensing issues be resolved promptly.

Procedural Matters

As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*. The Commission will send a copy of the *Notice of Proposed Rulemaking*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the *Notice of Proposed Rulemaking* and IRFA (or summaries thereof) will be published in the **Federal Register**. *See id.*

Need for and Objectives of the Proposed Rules: This NPRM is designed to help ensure that digital television receivers and cable television systems will function smoothly together and to promote the implementation of digital television ("DTV") service. In order to provide consumers with information about how digital television receivers will operate with cable television systems and thereby avoid consumer confusion, the NPRM seeks comment on labeling of digital television receivers. In order to encourage the provision of valuable digital content and to ensure that copy protection technology licensing issues do not stand in the way of designing DTV receivers that operate with cable television systems. the Notice seeks comment on some outstanding copy protection technology licensing issues as well.

Legal Basis: Authority for this proposed rulemaking is contained in Sections 4(i), 4(j), 336, and 624A of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 336, and 544a.

Description and Estimate of Small Entities to Which the Proposed Rules Will Apply: The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[2] The Regulatory Flexibility Act defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act.[3] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[4]

Rules adopted in this proceeding could apply to manufacturers of DTV equipment, including television receivers, set-top boxes and "point of deployment" modules. Distributors of this equipment, including retailers of consumer electronics equipment and, in the case of "point of deployment" modules, cable operators, would also be affected. Labeling rules would require all manufacturers, small and large, to adhere to certain terminology in the descriptive labels that they attach to the receivers that they produce. Regulations relating to copy protection licensing technology could affect the terms and conditions under which manufacturers, small and large, acquire copy protection technology licenses. However, with or without Commission regulations, all those entities would need a license for proprietary technology that they utilize. Cable operators will also be affected by any new requirements to offer supplementary equipment to subscribers to enable them to use special features of their DTV receivers. This proceeding seeks comment on whether the burden, if any, of compliance with rules adopted pursuant to this NPRM could be mitigated for small entities.

Cable Systems: SBA has developed a definition of small entity for cable and other pay television services, which includes all such companies generating less than $11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,323 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992.[5]

The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide.[6] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.[7] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this Notice.

The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." [8] The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 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. 603(b)(3).

[3] *Id.* 601(3).

[4] *Id.* 632.

[5] U.S. Census Bureau, 1992 Economic Census, 1992 Census of Transportation, Communications and Utilities at Firm Size 1–123.

[6] 47 CFR 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995).

[7] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[8] 47 U.S.C. 543(m)(2).

the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[9] Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450.[10] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

Small Manufacturers: The SBA has developed definitions of small entity for manufacturers of household audio and video equipment (SIC 3651) and for radio and television broadcasting and communications equipment (SIC 3663). In each case, the definition includes all such companies employing 750 or fewer employees.

Electronic Equipment Manufacturers: The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment. Therefore, we will utilize the SBA definition of manufacturers of Radio and Television Broadcasting and Communications Equipment.[11] According to the SBA's regulations, a TV equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.[12] Census Bureau data indicates that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.[13] The Census Bureau category is very broad, and specific figures are not available as to how many of these firms are exclusive manufacturers of television equipment or how many are independently owned and operated. We conclude that there are approximately 778 small manufacturers of radio and television equipment.

Electronic Household/Consumer Equipment: The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definition applicable to manufacturers of Household Audio and Visual Equipment. According to the SBA's regulations, a household audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.[14] Census Bureau data indicates that there are 410 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 386 of these firms have fewer than 500 employees and would be classified as small entities.[15] The remaining 24 firms have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Furthermore, the Census Bureau category is very broad, and specific figures are not available as to how many of these firms are exclusive manufacturers of television equipment for consumers or how many are independently owned and operated. We conclude that there are approximately 386 small manufacturers of television equipment for consumer/household use.

Computer Manufacturers: The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition of Electronic Computers. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity.[16] Census Bureau data indicates that there are 716 firms that manufacture electronic computers and of those, 659 have fewer than 500 employees and qualify as small entities.[17] The remaining 57 firms have 500 or more employees; however, we are unable to determine how many of those have fewer than 1,000 employees and therefore also qualify as small entities under the SBA definition. We conclude that there are approximately 659 small computer manufacturers.

Small Retailers: The Commission has not developed a definition of small entities applicable to retail sellers of navigation devices. Therefore, we will utilize the SBA definition. The 1992 Bureau of the Census data indicate: there were 9,663 U.S. firms classified as Radio, Television, and Consumer Electronic Stores (SIC 5731), and that 9,385 of these firms had $4.999 million or less in annual receipts and 9,473 of these firms had $7.499 million or less in annual receipts.[18] Consequently, we tentatively conclude that there are approximately 9,663 such small retailers that may be affected by the decisions and rules proposed in this NPRM.

Reporting, Recordkeeping, and Other Compliance Requirements: The proposed actions may require manufacturers of DTV equipment to adhere to some labeling standards. Moreover, the proposed actions may affect the terms under which manufacturers acquire licenses to utilize certain copy protection technology in their products. We believe that the impact of any rules that might be adopted pursuant to this NPRM would be minimal. We seek comment on this.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered: The RFA, *see* 5 U.S.C. 603, requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; the use of performance, rather than design, standards; and an exemption from coverage of the rule, or any part thereof, for small entities.

We believe that our proposals would have the positive result of providing consumers with clear information about the capabilities of DTV equipment and promote the implementation of DTV service. We believe that labeling requirements would have a minimal impact on manufacturers and retailers and that not applying requirements adapted to all manufacturers would

[9] 47 CFR 76.1403(b).

[10] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[11] This category excludes establishments primarily engaged in the manufacturing of household audio and visual equipment which is categorized as SIC 3651. *See infra* for SIC 3651 data.

[12] 13 CFR 121.201, (SIC) Code 3663.

[13] U.S. Dept. of Commerce, 1992 Census of Transportation, Communications and Utilities, Table 1D, (issued May 1995), SIC category 3663.

[14] 13 CFR 121.201, (SIC) Code 3651.

[15] U.S. Small Business Administration 1995 Economic Census Industry and Enterprise Report, Table 3, SIC Code 3651, (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

[16] 13 CFR 121.201, (SIC) Code 3571.

[17] U.S. Small Business Administration 1995 Economic Census Industry and Enterprise Report, Table 3, SIC Code 3571, (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

[18] U.S. Small Business Administration 1992 Economic Census Industry and Enterprise Report, Table 2D, SIC 7812, (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration)(SBA 1992 Census Report). The Census data does not include a category for $6.5 million therefore, we have reported the closest increment below and above the $6.5 million threshold. There is a difference of 88 firms between the $4.999 and $7.499 million annual receipt categories. It is possible that these 88 firms could have annual receipts of $6.5 million or less and therefore, would be classified as small businesses.

defeat the basic purpose of the requirements. Given that manufacturers would need to license copy protection technology that they incorporate in their equipment regardless of our rules, the potential impact of any rules appears to be minimal.[19] We do not believe that different treatment of small and large entities with respect to their technology licensing is warranted. Any supplementary equipment that cable operators might be required to offer to subscribers is likely to be standardized and manufactured in large enough quantities that the cost to small cable operators is unlikely to be substantial.[20] Moreover, cable operators are entitled to recover from subscribers the cost of supplementary equipment offered. Should commenters disagree with any of our conclusions, we welcome comments suggesting ways in which any perceived burden upon small entities could be mitigated.

Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules: None.

This NPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–10448 Filed 4–26–00; 8:45 am]

BILLING CODE 6712–01–U

[19] *See Notice* ar paras. 18–20.

[20] *Id* at paras. 14, 17.

Notices

Federal Register
Vol. 65, No. 82
Thursday, April 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: May 10, 2000 (8:45 a.m. to 5 p.m.).

Location: U.S. Department of State, Loy Henderson Auditorium, 23rd Street Entrance, Washington, DC.

This full-day, interactive meeting will bring together members of the public and private sectors to discuss the environment for gender equality—what has been achieved and what challenges remain.

The meeting is being held in cooperation with The President's Interagency Council on Women. Several leading non-governmental organizations involved in women's issues are co-sponsoring the event, including the Association for Women in Development (AWID), Center for Development and Population Activities (CEDPA), International Center for Research on Women (ICRW), U.S. Women Connect, Women's Edge, InterAction Commission on the Advancement of Women, and the Women's Foreign Policy Group.

The meeting is free and open to the public. However, Notification by May 8, 2000 Through the Advisory Committee Headquarters is Required. Persons wishing to attend the meeting must fax their name, social security number, organization and phone number to Lisa J. Harrison on (703) 741–0567.

Dated: April 13, 2000.

Noreen O'Meara,

Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA).

[FR Doc. 00–10479 Filed 4–26–00; 8:45 am]

BILLING CODE 6116–01–M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: May 2, 2000; 9:30 A.M.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session on May 2, 2000, to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. If necessary, the meeting will continue the following day for approximately an hour beginning at 9:00 a.m. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)). In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6)).

CONTACT PERSON FOR MORE INFORMATION: Personss interested in obtaining more information should contact either Brenda Hardnett or John Lindburg at (202) 401–3736.

Dated: April 24, 2000.

John A. Lindburg,

Legal Counsel and Acting Executive Director.

[FR Doc. 00–10559 Filed 4–24–00; 4:41 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1085]

Expansion of Foreign-Trade Zone 146, Lawrence County, IL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Bi-State Authority, grantee of Foreign-Trade Zone 146 (Lawrence County, Illinois), submitted an application to the Board for authority to expand FTZ 146 to include the Effingham Industrial Park in Effingham (Effingham County), Illinois (Site 2), adjacent to the St. Louis, Missouri, Customs port of entry (FTZ Docket 29–99; filed 6/2/99);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 32023, 6/15/99) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 146 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 18th day of April 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–10535 Filed 4–26–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1089]

Grant of Authority for Subzone Status; Clark Refining & Marketing, Inc. (Oil Refinery); Hartford, IL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to

grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Tri-City Regional Port District, grantee of FTZ 31, for authority to establish special-purpose subzone status at the oil refinery complex of Clark Refining & Marketing, Inc. (Clark) in Hartford, Illinois, was filed by the Board on February 1, 1999, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 4–99, 64 FR 6876, 2/11/99); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 31C) at the oil refinery complex of Clark Refining & Marketing, Inc., in Hartford, Illinois, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000—#2710.00.1050, #2710.00.2500 and #2710.00.4510 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix "C");

—Products for export; and

—Products eligible for entry under HTSUS #9808.00.30 and #9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2004, subject to extension.

Signed at Washington, DC, this 18th day of April 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman; Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–10539 Filed 4–26–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1091]

Expansion of Foreign-Trade Zone 163, Poncé, Puerto Rico

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, Codezol, C.D., grantee of Foreign-Trade Zone 163, submitted an application to the Board for authority to expand FTZ 163 to include an additional site (FTZ Docket 14–99; filed 3/29/99, and amended 12/20/99);

Whereas, notice inviting public comment was given in **Federal Register** (64 FR 18878, 4/16/99) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 163 is approved, as amended, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 18th day of April 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–10540 Filed 4–26–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1086]

Grant of Authority for Subzone Status; Equistar Chemicals, LP (Petrochemical Complex) Nueces County, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Port of Corpus Christi Authority, grantee of Foreign-Trade Zone 122, has made application to the Board for authority to establish special-purpose subzone status at the petrochemical complex of Equistar Chemicals, LP, located in Nueces County, Texas (FTZ Docket 15–99, filed 4/27/99);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 25477, 5/12/99); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, Therefore, the Board hereby grants authority for subzone status at the petrochemical complex of Equistar Chemicals, LP, located in Nueces County, Texas (Subzone 122N), at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the petrochemical complex shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone,

except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on inputs covered under HTSUS Subheadings 2710.00.05–2710.00.10, 2710.00.25, and 2710.00.4510 which are used in the production of:

—Petrochemical feedstocks (examiners report, Appendix "C");
—Products for export; and
—Products eligible for entry under HTSUS 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2004, subject to extension.

Signed at Washington, DC, this 18th day of April 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 00–10536 Filed 4–26–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1087]

Grant of Authority for Subzone Status; Equistar Chemicals, LP (Petrochemical Complex) Brazoria County, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Brazos River Harbor Navigation District, grantee of Foreign-Trade Zone 149, has made application to the Board for authority to establish special-purpose subzone status at the petrochemical complex of Equistar Chemicals, LP, located in Brazoria County, Texas (FTZ Docket 23–99, filed 5/11/99);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 27959, 5/24/99); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, Therefore, the Board hereby grants authority for subzone status at the petrochemical complex of Equistar Chemicals, LP, located in Brazoria County, Texas (Subzone 149F), at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the petrochemical complex shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on inputs covered under HTSUS Subheadings 2710.00.05–2710.00.10, 2710.00.25, and 2710.00.4510 which are used in the production of:

—Petrochemical feedstocks (examiners report, Appendix "C");
—Products for export; and
—Products eligible for entry under HTSUS 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2004, subject to extension.

Signed at Washington, DC, this 18th day of April 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 00–10537 Filed 4–26–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1088]

Grant of Authority for Subzone Status Dow Chemical Company; (Petrochemical Complex); Brazoria County, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Brazos River Harbor Navigation District, grantee of Foreign-Trade Zone 149, has made application to the Board for authority to establish special-purpose subzone status at the petrochemical complex of the Dow Chemical Company, located in Brazoria County, Texas (FTZ Docket 31–99, filed 6/15/99);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 34189, 6/25/99); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, Therefore, the Board hereby grants authority for subzone status at the petrochemical complex of Dow Chemical Company, located in Brazoria County, Texas (Subzone 149G), at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the petrochemical complex shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on inputs covered under HTSUS Subheadings #2710.00.05–#2710.00.10, #2710.00.25, and #2710.00.4510 which are used in the production of:

—Petrochemical feedstocks (examiners report, Appendix "C");
—Products for export;
—And, products eligible for entry under HTSUS #9808.00.30 and #9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until

September 30, 2004, subject to extension.

Signed at Washington, DC, this 18 day of April 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–10538 Filed 4–26–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

[A–122–822, A–122–823]

International Trade Administration

Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of extension of time limit for preliminary results of antidumping duty administrative review.

EFFECTIVE DATE: April 27, 2000.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley, Import Administration. International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0666.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999).

Extension of Time Limit for Preliminary Results

The Department of Commerce has received requests to conduct administrative reviews of the antidumping duty orders on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada. The Department initiated these reviews for Stelco, Inc., Dofasco, Inc., Sorevco, Inc., Continuous Colouor Coat, Ltd., and National Steel Corp., (corrosion-resistant) and Stelco, Inc., and Clayson Steel Inc. (cut-to-length) on October 1, 1999 (64 FR 53318–01).[1] We initiated for Gerdau MRM Steel (cut-to-length) on November 4, 1999 (64 FR 60161–01).[2] These reviews cover the period August 1, 1998 through July 31, 1999.

Due to the complexity of the issues, it is not practicable to complete these reviews within the time limit mandated by section 751(a)(3)(A) of the Act (*See Memorandum from Edward C. Yang to Joseph A. Spetrini, Extension of Time Limit,* April 7, 2000). Therefore, in accordance with that section, the Department is extending the time limit for the preliminary results to July 21, 2000. *See also* 19 CFR 351.213(h)(2).

Dated: April 7, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement Group III.

[FR Doc. 00–10527 Filed 4–26–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–833]

Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From Taiwan

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

SUMMARY: On March 30, 2000, the Department of Commerce published its final determination of sales at less than fair value of certain polyester staple fiber from Taiwan (see 65 FR 16877). The petitioners and Nan Ya Plastics Corporation filed allegations of ministerial errors with respect to the calculations for Nan Ya Plastics Corporation.

Based on our analysis of the comments received, we have made changes in the margin calculations for Nan Ya Plastics Corporation and the all others rate. The final weighted-average dumping margin for Nan Ya Plastics Corporation is now 5.77 percent and the all others rate is 7.53 percent.

EFFECTIVE DATE: April 27, 2000.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai or Gregory Campbell, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4087 or 482–2239, 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).

Case History

Since the final determination of this investigation (see 65 FR 16877 (March 30, 2000) ("*Final Determination*")), the following events have occurred:

On April 3, 2000, the petitioners [1] filed an allegation that the Department committed ministerial errors, as defined in 19 CFR 351.224, in its final calculations for Nan Ya Plastics Corporation ("Nan Ya"). Nan Ya responded to the petitioners' allegation and also filed its own allegation of ministerial errors on April 10, 2000. On April 14, 2000, the petitioners commented on Nan Ya's allegation.

Scope of Investigation

For the purposes of this investigation, the product covered is certain polyester staple fiber ("PSF"). Certain polyester staple fiber is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to this investigation may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) classified under the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 5503.20.00.20 is specifically excluded from this investigation. Also specifically excluded from this investigation are polyester staple fibers of 10 to 18 denier that are cut to lengths

[1] Petitioners withdrew their request for a review of Stelco under both orders. Stelco did not request that its sales be reviewed. National withdrew its request to reviewed. Petitioners did not request that National be reviewed.

[2] We inadvertently failed to include Gerdau MRM Steel in our October 1, 1999 notice.

[1] Arteva Specialties S.a.r.l.,d/b/a KoSa; Wellman, Inc; and Intercontinental Polymers, Inc.

of 6 to 8 inches (fibers used in the manufacture of carpeting).

The merchandise subject to this investigation is classified in the HTSUS at subheadings 5503.20.00.40 and 5503.20.00.60. 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 April 1, 1998 through March 31, 1999. This period corresponds to each respondent's four most recent fiscal quarters prior to the filing of the petition.

Analysis of Comments Received

Comment 1: Error in the Exchange Rate

The petitioners allege that the Department multiplied the exchange rate by itself prior to converting NTD-denominated adjustments on U.S. sales to U.S. dollar amounts.

The Department's Position:

We agree with the petitioners and have corrected this error. (See Memorandum to R. Moreland, Ministerial Error Allegations Regarding the Final Calculations for Nan Ya Plastics Corporation ("Calculation Memorandum"), April 19, 2000.)

Comment 2: Exclusion of Packing Labor Costs

In using Nan Ya's revised packing material costs as submitted at the beginning of verification, according to the petitioners, the Department failed to add packing labor before calculating total packing costs.

The Department's Position:

We agree with the petitioners that packing labor was not included in total packing expenses. For this amended final determination, we have corrected this error. (See the Calculation Memorandum.)

Comment 3: Error in Calculating U.S. Packing Costs

According to the petitioners, an error in the computer program had the effect of setting Nan Ya's U.S. packing costs to zero prior to their addition to normal value.

The Department's Position:

We agree with the petitioners that there was an error in the computer program which had the effect of setting U.S. packing costs to zero prior to their addition to normal value. We have corrected this error. (See the Calculation Memorandum.)

Comment 4: Bank Charges

The petitioners allege that the Department used a per-kilogram amount for bank charges on one U.S. sale when the reported quantity was in metric tons. While the narrative of the verification report stated that the amount used in the final calculations was a per-metric ton amount, the petitioners state that the supporting documentation for this sale indicates that the amount is actually on a per-kilogram basis.

The Department's Position:

After examining the supporting documentation for this sale, we agree with the petitioners that the amount in the narrative of the verification report that was used in the final calculations was a per-kilogram amount. Since Nan Ya's sales are reported on a metric-ton basis, we have recalculated the bank charges on this one sale on a metric-ton basis. (See the Calculation Memorandum.)

Comment 5: Fiber Scrap Adjustment

The petitioners allege that the Department relied on an incorrect fiber scrap adjustment factor in its margin calculation for the final determination. Specifically, the petitioners argue that the adjustment factor used by the Department to adjust Nan Ya's overstated scrap credit incorrectly used the inflated scrap credit amount as the denominator rather than the actual scrap amount produced.

Nan Ya maintains that the Department calculated the fiber scrap adjustment correctly. As evidence, Nan Ya points out that the multiplication of the reported scrap amount found in the database by "(1—adjustment factor)" yields as its result the actual scrap amount found at verification.

The Department's Position:

We agree with Nan Ya that the fiber scrap adjustment factor used in the final determination was correct. This adjustment factor was calculated by taking the difference between Nan Ya's reported scrap and its actual scrap produced, and then dividing this difference by its reported scrap. This adjustment factor was applied to the reported scrap amount to adjust it to reflect the actual scrap produced. Since we applied the adjustment factor to the reported amount, it was appropriate to use the reported amount as the basis (*i.e.*, denominator) for the calculation of the adjustment factor. The petitioners' suggestion would amount to calculating an adjustment factor on a different basis than the item which is to be adjusted. Therefore, we have not adjusted our calculation. (See the Calculation Memorandum.)

Comment 6: Constructed Date of Sale

In calculating a constructed date of sale for certain of Nan Ya's U.S. sales with incorrect sale dates, the Department subtracted from the date of shipment the average number of days between shipment date and sale date for correctly reported sales. However, state the petitioners, the function the Department used to converted the average number of days between sale and shipment to an integer truncated the average value instead of rounding it. As a result, the average number of days was understated by one day.

The Department's Position:

We agree with the petitioners that the function used in the computer program to convert the average number of days between sale and shipment to an integer truncated the result. Since a more accurate result would be obtained by rounding, we have rounded the average days between sale and shipment to the nearest whole number for this amended final determination. (See the Calculation Memorandum.)

Comment 7: Indirect Selling Expenses on U.S. Sales

Nan Ya states that the Department failed to include in the final calculations its revised indirect selling expenses on U.S. sales as presented at verification and instead used the information in its September 3, 1999, sales listing submitted prior to verification.

Based mainly upon imprecise statements in the narrative of the verification report and Nan Ya's rebuttal brief, and the omission of detail in the final calculation memorandum for Nan Ya, the petitioners argue that the Department intended to use the information in the sales listing of September 3, 1999.

The Department's Position:

We agree with Nan Ya that we should have used its revised indirect selling expenses as presented at verification in the final determination and have corrected our error in this amended final determination. (See the Calculation Memorandum.)

Comment 8: Revision of Control Numbers

While the Department corrected the control numbers used for product matching purposes based on information found at verification with respect to fiber type, Nan Ya alleges that it neglected to correct the separate

control numbers for home market sales as used in the sales-below-cost test.

The Department's Position:

We agree with Nan Ya that the control numbers assigned to home market sales in preparation for the sales-below-cost test should have been revised based on information found at verification with respect to fiber type. To correct this error, we have constructed new control numbers on home market sales for purposes of matching these sales to their respective costs of production. (See the Calculation Memorandum.)

Other Comments on the Calculation of Constructed Value

We received other comments pertaining to the calculation of constructed value. We note that there were no comparisons to constructed value in either the final determination or this amended final determination. In addition, we find that our calculations contained one additional ministerial error which was not identified by any party to this proceeding. Specifically, we erroneously included inventory carrying costs when calculating constructed value. The comments from interested parties and a discussion of the additional error we found are addressed in the Calculation Memorandum. Changes to the computer program, where appropriate, have been made in the event this proceeding results in an antidumping duty order and the computer program from this amended final determination gets used again in a future segment of this proceeding.

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service ("Customs") to suspend liquidation of all imports of the subject merchandise from Taiwan, produced and exported by Nan Ya that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Customs will continue to suspend liquidation on all imports of the subject merchandise from Taiwan produced and exported by Far Eastern Textile, Ltd. and all other producers/exporters. 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 below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage	Critical circumstances
FETL	9.51	No.
Nan Ya	5.77	No.
All Others	7.53	No.

The rate for all other producers and exporters applies to all entries of the subject merchandise except for entries from exporters that are identified individually above.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") 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: April 20, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–10531 Filed 4–26–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–815]

Certain Welded Stainless Steel Pipe From Taiwan: Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of rescission of the antidumping duty administrative review for the period December 1, 1998 through November 30, 1999.

SUMMARY: On January 26, 2000, in response to a request made by respondent Ta Chen Stainless Steel Pipe, Ltd. ("Ta Chen"), the Department of Commerce ("Department") published the notice of initiation of an antidumping duty administrative review on certain welded stainless steel pipe ("WSSP") from Taiwan, for the period December 1, 1998 through November 30, 1999. Because Ta Chen has withdrawn its request for review, the Department is rescinding this review in accordance with 19 CFR 351.213(d)(1).

EFFECTIVE DATE: April 27, 2000.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen or Robert A. Bolling, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, DC 20230; telephone: 202–482–0409 and 202–482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1999).

Background

On December 29, 1999, Ta Chen, a producer and exporter of subject merchandise from Taiwan, requested that the Department conduct an administrative review for the period December 1, 1998 through November 30, 1999. On January 26, 2000, the Department published a notice of initiation of the antidumping administrative review on WSSP from Taiwan, in accordance with 19 CFR 351.221(c)(1)(i). See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 65 FR 4228 (January 26, 2000). On March 20, 2000, the Department issued a questionnaire to Ta Chen. On April 10, 2000, Ta Chen withdrew its request for review.

Rescission of Review

Pursuant to Departmental regulations, the Department will rescind an administrative review "if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." 19 CFR 351.213(d)(1). Ta Chen's withdrawal of its request for review was within the 90-day time limit; accordingly, we are rescinding the administrative review for the period December 1, 1998 through

November 30, 1999, and will issue appropriate appraisement instructions to the U.S. Customs Service.

This notice serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation. This determination is issued in accordance with 19 CFR 351.213(d)(4) and section 777(i)(1) of the Act.

Dated: April 21, 2000.

Edward Yang,

Acting Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 00–10530 Filed 4–26–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042400G]

American Fisheries Act: Vessel and Processor Permit Applications: Proposed Information Collection; Request for Comments

AGENCY: National Oceanic and Atmospheric Administration

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 26, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at lengelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patsy A. Bearden, F/AK01, NOAA/NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907–586–7228).

SUPPLEMENTARY INFORMATION:

I. Abstract

The American Fisheries Act (AFA), signed into law in October 1998, established a new allocation program for the pollock fishery of the Bering Sea and Aleutian Islands Management Area (BSAI). NOAA issued an emergency interim rule to give immediate effect to all AFA-mandated management measures. Under the AFA, only vessels and processors that meet specific qualifying criteria are eligible to fish for and process pollock in the BSAI. The BSAI pollock quota is suballocated to groups of vessel owners who form fishing vessel cooperatives under the AFA. NOAA administers new AFA fishing, processing, and cooperative permits for the BSAI pollock fishery through application form requirements that allow NOAA to identify and permit the vessels and processors that are eligible to participate in the BSAI pollock fishery. Owners of vessels and processors must submit evidence of their qualification to participate.

II. Method of Collection

Applications are submitted on paper forms.

III. Data

OMB Number: 0648–0393.
Form Number: None.
Type of Review: Regular submission.
Affected public: Business or other for-profit institutions, individuals or households.
Estimated Number of Respondents: 141.
Estimated Time Per Respondents: 30 minutes for AFA replacement vessel applications, 2 hours for other applications.
Estimated Total Annual Burden Hours: 280.
Estimated Total Annual Cost to Public: $783.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 20, 2000.

Linda Engelmeier,

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

[FR Doc. 00–10511 Filed 4–26–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042400C]

Fisheries Certificate of Origin; Proposed Information Collection; Request for Comments

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 26, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at lengelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patricia J. Donley, National Marine Fisheries Service, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802 (562–980–4033 or pat.donley@noaa.gov).

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this collection of information is to comply with the

requirements of the International Dolphin Conservation Program Act (IDCPA) amendments to the Marine Mammal Protection Act (MMPA). IDCPA regulations require the submission of documentary evidence that shipments of tuna or certain other fish products entering the United States were captured, processed, and labeled in accordance with the requirements of the Act, and that the shipments originated from nations legally eligible under the Act to export such products to the U.S. The collection serves three purposes: (1) documents the dolphin-safe status of tuna import shipments as well as domestic deliveries of tuna by U.S.-flag tuna purse seine vessels; (2) verifies that import shipments of fish were not harvested by large-scale, high-seas driftnets; and(3) verifies that tuna was not harvested by a nation under embargo or otherwise prohibited from exporting tuna and tuna products to the United States.

II. Method of Collection

Forms are submitted by foreign exporters or domestic importers for shipments entering the United States. Forms may also be submitted by domestic tuna processors or tuna fishing vessel owners to report the dolphin-safe status of their catch. Forms must be accompanied by statements signed by vessel Captains, fishing observers, or representatives of exporting nations that attest to the dolphin-safe status of the shipment.

III. Data

OMB Number: 0648–0335.
Form Number: NOAA Form 370.
Type of Review: Regular submission.
Affected Public: Business and other for-profit institutions (Importers, exporters, brokers, tuna processors, tuna purse seine vessel Captains and owners, and tuna fishery observers).
Estimated Number of Respondents: 350.
Estimated Time Per Response: 20 minutes for processors, importers, and exporters, 5 minutes for vessel Captains and fishing observers.
Estimated Total Annual Burden Hours: 1,033.
Estimated Total Annual Cost to Public: $100.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 20, 2000.

Linda Engelmeier,

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

[FR Doc. 00–10512 Filed 4–26–00; 8:45 am]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042400E]

American Fisheries Act Recordkeeping and Reporting; Proposed Information Collection; Request for Comments

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 26, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at lengelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patsy A. Bearden, F/AK01, NOAA/NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907–586–7228).

SUPPLEMENTARY INFORMATION:

I. Abstract

The American Fisheries Act (AFA), signed into law in October 1998, established a new allocation program for the pollock fishery of the Bering Sea and Aleutian Islands Management Area (BSAI). NOAA issued an emergency interim rule to give immediate effect to all AFA-mandated management measures including new recordkeeping and reporting requirements for the BSAI pollock fishery, for processors that receive groundfish from AFA catcher vessels, and BSAI pollock fishery cooperatives formed under the AFA. These measures received emergency approval under the Paperwork Reduction Act, and NOAA is now seeking extension of that approval under normal clearance procedures.

II. Method of Collection

All documents are submitted or retained in paper form except for shoreside processor logbooks, which are submitted in electronic form.

III. Data

OMB Number: 0648–0401.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit institutions, individuals or households.
Estimated Number of Respondents: 22.
Estimated Time Per Response: 5 minutes to submit an AFA cooperative contract, 35 minutes per response for the shoreside processor electronic logbook, 4 hours per mothership and catcher/processor for at-sea scale documentation, 5 minutes for a cooperative pollock catch report, 8 hours for a cooperative preliminary report, and 8 hours for a cooperative final report.
Estimated Total Annual Burden Hours: 573.
Estimated Total Annual Cost to Public: $140.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 20, 2000.

Linda Engelmeier,

Deportmentol Forms Cleoronce Officer, Office of the Chief Informotion Officer.

[FR Doc. 00–10514 Filed 4–26–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042400D]

Pelagic Longline Vessel Monitoring System Checklist; Proposed Information Collection; Request for Comments

AGENCY: National Oceanic and Atmospheric Administration

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 26, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at lengelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Christopher Rogers, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910; 301–713–2347.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), the National Oceanic and Atmospheric Administration (NOAA) is responsible for management of the nation's marine fisheries. In addition, NOAA must comply with the United States' obligations under the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 *et seq.*) to implement the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). ICCAT adopted a recommendation that each member country institute, as a 3-year pilot program, a satellite-based vessel monitoring system (VMS) on certain vessels fishing for ICCAT-regulated species on the high seas outside the Exclusive Economic Zone of any coastal state. NOAA's National Marine Fisheries Service (NMFS) has obtained Office of Management and Budget approval to collect automated VMS position reports from pelagic longline vessels as of September 1, 2000.

NMFS proposes to add an additional requirement for the submission of a certification and checklist regarding installation of the VMS equipment. These would have to be returned to NMFS prior to the effective date of the VMS regulation. Given that the VMS hardware and satellite communications services are provided by third-parties as approved by NMFS, there is a need for NMFS to collect information regarding the individual vessel's installation in order to ensure that automated position reports will be received.

II. Method of Collection

Respondents would submit a signed copy of the checklist, certifying that they followed the applicable procedures. They would also provide information on the equipment used and the service provider selected.

III. Data

KOMB Number: 0648–0372.

KForm Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit institutions, individuals.

Estimated Number of Respondents: 298.

Estimated Time Per Response: 5 minutes (the burden for actual installation of the VMS equipment was included in previous clearance requests, so this response time is solely for completing the checklist form and submitting it).

Estimated Total Annual Burden Hours: 25.

Estimated Total Annual Cost to Public: $100.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information cn respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 20, 2000.

Linda Engelmeier,

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

[FR Doc. 00–10515 Filed 4–26–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042400B]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held May 15–19, 2000.

ADDRESSES: The meetings will be held at the Radisson Hotel New Orleans, 1500 Canal Street, New Orleans, Louisiana; telephone: 504–522–4500.

Council Address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, Florida 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION:

Monday, May 15, 2000

8 a.m.–9 a.m.—Convene the Administrative Policy Committee to discuss an internal policy issue related to conflict of interest.

9 a.m.–10:30 a.m.—Convene the Habitat Protection Committee to hear a research proposal by the Gulf Aquaculture Consortium and a report on proposed gas pipeline routes across the Gulf of Mexico.

10:30 a.m.–11:30 a.m.—Convene the Stone Crab Management Committee to review and approve for public hearings the Draft Amendment 7/Regulatory Amendment and make recommendations for the full Council to review on Thursday morning.

1 p.m.–5:30 p.m.—Convene the Mackerel Management Committee to hear the Mackerel Stock Assessment Panel (SAP) report, the Socioeconomic Panel report, and recommendations of the Mackerel Advisory Panel (AP) and the Standing and Special Mackerel and Dolphin/Wahoo Scientific and Statistical Committee (SSC) regarding the Gulf group king mackerel total allowable catch (TAC) and proposed management options under the joint dolphin/wahoo fishery management plan. The Committee will develop recommendations for the full Council to review on Thursday morning.

Tuesday, May 16, 2000

8 a.m.–10:30 a.m.—Convene the Joint Reef Fish and Mackerel Management Committees to review the revised Options Paper/Amendment for a Charter Vessel Permit Moratorium. The Committees will make recommendations for full Council review on Thursday morning.

10:30 a.m.–12:00 noon—Convene the Red Drum Management Committee to hear the Red Drum SAP report and AP and SSC recommendations regarding stock status.

1:30 p.m.–5 p.m.—Convene the Reef Fish Management Committee to review a draft license limitation options paper for the longline sector, hear a NMFS enforcement report on longline vessels, review the revised options paper for Amendment 18, discuss the legal ramifications of requiring imported fish to be consistent with federal size limits, and hear a report of the U.S. Department of Agriculture's organic fish designation. The Committee's recommendations on these issues will be considered by the Council on Thursday afternoon.

Wednesday, May 17, 2000

8 a.m.–8:30 a.m.—Convene the Joint Marine Reserves and Reef Fish Management Committees to approve the Public Hearing Draft Amendment for potentially establishing the Tortugas 2000 marine reserves.

8:30 a.m.–10 a.m.—Convene the Shrimp Management Committee to hear a report on the distribution of Southeast Area Monitoring and Assessment Program real-time data on shrimp catches, discuss whether an interim rule should be implemented to require shrimp vessel and/or operator permits, and hear a report by Texas Parks and Wildlife Department on the condition of the shrimp stocks.

10 a.m.–11:30 a.m.—Convene the Deep Water Crab Management Committee to discuss a possible gear conflict between golden crab and royal red shrimp fishermen, a trap enforcement issue, and a report on the contamination of crab tissue by heavy metals.

11:30 a.m.–12:30 p.m.—Convene the Migratory Species Committee to hear a report regarding the proposed bluefin tuna harvest rules for the angling category.

2 p.m.–The Council will convene.

2:15 p.m.–5 p.m.—Receive public testimony on the Gulf group king mackerel (TAC) and other framework management measures.

Thursday, May 18, 2000

8:30 a.m.–9:30 a.m.—Receive a report of the Mackerel Management Committee.

9:30 a.m.–10:30 a.m.—Receive a report of the Joint Reef Fish and Mackerel Management Committees.

10:30 a.m.–11 a.m.—Receive a report of the Red Drum Management Committee.

11 a.m.–11:30 a.m.—Receive a report of the Habitat Protection Committee.

11:30 a.m.–11:45 a.m.—Receive a report of the Administrative Policy Committee.

11:45–12:00 noon—Receive a report of the Stone Crab Management Committee.

1:30 p.m.–3 p.m.—Receive a report of the Reef Fish Management Committee.

3 p.m.–3:30 p.m.—Receive a report of the Joint Marine Reserves and Reef Fish Management Committee.

3:30 p.m.–3:45 p.m.—Receive a report of the Shrimp Management Committee.

3:45 p.m.–4 p.m.—Receive a report of the Deep Water Crab Management Committee.

4 p.m.–4:15 p.m.—Receive a report of the Migratory Species Management Committee.

4:15 p.m.–4:30 p.m.—Receive a report of the Gulf and South Atlantic Fishery Foundation, Inc. Effort Workshop.

4:30 p.m.–4:45 p.m.—Receive a report of the NMFS Workshop on Report to Congress.

4:45 p.m.–5 p.m.—Receive the NMFS Regional Administrator's Report.

5 p.m.–5:20 p.m.—Receive Director's Reports.

Friday, May 19, 2000

8:30 a.m.–11:45 a.m.—Receive a presentation on the NMFS Fishery Stock Assessment Model.

11:45 a.m.–12:00 noon—Other Business.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, these issues may not be the subject of formal Council action during these meetings. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

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

Dated: April 24, 2000.

Richard W. Surdi,

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

[FR Doc. 00–10516 Filed 4–26–00; 8:45 am]

BILLING CODE 3510–22–F

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Tuesday, May 2, 2000. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Commission offices at 25 State Police Drive, West Trenton, New Jersey.

The conference among the commissioners and staff will begin at 9:30 a.m. and will include status reports

on the comprehensive plan and the Christina Basin TMDL; reports on the March 31 drought management meeting and the April 17 Water Management Advisory Committee meeting; an update on the DRBC Corps of Engineers proposal for joint projects and progress toward an agreement for storage at F.E. Walter Reservoir; and discussions about activities of the Northeast-Midwest Institute, a meeting scheduled for May 19, 2000 regarding restoration of the DRBC's federal funding, the planned DRBC 40th anniversary commemorative calendar, and upcoming Commission business meeting dates and locations.

In addition to the dockets listed below, which are scheduled for public hearing, the Commission will address the following at its 1 p.m. business meeting: Minutes of the March 7, 2000 business meeting; announcements; report on Basin hydrologic conditions; reports by the Executive Director and General Counsel; and public dialogue. The Commission also will consider resolutions to: Extend its contract with the Northeast-Midwest Institute; authorize production of a 40th anniversary calendar; and amend the Administrative Manual: By-Laws, Management and Personnel regarding approved holidays.

The dockets scheduled for public hearing are as follows:

1. *Elizabethtown Water Company D–81–17 CP RENEWAL 2.* An application for the renewal of a ground water withdrawal project to supply up to 51.84 million gallons (mg)/30 days of water to the applicant's public water supply system from Wells Nos. 1 and 2 in the Raritan aquifer. Commission approval on September 17, 1986 was limited to 12 years. The applicant requests that the total withdrawal from all wells remain limited to 51.84 mg/30 days. The project is located in West Windsor Township, Mercer County, New Jersey.

2. *J. Carlton Wells & Sons, Inc. D–99–34.* A ground water withdrawal project to supply a maximum of 179 mg/30 days of water from six wells in the Columbia aquifer, for irrigation of the applicant's farms, located near the Town of Milton, Sussex County, Delaware.

3. *East Whiteland Township and The Cutler Group D–99–59 CP.* A project to construct a 0.105 million gallons per day (mgd) lagoon wastewater treatment system to serve the proposed 279-unit Malvern Hunt development and other portions of East Whiteland Township, Chester County, Pennsylvania. The proposed sewage treatment plant (STP) will provide secondary treatment, and treated effluent will be discharged to a lagoon for application to spray fields located off Swedesford Road across from the STP.

4. *Hatfield Quality Meats D–99–72.* A ground water withdrawal project to supply up to 12.6 mg/30 days of water to the applicant's meat processing plant from new Well No. H–12, in the Brunswick aquifer, and to increase the withdrawal limit from all wells to 19.9 mg/30 days. The project is located in Hatfield Township, Montgomery County in the Southeastern Pennsylvania Ground Water Protected Area.

5. *Delaware Park Racetrack & Slots D–2000–2.* A surface water withdrawal project to supply up to 8.9 mg/30 days of water for seasonal irrigation of the applicant's racetrack grounds located near Stanton in New Castle County, Delaware. The water will irrigate approximately 26 acres of the applicant's track, walks and turf. Surface water will be withdrawn from two intakes situated just above an existing low dam on White Clay Creek, a tributary of the Christina River.

6. *Perdue Farms, Inc. D–2000–3.* A ground water withdrawal project to supply up to 60.48 mg/30 days of water to the applicant's existing poultry processing facility from new Well No. 5, and to retain the existing withdrawal limit from all wells at 66 mg/30 days. The project withdrawal is from the Columbia aquifer and is located in the Town of Georgetown, Sussex County, Delaware.

7. *United States Air Force—Dover Air Force Base D–2000–5 CP.* A project to replace withdrawal from existing Wells A and C in the applicant's water supply system that have become unreliable sources of supply, with new Wells A–2 and C–2. The applicant requests that the total withdrawal from all other existing wells, in combination with the new wells, be decreased from 65 mg/30 days to 56 mg/30 days. The project wells are located in the Cheswold and Piney Point Aquifers in Dover, Kent County, Delaware.

8. *Stony Creek Anglers, Inc. D–2000–7.* A ground water withdrawal project to supply up to 5.2 mg/30 days of water to the applicant's proposed trout nursery from new Well No. 6 in the Stockton Formation, and to limit the withdrawal from all wells to 5.2 mg/30 days. The project is located in West Norriton Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

9. *Mantua Creek Generating Company, L.P. D–2000–13.* A project to construct a nominal 800 megawatt natural gas-fired, combined cycle electric generating station on a 303-acre tract immediately east of Paulsboro in West Deptford Township, Gloucester County, New Jersey. The applicant proposes to distribute the electric power via local PSE&G and Conectiv Energy lines to the Pennsylvania-Jersey-Maryland power grid. The applicant will utilize a maximum of 8.8 mgd of treated effluent from the Gloucester County Utilities Authority (GCUA) sewage treatment plant for cooling tower makeup and steam, with approximately 2.8 mgd to be returned to GCUA as wastewater.

10. *H. Stanford Roberts Nursery D–2000–15.* An application to supply up to 4.2 mg/30 days of water to the applicant's nursery irrigation system from existing Wells Nos. 1–3 and new Well No. 4, and to limit the combined withdrawal from all wells to 4.2 mg/30 days. The project wells are located in the Stockton Formation in Newtown Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

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

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

Dated: April 18, 2000.

Pamela M. Bush,

Secretary.

[FR Doc. 00–10477 Filed 4–26–00; 8:45 am]

BILLING CODE 6360–01–P

EMERGENCY OIL AND GAS GUARANTEED LOAN BOARD

Submission for OMB Review; Comment Request

The Emergency Oil and Gas Guaranteed Loan Board has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This collection has been submitted under the emergency Paperwork Reduction Act procedures.

Agency: Emergency Oil and Gas Guaranteed Loan Board.

Title: Guarantee Agreement.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: New collection—Emergency Review.

Burden: 1,475 hours.

Number of Respondents: 20.

Average Hours per Response: 80.

Needs and Uses: Pursuant to "The Emergency Oil and Gas Guaranteed Loan Program Act of 1999," Chapter 2, Public Law 106–51, the Emergency Oil and Gas Guaranteed Loan Board developed a guarantee agreement that must be signed by qualified oil and gas companies that receive loan guarantees. The information being collected will be used and is necessary to ensure that the applicant is meeting the conditions of the guarantee agreement and to protect the Federal government from default and/or fraud. The information is also required as supporting documentation for annual or other audits that may be conducted by or on behalf of the Board or by the General Accounting Office (GAO) for as long as the guarantee agreement is in effect.

Affected Public: Businesses.

Frequency: Quarterly and, if applicable, in the event of noncompliance with terms of the guarantee agreement.

Respondent's Obligation: Voluntary but required to obtain a loan guarantee.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503. A clearance has been requested by May 12, 2000.

Dated: April 21, 2000.

Linda Engelmeier,

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

[FR Doc. 00–10483 Filed 4–26–00; 8:45 am]

BILLING CODE 3510–BP–P

EMERGENCY STEEL GUARANTEE LOAN BOARD

Submission for OMB Review; Comment Request

The Emergency Steel Guarantee Loan Board has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This collection has been submitted under the emergency Paperwork Reduction Act procedures.

Agency: Emergency Steel Guarantee Loan Board.

Title: Guarantee Agreement.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: New collection—EMERGENCY REVIEW.

Burden: 1,475 hours.

Number of Respondents: 20.

Avg. Hours per Response: 80.

Needs and Uses: Pursuant to "The Emergency Steel Loan Guarantee Act of 1999," Chapter 1, Public Law 106–51, the Emergency Steel Guarantee Loan Board developed a guarantee agreement that must be signed by qualified steel companies that receive loan guarantees. The information being collected will be used and is necessary to ensure that the applicant is meeting the conditions of the guarantee agreement and to protect the Federal government from default and/or fraud. The information is also required as supporting documentation for annual or other audits that may be conducted by or on behalf of the Board or by the General Accounting Office (GAO) for as long as the guarantee agreement is in effect.

Affected Public: Businesses.

Frequency: Quarterly and, if applicable, in the event of noncompliance with terms of the guarantee agreement.

Respondent's Obligation: Voluntary but required to obtain a loan guarantee.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503. A clearance has been requested by May 12, 2000.

Dated: April 21, 2000.

Linda Engelmeier,

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

[FR Doc. 00–10484 Filed 4–26–00; 8:45 am]

BILLING CODE 3510–BP–P

DEPARTMENT OF ENERGY

Notice of Availability of Solicitation

AGENCY: Idaho Operations Office, Department of Energy.

ACTION: Notice of Availability of Solicitation—Agriculture Industry of the Future.

SUMMARY: The U.S. Department of Energy (DOE), Idaho Operations Office (ID), on behalf of the Office of Industrial Technologies, is seeking applications for innovative cost-shared research, development and demonstration of technologies that will enhance economic competitiveness, reduce energy consumption and reduce environmental impacts in the emerging renewable bioproducts industry. The research must address high priority goals in either the processing or utilization barrier areas identified in the "Technology Roadmap for Plant/Crop-Based Renewable Resources 2020."

DATES: The deadline for receipt of applications is 3:00 p.m. MDT June 6, 2000.

ADDRESSES: Applications should be submitted to: Procurement Services Division, U.S. Department of Energy, Idaho Operations Office, Attention: Elaine Richardson [DE–PS07–00ID13959], 850 Energy Drive, MS 1221, Idaho Falls, Idaho 83401–1563.

FOR FURTHER INFORMATION CONTACT: Elaine Richardson, Contract Specialist, at richarem@id.doe.gov.

SUPPLEMENTARY INFORMATION: The statutory authority for this program is the Federal Non-Nuclear Energy Research & Development Act of 1974 (Pub. L. 93–577). DOE anticipates making approximately 3 to 6 awards with total estimated DOE funding of $400,000 to $750,000 per award per year, each with a duration of three years or less. Multi-partner collaborations including National Laboratories are encouraged. Single organization awards will not be considered. Industrial partners must be included, either as primary applicants or as cost sharing partners. This solicitation will require a fifty per cent (50%) minimum non-federal cost-share. National Laboratories will not be eligible for an award under this solicitation. However, an application that includes performance

of a portion of the work by a National Laboratory may be considered for award provided the applicant clearly identifies the unique capabilities, facilities and/or expertise the Laboratory offers the primary applicant. NOTE: The DOE Office of Industrial Technologies does not fund product development R&D. Topics in any of the above mentioned documents will be funded only if the proposed research and development addresses energy efficiencies in this new industry area, not in the end-use application. It is anticipated that the following criteria will be considered in the evaluation: (1) Research Concept and Plan; (2) Economic and Environmental Benefits; (3) Energy Benefits; (4) Multi-Partner Involvement; (5) Applicant/Team Capabilities and Facilities. The issuance date of Solicitation No. DE–PS07–00ID13959 will be April 24, 2000. The solicitation will be available in full text via the Internet at the following address: *http://www.id.doe.gov/doeid/psd/procdiv.html*. Technical and non-technical questions should be submitted in writing to Elaine Richardson by e-mail *richarem@id.doe.gov*, or facsimile at 208–526–5548 no later than May 8, 2000.

R. Jeffrey Hoyles,

Director, Procurement Services Division.

[FR Doc. 00–10366 Filed 4–26–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–251–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

April 21, 2000.

Take notice that on April 19, 2000, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets in the above captioned docket, bear a proposed effective date of April 1, 2000.

ESNG states that the purpose of this instant filing is to track rate changes attributable to storage services purchased from Transcontinental Gas Pipe Line Corporation (Transco) under its Rate Schedules GSS and LSS. The costs of the above referenced storage services comprise the rates and charges payable under ESNG's Rate Schedules GSS and LSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedules GSS and LSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested 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. 00–10474 Filed 4–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT00–5–000]

Egan Hub Partners, L.P., Notice of Proposed Changes in FERC Gas Tariff

April 21, 2000.

Take notice that on April 18, 2000 Egan Hub Partners, L.P. (Egan) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, proposed to be effective on May 18, 2000: Second Revised Sheet No. 87, Third Revised Sheet No. 88.

Egan states that the revised tariff sheets are being filed to update the description of Egan's compliance with Order No. 497 and the Commission's marketing affiliate regulations

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. 00–10469 Filed 4–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1026–001]

Indianapolis Power&Light Company; Notice of Filing

April 21, 2000.

Take notice that on March 27, 2000, Indianapolis Power & Light Company (IPL) tendered for filing its compliance filing in the above-referenced docket.

Copies of this filing were served on the Indiana Utility Regulatory Commission and others as provided on the official service list.

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 May 1, 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).

David P. Boergers,

Secretary.

[FR Doc. 00–10465 Filed 4–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–117–012]

Kinder Morgan Interstate Gas; Transmission LLC; Notice of Filing of Refund Report

April 21, 2000.

Take notice that on April 18, 2000, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing its Refund Report in Docket Nos. RP98–117, *et al.*

KMIGT states that this report is being filed in compliance with Article VI of the Offer of Settlement and Stipulation and Agreement (Settlement(which was filed in the above referenced proceeding and approved by a Commission Letter Order issued December 22, 1999 (89 FERC ¶ 61,323). KMIGT states that the refund was distributed by KMIGT on March 20, 2000, and is applicable to the period August 1, 1998, through December 31, 1999. All customers receiving refunds were served with calculations supporting their individual refunds. The refund was calculated pursuant to the provisions of Article VI of the Settlement.

KMIGT states that Appendix A of the Refund Report contains a summary of the refunds by shipper, service and contract for the refund period. Appendix B of the refund report contains detailed calculations supporting the determination of refunds for each individual shipper.

In light of the fact that each shipper receiving refunds was served with detailed calculations supporting their individual refunds, and given the voluminous nature of the shipper-specific information contained in Appendix B of the Refund Report, KMIGT states that only the letter and the summary information contained in Appendix A of this Refund Report has been served upon all affected customers of KMIGT and applicable state agencies.

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 April 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. 00–10472 Filed 4–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–169–000]

Natural Gas Pipeline Company of America and Koch Gateway Pipeline Company; Notice of Joint Application

April 21, 2000.

Take notice that on April 5, 2000, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148, and Koch Gateway Pipeline Company (Koch), 20 East Greenway Plaza, 5th Floor, Houston, Texas 77046, filed in Docket No. CP00–169–000 a joint abbreviated application pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended, and Sections 157.7 and 157.18 of the Commission's regulations thereunder, requesting permission and approval for Natural and Koch to abandon the following exchange service agreements, all of which are more fully set forth in the application, which is on file with the Commission and open to public inspection:

(1) An exchange service jointly authorized in Docket No. CP67–315 and performed under Natural's Rate Schedule X–16 and Koch's Rate Schedule X–22;

(2) An exchange service authorized in Natural's Docket No. CP71–200 and Koch's Docket No. CP71–201 and performed under Natural's Rate Schedule X–29 and Koch's Rate Schedule X–41;

(3) An exchange service jointly authorized in Docket No. CP77–121 and performed under Natural's Rate Schedule X–79 and Koch's Rate Schedule X–83;

(4) An exchange service jointly authorized in Docket No. CP77–226 and performed under Natural's Rate Schedule X–81 and Koch's Rate Schedule X–82; and

(5) An exchange service authorized in Natural's Docket No. CP77–641, as amended, and Koch's Docket CP78–23, as amended, and performed under Natural's Rate Schedule X–94 and Koch's Rate Schedule X–94

The application may be viewed on the web at *www.ferc.fed.us/online/rims.htm*. Call (202) 208–2222 for assistance.

Any questions regarding this application should be directed for Natural to James J. McElligott, Senior Vice President, 747 East 22nd Street, Lombard, Illinois 60148 at (630) 691–3525, J. Curtis Moffatt, Esq., Van Ness Feldman, P.C., 1050 Thomas Jefferson Street, NW., Washington, DC 20007–3877, or Philip R. Telleen, Esq., Attorney for Natural, 747 East 22nd Street, Lombard, Illinois 60148 at (630) 691–3749. For Koch, Kyle Stehens, Director of Certificates, P.O. Box 1478 Houston, Texas 77251–1478 at (713) 544–7309 or Michael E. McMahon, Attorney for Koch, at (713) 544–4796.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 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 385.211) 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 the 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 if filed within the time required herein, if the Commission on its review of the matter finds that permission and approval for the proposed abandonment are 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 Natural and Koch to appear to be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–10467 Filed 4–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–186–000]

Northwest Pipeline Corporation; Notice of Application

April 21, 2000.

Take notice that on April 14, 2000 Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP00–186–000, an abbreviated application, pursuant to sections 7(b) and 7(c) of the Natural Gas Act and part 157 of the Federal Energy Regulatory Commission's Regulations for an order authorizing the replacement of the existing permanent compressor unit with an upgraded mobile compressor unit at the Zillah Compressor Station on Northwest's Wenatchee Lateral in Yakima County, Washington, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Specifically, Northwest proposes to upgrade the Zillah station controls and station infrastructure and to replace the existing Solar Saturn T–1000 (1,068 NEMA-rated horsepower) stationary compressor unit with one of Northwest's existing Solar Saturn T–1300 (1,343 ISO-rated horsepower) trailer-mounted turbine compressor packages. The mobile unit would be based at Zillah during the winter season to provide compression when needed for operations on the Wenatchee Lateral. During off-peak periods when not required at Zillah, the mobile unit would remain available as a temporary back-up to out of service permanent units at other locations on Northwest's system. Northwest states that the additional horsepower available with the proposed mobile unit and the more optimal staging of the mobile compressor will enhance operational and service flexibility for existing firm shippers on the Wenatchee Lateral.

The associated upgrades to appurtenant facilities, especially the station control equipment, will enhance efficiency and reliability of service at the Zillah Compressor Station. Northwest's total estimated cost for the proposed project is approximately $940,000, which Northwest proposes to be given rolled-in treatment in its next rate case.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 12, 2000, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to interview or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.314 and 385.214). 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 the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Any questions regarding the application should be directed to Gary Kotter, Manager, Certificates, Northwest Pipeline Corporation, P.O. Box 58900, Salt Lake City, Utah 84158, (801) 584–7117.

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 issued by the Commission, filed by the applicant, or filed by all other 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 serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission. A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such 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 the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA 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 the proposal 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 Northwest to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–10475 Filed 4–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–183–000]

OkTex Pipeline Company; Notice of Application

April 21, 2000.

Take notice that on April 14, 2000, OkTex Pipeline Company (OkTex), 100 West Fifth Street, P.O. Box 871, Tulsa, Oklahoma 74102, filed an application in Docket No. CP00–183–000 pursuant to Section 7(c) of the Natural Gas Act seeking a certificate of public convenience and necessity to acquire certain pipeline facilities being abandoned by Kinder Morgan Interstate Gas Transmission, LLC ("KMIGT"), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

OkTex states that the facilities it is acquiring from KMIGT consist of 52.5 miles of 20-inch pipeline located in Hemphill County, Texas, and Roger Mills, Custer and Dewey Counties, Oklahoma. It is explained that the facilities comprise the eastern portion of the Buffalo Wallow system and that OkTex intends to operate the facilities as part of its interstate pipeline system. OkTex states that the purchase price of the facilities is $700,000. In a

companion filing, Docket No. CP00–174–000, KMIGT has requested permission to abandon facilities by sale to OkTex.

Any person desiring to be heard or to make any protests with reference to said application should on or before May 12, 2000, file with the Federal Energy Regulatory Commission, 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 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. 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).

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 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 OkTex to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–10470 Filed 4–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–199–000]

Reliant Energy Gas Transmission Company; Notice of Cancellation of Technical Conference

April 21, 2000.

Take notice that the technical conference scheduled for Tuesday, May 2, 2000, at 9:30 am, has been canceled. The conference will be rescheduled at a later date.

David P. Boergers,

Secretary.

[FR Doc. 00–10473 Filed 4–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–170–000]

Southern Natural Gas Company; Notice of Application

April 21, 2000.

Take notice that on April 10, 2000, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, pursuant to Section 7(b) of the Natural Gas Act, as amended, and the rules and regulations of the Federal Energy Regulatory Commission (Commission), filed in Docket No. CP00–170–000 an application seeking abandonment authority to convert the transportation storage services it renders under its STS–1 and ST–1 Rate Schedules on behalf of the City of LaGrange, Georgia and Albany Water, Gas and Light Commission, effective as of October 1, 2000, from a Part 157 certificated service to a Part 284 seasonal service. In addition, Southern seeks pre-granted abandonment authority under Section 7 of the Natural Gas Act to convert the transportation storage services it renders under its STS–1 and ST–2 Rate Schedules on behalf of Atlanta Gas Light Company (AGLC) from a Part 157 certificated service to a Part 284 seasonal service, upon notification from AGLC or a Certificated Marketer to which it has assigned such service effective on October 1, 2001, October 1, 2002, or October 1, 2003, with all such services to be converted no later than October 1, 2004. This proposal is part of an overall settlement proposal filed by Southern on March 10, 2000, in Docket Nos. RP99–496–000 and RP99–496–001 to resolve all outstanding issues in Southern's Section 4 rate proceeding.

Any persons desiring to participate in the hearing process or make any to protest with reference to said application 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 of Practice and Procedure, (18 CFR 385.214, 385.211). All such petitions or protests should be filed on or before May 1, 2000. Protests filed with the Commission will be considered in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with the commission's rules. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application, if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the abandonment and amendment of the certificate is required by the public convenience and necessity. If a protest or 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 procedures herein provided for, unless otherwise advised, it will be unnecessary for Southern to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–10468 Filed 4–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–34–000]

Algonquin Gas Transmission Company; Notice of Availability of the Environmental Assessment for the Proposed Fore River Project

April 21, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Algonquin Gas Transmission Company (Algonquin) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed facilities including:

- Replacement of approximately 6.9 miles of existing 10-inch-diameter pipeline (I–3 Lateral) with 24-inch-diameter pipeline from milepost (MP) 0.0 in Canton, Massachusetts to MP 6.9 in Braintree, Massachusetts; and
- Construction of a new 0.5-mile-long, 24-inch-diameter pipeline I–9 Lateral) and measurement facilities in Braintree and Weymouth, Massachusetts

The purpose of the proposed facilities would be to provide transportation service of up to 140,000 Dth/d of natural gas for Sithe Energy Fore River Station (Fore River Station). Sithe Power Marketing, L.P. (Sithe) has requested firm natural gas transportation service to fuel the planned Fore River Station, a 750 megawatt gas-fired electric power plant.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and property recorded:

- Send two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas Group 2, PJ11.2;
- Reference Docket No. CP00–34–000; and
- Mail your comments so that they will be received in Washington, DC on or before May 22, 2000.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–10466 Filed 4–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

April 21, 2000.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

[Docket No. RM98–1–000]

Exempt

1. EL99–90–000: 3/27/00, Annie Kuether
2. CP00–40–000: 3/4/00, Lou Phemister
3. CP99–163–000: 4/12/00, David Swearingen
4. CP00–14–00: 4/11/00, John Wisniewski (FERC)

5. CP00–6–000: 2/29/00, Andreas Mager, Jr.
6. CP00–6–000: 4/8/00, Ken Huntington
7. CP00–6–000: 4/7/00, Ken Huntington
8. Project Nos. 2699, 2019, and 11563: 4/18/00, Frank Winchell
9. Project No. 11243,–016: 4/13/00, John K. Novak (FERC)
10. CP99–284—000: 4/4/00, David C. Dybala
11. CP99–284–000: 4/7/00, David C. Dybala
12. Project No. 2188–030: 4/3/00, Candace M. Gorton
13. CP00–14–000: 3/31/00, Janet Rowe
14. CP00–14–000: 4/3/00, Janet Rowe
15. CP00–14–000: 4/3/00, Lauri May
16. CP00–14–000: 4/11/00, Todd Mattson
17. CP00–6–000: 11/8/99, Thomas O. Maher, PhD.
18. CP00–6–000: 3/15/00, Thomas O. Maher, PhD.
19. Project No. 2471–005: 4/18/00, William Taft, Michigan Dept. of Natural Resources
20. Project No. 2576: 4/8/00, Peter J. Forte
21. Project No. 2661–012: 4/19/00, Douglas Hjorth
22. CP00–14–000: 4/17/00, Brian O'Higgins
23. CP00–14–000: 4/18/00, Janet Rowe
24. Project No. 2576: 3/28/00, James Gaffney
25. Project No. 2576: 3/27/00, Keech T. LeClair
26. Project No. 2576: 3/29/00, Robert W. Harris
27. Project No. 2576: 3/30/00, Barry Burbach
28. Project No. 2576: 3/30/00, AM Matula
29. Project No. 2576: 3/30/00, Christopher Provost
30. Project No. 2576: 3/30/00, *kiss@bestweb.net*
31. Project No. 2576: 3/30/00, *KH@bestweb.net*
32. Project No. 2576: 3/30/00, *ktl@bestweb.net*
33. Project No. 2576: 3/30/00, *wwoc@bestweb.net*
34. Project No. 2576: 3/30/00, *wwoc@bestweb.net*
35. Project No. 2676: 3/30/00, *ajl@bestweb.net*
36. Project No. 2576: 3/30/00, Keech T. LeClair
37. Project No. 2576: 3/30/00, *cc@bestweb.net*
38. Project No. 2576: 4/1/00, Paraic Sweeney
39. Project No. 2576: 3/31/00, *BMcdon 1342@aol.com*
40. Project No. 2576: 4/20/00, Kim Wantek
41. Project No. 2576: 4/17/00. *DocOnWeelz@aol.com*
42. Project No. 2576: 4/5/00, Dan Greenbaum
43. Project No. 2676: 4/5/00, M Convard

Prohibited

1. Project No. 11243: 3/16/00, Kenneth J. Gates

David P. Boergers,

Secretary.

[FR Doc. 00–10471 Filed 4–26–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6585–1]

Agency Information Collection Activities: Continuing Collection; Comment Request; Land Disposal Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Land Disposal Restrictions, EPA ICR #1442, OMB Control Number 2050–0085, expires August 31, 2000. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 26, 2000.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–00–LRIP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460. Hand deliveries of comments should be made to the Arlington, VA, address below. Comments may also be submitted electronically through the Internet to: rcradocket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–2000–LRIP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. This notice and the supporting documents that detail the Land Disposal Restrictions ICR are also available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). In the Washington, D.C., metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this information collection, contact Peggy Vyas, Office of Solid Waste (5302W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460, telephone: (703) 308–5477, E-mail: vyas.peggy@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: *Affected entities:* Entities potentially affected by this action are generators of hazardous waste, as well as owners and operators of hazardous waste treatment, storage, and disposal facilities.

Title: Land Disposal Restrictions, EPA ICR # 1442, OMB Control Number 2050–0085, expires on August 31, 2000.

Internet Availability: The ICR is available on the Internet. Follow these instructions to access the information electronically: *On WWW:* http://www.epa.gov/epaoswer/hazwaste/ldr/ldr-icr.htm

The official record for this action will be kept in paper form. Accordingly, EPA 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.

EPA responses to comments, whether the comments are written or electronic, will be in a background document to a notice in the **Federal Register**. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above. (Note: The official record for this action will be kept in paper form and maintained at the address in the **ADDRESSES** section above.)

Abstract: Section 3004 of the Resource Conservation and Recovery Act (RCRA), as amended, requires that EPA develop standards for hazardous waste treatment, storage, and disposal as may be necessary to protect human health and the environment. Subsections 3004(d), (e), and (g) require EPA to promulgate regulations that prohibit the land disposal of hazardous

waste unless it meets specified treatment standards described in subsection 3004(m).

The regulations implementing these requirements are codified in the *Code of Federal Regulations* (CFR) Title 40, part 268. EPA requires that facilities maintain the data outlined in this ICR so that the Agency can ensure that land disposed waste meets the treatment standards. EPA strongly believes that the recordkeeping requirements are necessary for the agency to fulfill its congressional mandate to protect human health and the environment.

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 EPA would like to solicit comments to:

(i) 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;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The following table summarizes the burden associated with this ICR:

Citation	Annual recordkeeping burden	Annual reporting burden
§ 268.4	1 hour and 10 minutes	2 hours and 10 minutes.
§ 268.7(a)(1)	6 hours and 10 minutes	n/a.
§ 268.7(a)(2)–(4)	n/a	20 minutes.
§ 268.7(a)(5)	4 hours and 50 minutes	n/a.
§ 268.7(a)(6)–(8)	10 minutes	n/a.
§ 268.7(a)(9)–(10)	n/a	40 minutes.
§ 268.7(b)(3)–(6)	3 hours	33 hours and 30 minutes.
§ 268.7(c)(1)	40 minutes	n/a.
§ 268.7(d)	2 hours and 15 minutes	10 minutes.
§ 268.7(e)	10 minutes	30 minutes.
§ 268.9(d)	5 minutes	n/a.
§ 268.42	1 hour and 30 minutes	11 hours.
§ 268.44	1 hour and 30 minutes	10 hours and 40 minutes.
§ 268.50(a)(2)	4 hours and 30 minutes	n/a.
Total	26 hours	59 hours.

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.

Dated: April 19, 2000.

James R. Berlow,

Acting Director, Office of Solid Waste.

[FR Doc. 00–10520 Filed 4–26–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6585–8]

Notice of Request for Pre-Proposals To Convene a National Watershed Forum

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the EPA is soliciting pre-proposals from organizations interested in convening a National Watershed Forum and that are eligible to receive Federal assistance awards under the Clean Water Act Section 104(b)(3). Eligible entities under Clean Water Act Section 104(b)(3) authority are "State water pollution control agencies, interstate agencies, other public or non-profit private agencies, institutions, organizations, and individuals." EPA will award up to $300,000 to a recipient organization through a cooperative agreement to support the recipient organization's efforts to convene a National Watershed Forum.

DATES: Pre-proposals must be received on or before 5pm Eastern Time on June 1, 2000 to be considered for this Federal assistance award.

ADDRESSES: Pre-proposals must be electronically mailed (E-mailed) to forum.watershed@epa.gov

FOR FURTHER INFORMATION CONTACT: Chris Lewicki by telephone at 202–260–2757 or by E-mail at forum.watershed@epa.gov.

SUPPLEMENTARY INFORMATION:

What Is the Purpose of This Request for Pre-Proposals?

EPA is seeking to award a cooperative agreement to a non-profit organization or other eligible entity under the Clean Water Act Section 104(b)(3) to support the recipient organization's efforts to convene a National Watershed Forum (Forum), preferably in Spring 2001, but no later than November 17, 2001. EPA and cooperating Federal agencies [1] will jointly co-sponsor the Forum with the recipient organization and, through participation on a Forum planning committee, will have substantial involvement in helping the recipient organization carry out the project.

This is a request for pre-proposals from eligible entities who wish to convene a National Watershed Forum

[1] Cooperating Federal agencies are those Federal agencies that have written agreements with the EPA to be co-sponsors of the National Watershed Forum.

and who have a demonstrable substantive interest in watershed protection and restoration across the nation. A detailed work plan and budget is all that is required at this time. The organization whose pre-proposal is selected for the Federal assistance award (cooperative agreement) will need to complete an EPA Application Kit for Assistance, including the Federal SF–424 form (Application for Federal Assistance) by June 23, 2000.

What Need Is There for a National Watershed Forum?

Approximately 40 percent of the nation's surveyed waters do not provide for basic uses such as fishing and swimming. Over the past several years, there has been a tremendous increase in the number of community-oriented, local watershed protection and restoration efforts. EPA estimates that there are more than 4,000 such efforts nationwide. Citizens are recognizing that to make further improvements in the condition of the aquatic resources in their community, they need to organize into local watershed groups and seek collaborative partnerships. These watershed groups help build public understanding of the problems in their watersheds and public will to take cooperative actions to address the problems. But, they can not do it alone. The National Watershed Forum will help the efforts of diverse watershed interests by providing opportunities to:

- Investigate barriers to watershed protection and restoration,
- Investigate future directions and actions needed to advance watershed protection and restoration efforts,
- Learn about innovative tools for watershed protection,
- Explore creative approaches to watershed protection and restoration,
- Form networks,
- Build partnerships, and
- Establish linkages to and among regional watershed roundtables.

The Forum will be a highly interactive and productive event. EPA anticipates the Forum will engage approximately 500 delegates, representing diverse watershed interests. Working sessions at the Forum could resemble focus groups, with participants divided according to their primary interests (*e.g.,* urban watershed restoration, source water protection, storm water management, aquatic habitat, instream flows).

Regional watershed roundtables (Roundtables), which are convening across the country, are building the momentum for the Forum in two ways. First, the stakeholder dialogue resulting from the Roundtables can help the recipient organization in the development of the Forum agenda. Second, the Roundtables have assembled the diverse watershed interests in their region (*e.g.,* watershed associations, private landowners, conservationists, commercial enterprises, government agencies, tribes, and others) from which delegates could be sent to the Forum to represent their region's watershed stakeholders.

The Forum can showcase innovative tools and approaches for watershed protection and restoration, stimulate dialogue and interaction among watershed groups across the country, and explore new directions for cooperative action that will sustain watersheds into the next century and beyond.

What Must the Recipient Organization Accomplish With the Federal Financial Assistance?

Through a cooperative agreement to one non-profit organization or other eligible entity, EPA will award up to $300,000 to support the investigation, by diverse watershed stakeholders, of barriers, and solutions for overcoming these barriers, to watershed protection and restoration.

A portion of the $300,000 award will be dedicated to support travel of non-Federal delegates that would not otherwise be able to attend the National Watershed Forum. The recipient organization is responsible for making the final decision regarding which non-Federal delegates will receive travel support. The recipient organization is encouraged to leverage resources to the extent possible. The co-sponsoring Federal agencies expect the recipient organization to successfully accomplish the following:

- Cooperate with the Forum planning committee;
- Share responsibility with the Forum planning committee for logistical planning, selection of location and facilities, speakers, panelists, and agenda development;
- Design, produce, and disseminate a report that analyzes and synthesizes the results of the Roundtables to help inform the agenda development of the Forum (each Roundtable has its own report that summarizes the regional dialogue);
- Effectively and efficiently convene, preferably in Spring 2001, but no later than November 17, 2001 the National Watershed Forum;
- Design and develop Internet web page and live Internet broadcasts of the Forum;
- Summarize the dialogue of the Forum's focus groups for presentation at the Forum and presentation on a Forum web site;
- Develop and implement a travel award process for non-Federal delegates;[2]
- Develop and summarize participants' evaluation of the National Watershed Forum; and
- Design, produce, and disseminate a final report that summarizes the national dialogue of the Forum's focus groups.

What Is the Statutory Authority?

The EPA will be awarding a cooperative agreement to one non-profit organization or other eligible entity to support the investigation, by diverse watershed stakeholders, of barriers, and solutions for overcoming these barriers, to watershed protection and restoration under the authority of Section 104(b)(3) of the Clean Water Act.

What Information Needs To Be Included in the Pre-Proposal?

In the preparation of a pre-proposal, please note that the Government's intent is to support the efforts of the recipient organization and not to obtain services for its direct use and benefit.

1. Identify name, phone number, FAX number, postal address, and e-mail address of the primary contact for your pre-proposal.
2. Brief description of the organization, including its experience related to facilitating dialogue among diverse interests and its understanding of watershed protection and restoration issues across the nation.
3. Description of how this project benefits the organization's mission.
4. Brief biographies of organization's lead staff for the project.
5. Description of the process that would be used to convene the National Watershed Forum (including time line, outreach, agenda development, methods for facilitating dialogue, methods for any additional fund raising, methods for documenting results of dialogue).
6. Budget summary that identifies estimated EPA and non-Federal resources needed for costs associated with personnel, fringe, contractual services, travel (including staff travel and travel scholarships for non-Federal delegates to the Forum), supplies, indirect costs, and any other anticipated costs.
7. Identify any anticipated program income resulting from this award (*e.g.,* registration fees, publications fees) and

[2] Note that the non-Federal travel support system must ensure that the recipient organization that receives the assistance award, rather than the Federal co-sponsors, makes the decisions on who receives travel assistance.

a description of how you propose this program income will be used to support the National Watershed Forum.

8. Describe how you intend to obtain diverse watershed stakeholder participation in the planning and participation in the National Watershed Forum (*e.g.*, watershed alliances, environmental and public health organizations, private land owners, commercial enterprises, tribes, and government agencies).

9. Description of how you propose to select which non-Federal Forum delegates will receive travel scholarships.

10. Description of process to be used to produce a final report that summarizes dialogue (barriers and new directions and actions to overcome these barriers) that are representative of the full range of viewpoints of all the delegates at the National Watershed Forum.

11. Description of the reporting mechanisms that would be used to track and report on progress associated with convening the National Watershed Forum. Include description of how the organization plans to measure success.

12. Description of any other relevant information (*e.g.*, other support that you may be able to offer) that EPA [3] may need to evaluate your proposal (see evaluation criteria below).

13. Description of organization's past experience as a grant recipient.

What Are the Pre-Proposal Evaluation Criteria for Selecting the Recipient Organization?

- Capacity to design effective, interactive focus group process among diverse interests and organizations and to provide professional, neutral facilitators in focus group process. 15 points
- Capacity to design, produce, and disseminate a report that summarizes Forum dialogue. 10 points
- Capacity to handle non-Federal planning and logistics of Forum, such as location and facilities selection, travel scholarships, materials development and printing, and agenda development. 15 points
- Demonstrable substantive interest and experience in watershed planning, protection and restoration issues across the entire nation. 10 points
- Capacity to summarize results of focus groups for presentation at the Forum and presentation on web site. 5 points
- Ability to design and develop Internet web page and live Internet broadcasts. 5 points
- Ability to understand the results of regional watershed roundtables, and to design, produce, and disseminate a report that analyzes and synthesizes the results of the Roundtables to help inform the agenda development of the Forum. 5 points
- Capacity to work closely with Forum planning committee and incorporate Forum planning committee's input into design and implementation of Forum. 15 points
- History of successful performance as a grant or cooperative agreement recipient. 10 points
- Ability to leverage resources and minimize overhead. 10 points

Total: 100 points

Pre-Proposal Format: Pre-proposals must be submitted in Word Perfect 5.1, 5.2, 6, 7, or 8 or in Microsoft Word.

Pre-proposal typeface must be in 12 point font with one inch margins. Pre-proposals must not exceed 10 pages in length.

Where To Send Pre-Proposals: Only pre-proposals that are electronically mailed (E-mail) will be considered. E-mail pre-proposals to: forum.watershed@epa.gov

In the subject heading of your E-mail submission, state the following, "FORUM PRE-PROPOSAL."

Pre-Proposal Due Date: Pre-proposals must be received on or before 5pm Eastern Time on June 1, 2000 to be considered for this Federal assistance award.

Expected Date of Notification of Selection of Recipient Organization: EPA will select the recipient organization and notify all organizations that submitted pre-proposals of its decision by June 16, 2000. The organization whose pre-proposal is selected for the Federal assistance award (cooperative agreement) will need to complete an EPA Application Kit for Assistance, including the Federal SF–424 form (Application for Federal Assistance) by June 23, 2000.

Expected Date of Final Award to Recipient Organization: No later than September 30, 2000.

Contact Person: Chris Lewicki, EPA Office of Wetlands, Oceans, and Watersheds 202–260–2757 phone

For E-mail inquiries: forum.watershed@epa.gov

In the subject heading of your E-mail inquiry, state the following, "FORUM INQUIRY" Please include your phone number in the E-mail.

web site: http://www.epa.gov/owow

[3] EPA will receive input on pre-proposals from cooperating Federal agencies. The responsibility for the final decision to select a recipient organization to co-sponsor the Forum, however, rests with EPA.

Dated: April 21, 2000.

Robert H. Wayland III,

Director, Office of Wetlands, Oceans and Watersheds.

[FR Doc. 00–10519 Filed 4–26–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6586–2]

Environmental Laboratory Advisory Board, Meeting Dates and Agenda

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App 2) notification is hereby given of an open meeting of the Environmental Laboratory Advisory Board (ELAB).

DATES: The meeting will be held on May 11, 2000, from 1:00 p.m. to 4:00 p.m. (EST).

ADDRESSES: While the meeting will be conducted by teleconference, the public is invited to participate in the teleconference by contacting Jeanne Hankins.

SUPPLEMENTARY INFORMATION: The Board will discuss the work being conducted by its subcommittees and any new issues that may be brought to the Board's attention.

The meeting is open to the public and time will be allotted for public comment. Written comments are encouraged and should be directed to David Friedman; USEPA; 1300 Pennsylvania Avenue, NW (8101R); Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Friedman; Designated Federal Officer; USEPA; 1300 Pennsylvania Avenue, NW (8101R); Washington, DC 20460. If questions arise, please contact Mr. Friedman by phone at (202) 564–6662, by facsimile at (202) 565–2432 or by email at *friedman.david@epa.gov*. Persons desiring to participate, by telephone, in this meeting, should call Jeanne Hankins at 919–541–1120.

Dated: April 20, 2000.

Peter Durant,

Acting Deputy Assistant Administrator for Management, Office of Research and Development.

[FR Doc. 00–10523 Filed 4–26–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6586–1]

San Fernando Valley, Area 2—Glendale Operable Units Superfund Site Proposed Notice of Administrative Settlement

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 *et seq.*, notice is hereby given that a proposed Agreement and Covenant Not to Sue associated with the San Fernando Valley Crystal Springs Superfund Site—Glendale Operable Units was executed by EPA on January 25, 2000. The proposed Agreement and Covenant Not to Sue would resolve certain potential claims of the United States under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and Section 7003 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6973, against Ford Leasing Development Company and Ford Front Realty Corp. (the "Purchasers"). The Purchasers have acquired certain real property formerly owned by ZERO Corporation at the southwest corner of Burbank Boulevard and Front Street, Burbank, California. The Purchasers plan to acquire two separate adjacent parcels currently owned by the City of Burbank. The property consists of a total of approximately 12.1 acres. The Purchasers intend to construct an automobile dealership sales and service facility and related amenities on the property. The proposed settlement would require the Purchasers to pay EPA a one-time payment of $ 150,000.

For thirty (30) calendar days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. If requested prior to the expiration of this public comment period, EPA will provide an opportunity for a public meeting in the affected area. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before May 30, 2000.

AVAILABILITY: The proposed Agreement and Covenant Not to Sue and additional background documentation relating to the settlement are available for public inspection at the U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA, 94105. A copy of the proposed settlement may be obtained from Marie M. Rongone, Senior Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA, 94105. Comments should reference "Ford Agreement and Covenant Not to Sue, San Fernando Valley Superfund Site, Glendale Operable Units," and "Docket No. 2000–03" and should be addressed to Ms. Rongone at the above address.

FOR FURTHER INFORMATION CONTACT: Marie M. Rongone, Senior Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; E-mail: rongone.marie@epamail.epa.gov; Phone: (415) 744–1313; Facsimile (415) 744–1041.

Dated: March 30, 2000.

Keith Takata,

Director, Superfund Division, U.S. EPA, Region IX.

[FR Doc. 00–10522 Filed 4–26–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

April 18, 2000.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of ' law, 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. Questions concerning the OMB control numbers and expiration dates should be directed to Judy Boley, Federal Communications Commission, (202) 418–0214.

Federal Communications Commission

OMB Control No.: 3060–0910.

Expiration Date: 03/31/2003.

Title: Third Report and Order in CC Docket No. 94–102, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems.

Form No.: N/A.

Estimated Annual Burden: 8,000 Burden Hours Annually, 1 hour per response; 8,000 responses.

Description: The information required to be reported to the Commission by wireless carriers will provide PSAPs, providers of location technology, investors, manufacturers, local exchange carriers, and the Commission with valuable information necessary for preparing for full Phase II E911 implementation. The advance reports will provide helpful, if not essential, information for coordinating carrier plans with those of manufacturers and PSAPs. Also, they will assist the Commission's efforts to monitor Phase II developments and to take necessary actions to maintain the Phase II implementation schedule.

OMB Control No.: 3060–0732.

Expiration Date: 04/30/2003.

Title: Consumer Education Concerning Wireless 911.

Form No.: N/A.

Estimated Annual Burden: 1,563 Burden Hours Annually, 30 minutes to 1 hour per response; 2,500 responses.

Description: The information collected will be used by consumers to determine rationally and accurately the scope of their options in accessing 911 services from mobile sets.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–10447 Filed 4–26–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 203–011367–017.

Title: The Colombia Discussion Agreement.

Parties: Frontier Liner Service; Crowley Liner Services, Inc.; King Ocean de Colombia; Crowley American Transport; A.P. Moller-Maersk Sealand; Seaboard Marine Ltd.; American

President Lines, Ltd.; and Crowley America Transport

Synopsis: The proposed amendment clarifies the authority of the parties to adopt voluntary guidelines with respect to the terms and procedures of their individual service contracts.

Agreement No.: 232–0110401–006.

Title: MLL/Hapag Lloyd Space Charter and Sailing Agreement.

Parties: Hapag Lloyd Container Linie GmbH; Lykes Lines Limited, LLC; and Mexican Line Limited.

Synopsis: The Agreement is amended to provide that it shall be suspended as of the date that the Grand Alliance-Americana Atlantic Agreement becomes effective and shall remain suspended during the term of the latter agreement.

Agreement No.: 203–011421–022.

Title: The East Coast of South America Discussion Agreement.

Parties: Crowley American Transport; Alianca Transportes Maritimos S.A.; Columbus Line; Lykes Lines Ltd., LLC; APL Co. PTE. Ltd.; P&O Nedlloyd B.V.; P&O Nedlloyd Limited; Pan American Independent Line; Zim Israel Navigation Co., Ltd.; Mediterranean Shipping Co. S.A.; Euroatlantic Container Line S.A.; DSR-Senator Line; A.P. Moller-Maersk Sealand; Compania Sud Americana de Vapores, S.A.; Evergreen Marine Corporation (Taiwan) Limited; Braztrans Transportes Maritimos Limitada; and Compania Libra de Navegacao.

Synopsis: The proposed amendment deletes outdated references within the Agreement, clarifies certain of the Agreement's authority provisions, and makes other administrative changes to the Agreement text.

Agreement No.: 203–011602–001.

Title: The Grand Alliance Agreement II.

Parties: Hapag-Lloyd Container Linie GmBH; Nippon Yusen Kaisha; Orient Overseas Container Line (UK) Ltd.; Orient Overseas Container Line, Inc.; P&O NedLloyd B.V.; P&O NedLloyd Limited.

Synopsis: The parties are amending the agreement to specifically allow them to sub-charter space from each other that was originally chartered from third-parties.

Agreement No.: 217–011704.

Title: NSCSA/Safmarine Space Charter Agreement.

Parties: National Shipping Company of Saudi Arabia ("NSCSA"); Safmarine Container Lines N.V. ("Safmarine").

Synopsis: The agreement permits Safmarine to charter space on NSCSA vessels, and allows the parties to coordinate vessel operations and cooperate in related arrangements in the trade between the U.S. East and Gulf Coast and ports in India, Pakistan, the Arabian Gulf, the Red Sea and the Mediterranean Sea.

Agreement No.: 203–011705.

Title: Grand Alliance-Americana Atlantic Agreement.

Parties: Hapag-Lloyd Container linie GmBH; Nipon Yusen Kaisha; Orient Overseas Container line Limited; Orient Overseas Container Line (UK) Limited; Orient Overseas Container Line, Inc.; P&O Nedlloyd Limited/P&P Nedlloyd B.V.; Lykes Lines Limited, L.L.C.; and Mexican Lines Limited.

Synopsis: The agreement establishes a space charter and sailing agreement between the Grand Alliance Group and the Americana Group in the U.S.-North Europe Trades and authorizes activities incidental to such charters.

Dated: April 21, 2000.

By Order of the Federal Maritime Commission.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 00–10446 Filed 4–26–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 00–05]

World Line Shipping, Inc. and Saeid B. Maralan (AKA Sam Bustani); Notice of Show Cause Proceeding

Notice is given that the Commission, on April 20, 2000, served an Order to Show Cause on World Line Shipping, Inc. ("World Line Shipping"), which was a tariffed and bonded non-vessel-operating common carrier ("NVOCC") until October 21, 1999, and Saeid B. Maralan (aka Sam Bustani) ("Bustani"), the president and owner of World Line Shipping. The order directs World Line Shipping to show cause why it should not be found to have violated section 8 of the Shipping Act of 1984, ("Shipping Act") 46 U.S.C. app. section 1707, by acting as a NVOCC without a tariff for such service available to the public; World Line Shipping and Sam Bustani to show cause why they should not be found to have violated section 19(a) of the Shipping Act, 46 U.S.C. app. section 1718(a), by acting as ocean transportation intermediaries ("OTIs") without a license issued by the Commission; World Line Shipping and Sam Bustani to show cause why they should not be found to have violated section 19(b) of the Shipping Act, 46 U.S.C. app. 1718(b), by acting as OTIs without a bond or other surety filed with the Commission; Sam Bustani to show cause why he should not be found to have violated the cease and desist orders issued in Docket No. 98–19, Saeid B. Maralan *et al.*—Possible Violations of Sections 8(a)(1), 10(b)(1), 19(a) and 23(a) of the Shipping Act of 1984, 28 S.R.R. 1244 (FMC 1999), prohibiting him from acting as an NVOCC without a tariff and bond on file with the Commission; Sam Bustani to show cause why he should not be found to have violated the cease and desist orders issued in Docket No. 98–19, Saeid B. Maralan *et al.*—Possible Violations of Sections 8(a)(1), 10(b)(1), 19(a) and 23(a) of the Shipping Act of 1984, 28 S.R.R. 1244 (FMC 1999), prohibiting him from using any name other that World Line Shipping, Inc. when operating as an NVOCC unless and until he registers other d/b/a names in the World Line tariff and with the State of California; and World Line Shipping and Sam Bustani to show cause why an order should not be issued directing World Line Shipping and Sam Bustani to cease and desist from providing or holding themselves out to provide transportation as an OTI between the United States and a foreign country unless and until such time as World Line Shipping or Sam Bustani shall have published a publicly available tariff and filed a bond for such service with the Commission. Should violations be found, the Commission may refer the proceeding to an Administrative Law Judge for the assessment of civil penalties. The full text of the Order may be viewed on the Commission's home page at www.fmc.gov, or at the Office of the Secretary, Room 1046, 800 N. Capitol Street, NW, Washington, DC.

Any person may file a petition for leave to intervene in accordance with 46 CFR 502.72.

T.A. Zook,

Assistant Secretary.

[FR Doc. 00–10444 Filed 4–26–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Trans Pacific Inc., Fuchi Build, 4th Fl., 19–1 Tsukishima, 1–Chrome Chuo-Ku. Tokyo. Officer: Akira Sakonjo, President (Qualifying Individual)

West Coast Logistics Inc., 29 Broadway, Suite 1506, New York, NY 10005. Officers: Janette Taylor, Treasurer (Qualifying Individual), U. Panicker, President

Akins International, Inc., 1890 Timber Lane, Glendale Heights, IL 60139. Officers: Lynn A. Akins, President (Qualifying Individual), Erin E. Akins, Vice President

Cyberfreight Inc., 1029 Madison Avenue, 4th Floor, New York, NY 10021. Officers: Joel Barnehama, CEO (Qualifying Individual), Michael Aryeh, Secretary

EAFF (USA) Inc., 2200 N.W. 110th Avenue, Miami, FL 33172. Officers: Joseph Velez, Corporate Officer (Qualifying Individual), Rodolfo Juan Claudio Sagel, President

Cargo Transport, Inc., 44190 Mercure Circle, Suite 195, Dulles, VA 20166. Officers: David Bernhardt, Vice President (Qualifying Individual), Peter O'Rorke, President

Elite Ocean Cargo, Inc., 16303 Air Center Blvd., Houston, TX 77032. Officers: Larry Earley, Vice President (Qualifying Individual), Bobby Hale, President

WorldPoint Logistics, Inc. d/b/a President Container Lines, 40 Parker Road, Suite 201, Elizabeth, NJ 07207. Officers: Daniel T. Petrosini, President (Qualifying Individual), Jack P. Edwards, CEO

C & A Shipping, Inc., 210 Route 4 East, Suite 307, Paramus, NJ 07652. Officers: Dazu Yang, CFO (Qualifying Individual), Yaqing Li. President

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants

JCOB & Co., Inc., 171 Armstrong Road, Des Plaines, IL 60018. Officer: Hyung Kook, Lee, President (Qualifying Individual)

Dated: April 21, 2000.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 00–10445 Filed 4–26–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 9:00 a.m. (EDT) May 8, 2000.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. National Finance Center record keeping and New TSP System.
2. Congressional/Agency/Participant Liaison.
3. Benefits and Investments.
4. Participant Communications.
5. Approval of the minutes of the April 10, 2000, Board member meeting.
6. Thrift Savings Plan Activity Report by the Executive Director.
7. Approval of the Update of the FY 2000 Budget and FY 2001 Estimates.
8. Investment Policy Review.
9. Status of Audit Recommendations.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: April 25, 2000.

Salomon Gomez,

Associate General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 00–10699 Filed 4–25–00; 3:41 pm]

BILLING CODE 6760–01–M

GENERAL SERVICES ADMINISTRATION

Submission for OMB Review; Comment Request Child Care Subsidy Application—Provider

AGENCY: Office of Child Care, GSA.

ACTION: Notice of request for approval for a new information collection entitled Child Care Subsidy Application—Provider.

SUMMARY: The General Services Administration has submitted an emergency processing information collection to the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). OMB approval has been requested by May 3, 2000. The proposed information collection activity is for the approval of the form for implementation of the GSA Child Care Subsidy for lower income Federal employees. The OPM Rule was published March 14, 2000. The form would be used to verify the fees paid by Federal employees to licensed child care providers so that providers could be paid a portion of those fees by GSA. The Rule requires funds to subsidize lower income employees' child care rate be paid to child care providers rather than employees. The form will also request banking information so those child care providers can be paid via electronic funds transfer.

DATES: Submit comments on or before May 3, 2000.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Marjorie Ashby, General Service Administration, (MVP) 1800 F Street, NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Bonnie Storm, Office of Child Care, GSA, 202–208–5119.

SUPPLEMENTARY INFORMATION:

A. *Purpose:* The purpose of this Notice is to consult with and solicit comments from the public concerning the proposed collection of information regarding GSA child care subsidy for lower income GSA employees.

B. *Annual Reporting Burden Respondents:* 500, annual responses; 500; average hours per response: .15; bruden hours: 125.

Copy of Proposal

A copy of this proposal may be obtained from Office of Child Care, Room 6118, GSA Building, 1800 F Street, NW, Washington, DC 20405, or calling (202) 208–5119.

Sue McIver,

Acting Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 00–10488 Filed 4–26–00; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00084]

Notice of Availability of Funds; Grant for School-Based Injury Prevention Program

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year 2000 funds for a grant for a school-based injury prevention program in pre-schools and elementary schools. CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus area of Injury and Violence Prevention. For the conference copy of

"Healthy People 2010", visit the Internet site: <http://www.health.gov/healthypeople>.

The purpose of the program is to implement and evaluate a school-based injury prevention program that teaches children pre-school to fifth grade the skills necessary to protect themselves and their families by reacting in a calm, educated manner when confronted with a life safety event or fire hazard.

B. Eligible Applicants

Assistance will be provided only to the City of Waterloo, Iowa. No other applications are solicited. The grant awarded to the City of Waterloo, Iowa is mandated by the FY-2000 Injury Appropriation Conference Report.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $150,000 is available in FY 2000 to fund one award. It is expected that the average award will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Continuation award within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting the activities to achieve the purpose of this program, the recipient will be responsible for the following activities:

1. Implement an extensive injury prevention educational program that targets children in pre-schools (including Head Start), elementary schools, and after school clubs, using the Fire P.A.L.S. (Prevent Accidents, Live Safe) and Learn Not To Burn Fire Prevention Program curricula.

2. Prepare materials to address the following types of injuries: fire safety, pedestrian safety, bicycle safety, accidental poisoning, water safety, outdoor recreation safety, and basic first aid.

3. Develop collaborative relationships with local organizations and agencies that work directly with the target population in other venues, and who provide insight to the program about educational methodologies and behavioral change theory.

4. Conduct training for the instructors who administer the safety curriculum, and evaluate their performance.

5. Develop and implement a detailed evaluation plan that documents process, impact, and outcome measures; and assess the students' knowledge of safety principles, as well as their personal safety behaviors, through pre and post tests on the educational materials.

6. Conduct an analysis of the cost-effectiveness of the school educational program.

7. Compile, and disseminate results from the program.

8. Identify opportunities to expand the school-based injury prevention program to additional schools incorporating lessons learned from earlier implementation efforts.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 double-spaced pages, printed on one side, with one inch margins, and no smaller than 12 point font. Number each page consecutively and provide a complete table of contents. The entire application with appendices should be no longer than 70 pages total. The application must include a one-page abstract and summary of the proposed effort.

F. Submission and Deadline

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0925–0001). Forms are in the application kit. On or before July 10, 2000, submit the application to the Grants Management Specialist identified in the "Where To Obtain Additional Information" Section of this announcement.

G. Evaluation Criteria

The application will be evaluated individually against the following criteria by an independent objective review group appointed by CDC.

1. Background and Need (15 Percent)

The extent to which the applicant justifies the need for a safety education program by presenting data that describes the magnitude of the injury problems in Waterloo, especially related to the topics to be included in the program. The extent to which the applicant identifies the need for such efforts in the targeted schools and community after-school programs. The extent to which the applicant presents an understanding of the need for an injury prevention education program in pre-schools and elementary schools. The extent to which the applicant details previous injury prevention and safety educational efforts in the Waterloo area, especially among the target population.

2. Goals, Objectives, and Methods (25 Percent)

The extent to which the applicant provides a detailed description of all proposed activities and collaboration needed to achieve the specific, time-framed and measurable objectives and the overall program goal(s). The extent to which the applicant identifies a theoretical basis for the behavior change program and describes how barriers will be identified and resolved. The extent to which the applicant provides a reasonable logically sequenced and complete schedule for implementing all activities. The extent to which position descriptions, lines of command, and collaborations are appropriate to accomplishing the program goal(s) and objectives.

3. Evaluation (15 Percent)

The extent to which the proposed evaluation plan is detailed and capable of documenting program process, impact and outcome measures through pre and post testing of students.

4. Collaboration (15 Percent)

The extent to which the applicant provides a description of the relationships between the program and school districts, community organizations, public health agencies, and other partners collaborating to implement and evaluate the program. The extent to which the applicant provides letters of commitment from each outside entity documenting their willingness, skills, and capacities to fulfill their specific roles and responsibilities.

5. Staff and Resources (30 Percent)

The extent to which the applicant can provide adequate facilities, staff and/or collaborators, including a full-time coordinator and resources to accomplish the proposed goal(s) and objectives during the project period. The extent to which the applicant demonstrates staff and/or collaborator availability, expertise, previous experience, and capacity to perform the undertaking successfully. Extent to which the applicant demonstrates prior experience in this area, especially the ability to work with community partners, and describes the likely impact of their activities on this problem. The extent to which current and past safety educational activities of the Waterloo Fire Rescue are described, as well as demonstration of their current capacity

to conduct the safety education program.

Budget and Justification (Not Scored)

The extent to which the applicant provides a detailed budget and narrative justification consistent with the stated objectives and planned program activities.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original and plus copies of:

1. Semi-annual progress reports;
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" Section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I.

AR–7—Executive Order 12372 Review
AR–8—Public Health System Reporting Requirements
AR–10—Smoke-Free Workplace Requirements
AR–11—Healthy People 2010
AR–12—Lobbying Restrictions
AR–13—Prohibition on Use of CDC Funds for Certain Gun Control Activities

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a), 317(k)(2), 391, 392, 394, and 394A [42 U.S.C. 241(a), 247b(k)(2), 280b, 280b–1, 280b–2, 280b–3] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page on the Internet: http://www.cdc.gov. If you have questions after reviewing the content of all documents, business management assistance may be obtained from: Sheryl L. Heard, Grants Management Specialist Grants Management Branch, Procurement and Grants Office, Announcement 00084, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341–4146, Telephone (404) 488–2723, Email: slh3@cdc.gov

For program technical assistance, contact: Tim Groza, MPA, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 4770 Buford Highway, N.E., Mailstop K63, Atlanta, GA 30341–3724, Telephone (770) 488–4676, Email: tgroza@cdc.gov.

To order a copy of CDC's Demonstrating Your Program's Worth: A Primer on Evaluation for Programs to Prevent Unintentional Injury go to: www.cdc.gov/ncipc/pub-res/demonstr.htm.

Dated: April 21, 2000.

John L. Williams,

Director, Procurement and Grants Office Centers for Disease Control, and Prevention (CDC).

[FR Doc. 00–10486 Filed 4–26–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00074]

Demonstration Projects for the Early Intervention and Prevention of Sexual Violence and Intimate Partner Violence among Racial and Ethnic Minority Populations; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of FY 2000 funds for a cooperative agreement program to: support the development, implementation and evaluation of culturally competent demonstration projects for the early intervention and prevention of both sexual violence (SV) and intimate partner violence (IPV) among racial and ethnic minority populations. This program addresses "Healthy People 2010," a national activity to reduce morbidity and mortality and improve health. This announcement is related to the focus area of Injury and Violence Prevention. For the conference copy of "Healthy People 2010", visit the Internet site: http://www.health.gov/healthypeople.

B. Eligible Applicants

Applications may be submitted by public and private non-profit and for-profit community-based organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations. Organizations serving American Indian or Alaskan Native tribal entities must have resolutions from the tribal councils of the tribes they intend to serve supporting their application for funding under this announcement.

The applicant organization or agency must have at least two years of experience serving the proposed population(s). The applicant may propose services to one or more of the following racial or ethnic minority community, *i.e.*, African American, American Indian or Alaska Native, Hispanic American, Asian American, or Pacific Islander. Communities or groups which cannot be specified under these categories will not be considered.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $1.6 million is available in FY 2000 to fund approximately three to four awards. It is expected that the average award will be $400,00. It is expected that the awards will begin on or about September 1, 2000, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Allowable Uses

Funds can be used to support personnel and to purchase modest amounts of hardware, and software required to implement the project. Applicants may contract with other organizations under these cooperative agreements; however, applicants must perform a substantial portion of the activities (including program management and operations and delivery of prevention and intervention services) for which funds are requested. Applications requesting funds to support only administrative and managerial functions will not be accepted.

Prohibited Uses

Funds for this project cannot be used for construction, renovation, the lease of

passenger vehicles, the development of major software applications, or supplanting current applicant expenditures.

Funding Preferences

In making awards, preference for funding may be given to ensuring a mix of the interventions listed under Section D, "Programmatic Interests," of this announcement as well as a distribution among ethnic populations or geographic areas.

D. Programmatic Interests

Each applicant must conduct (develop, implement, and evaluate) at least one, but on more than two of the following priority prevention or early intervention activities, which addresses both SV and IPV. Because of the resources, special expertise, and organizational capacities needed for success, applicants should carefully consider the feasibility of undertaking more than one of the priority interventions listed in this section of the Program Announcement.

Interventions may be focused either on the individual or the entire family.

The applicant must develop, implement and evaluate:

1. Culturally competent strategies and programs aimed at prevention and early intervention of sexual violence (SV) and intimate partner violence (IPV), such as parenting or child development classes, and support groups for children who have witnessed SV and IPV or experienced child abuse, including child sexual abuse, in conjunction with witnessing SV and IPV,

2. Culturally competent victim support prevention and intervention programs that work through programs designed to address perpetrators of SV and IPV and children who witness SV and IPV or experience child abuse, including child sexual abuse, in conjunction with witnessing SV and IPV.

3. Culturally competent perpetrator re-education programs that work through programs designed to address victims of SV and IPV and children who witness SV and IPV or experience child abuse, including child sexual abuse in conjunction with witnessing SV and IPV.

4. Culturally competent school or community-based early intervention/prevention programs designed to promote healthy relationships and prevent dating violence (SV and IPV) among school-aged youth, whether the youth are in school or not.

5. Culturally competent school or community-based prevention and intervention programs designed to identify and assist pre-school, school-aged children and adolescents who witness SV and IPV or experience child abuse, including child sexual abuse, in conjunction with witnessing SV and IPV.

6. Culturally competent advocacy programs/strategies that link the population community's health care system, criminal justice system, child protection service system, SV and IPV prevention and intervention programs, and other sectors of the community deemed appropriate (*e.g.*, the faith community, traditional healers, business community) such that victims, perpetrators, and children who witness IPV or experience child abuse, including child sexual abuse, in conjunction with witnessing SV and IPV—have access to culturally competent intervention and prevention services.

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities:

a. Coordinate and collaborate with other organizations and agencies working with the proposed intervention population(s), especially those involved in SV and IPV prevention and intervention.

b. Develop and implement the proposed activities, in collaboration with these working partners to prevent duplication of efforts.

c. Incorporate cultural competency, linguistic and developmental appropriateness into all program activities and prevention messages.

d. If the applicant is a community-based organization, they must establish and maintain a full working partnership with a university, academic institution of higher education or research institute to develop their research protocol, data collection instruments and conduct an overall evaluation of the proposed intervention and prevention activities. Universities, academic institution of higher education or research institutes applying for funding are required to establish and maintain a full working partnership with a either a community-based organization or health department to carry out the proposed intervention or prevention activities.

e. Develop a research protocol, including all instruments and consent documents, for IRB review by all cooperating institutions participating in the research project. All IRBs must review and approve the protocol initially and on an annual basis until the research is completed.

f. Compile lessons learned from the project and facilitate the dissemination of lessons learned and successful prevention interventions and program models.

2. CDC Activities:

a. Provide up-to-date scientific and programmatic information about SV and IPV prevention.

b. Assist in the development of a research protocol for IRB review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research is completed.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 50 double-spaced pages, (not including, attachments, and line item budget and justifications), printed on one side, with unreduced 12 point font on 8½" by 11" paper, with 1" margins, headings and footers. Number each page sequentially, including appendices, and provide a complete Table of Contents to the application and its appendices. Each section of the application as defined under format, shown below, must begin on a new page. The original and each copy of the application set must be submitted unstapled and unbound. Materials which should be part of the basic narrative will not be accepted if placed in the appendices. The applicant should provide a detailed description of first year activities and briefly describe future-year objectives and activities.

In developing the application, you must follow the format shown below:

Format

1. Abstract
2. Assessment of Need and Justification of Proposed Activities
3. Organizational History and Capacity
4. Program Design and Plan of Operation
5. Program Evaluation Plan
6. Project Management and Staffing
7. Budget and Staffing Breakdown and Justification
8. Human Subjects
9. Required Attachments

For specific content requirements for each item shown under "Format " (above) see details listed in "Evaluation Criteria" (Section G).

F. Submission and Deadline

Letter of Intent (LOI)

Although not a prerequisite of the application, a non-binding letter of intent-to-apply is requested from potential applicants. Your letter of intent should identify the announcement number, name the principal investigator, and state which of the priority prevention and intervention activities you intend to conduct if awarded funding. On or before June 1, 2000, submit the letter of intent to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and two copies of PHS 5161 (OMB Number 0937–0189). Forms are in the application kit. On or before July 10, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain in a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each applicant will be evaluated individually against the following criteria by a special emphasis panel (SEP) appointed by CDC.

1. Abstract (Not to Exceed 2 Pages) (Not Scored)

The extent to which the applicant summarizes which categories of the six priority prevention/interventions, (maximum number of two) listed under Section D. "Programmatic Interests", they intend to implement and the extent to which the abstract contains the following:

a. Brief summary of the need for the proposed activities;

b. Short-term and long-term goals;

c. Brief summary of proposed plan of operation, including the population(s) to be served, activities to be undertaken and services to be provided, location of the services, and the location of the organization and how it will serve the local community; and

d. A brief summary of plans for evaluating the activities of this project.

2. Assessment of Need and Justification for the Proposed Activities: (15 Points)

The extent to which the applicant:

a. Describes the incidence and prevalence of sexual violence and abuse, intimate partner violence and associated injury and death among the intervention population(s), for each intervention proposed;

b. Describes the intervention population(s), both qualitatively and quantitatively, for each intervention proposed, including demographics by age, sex, socioeconomic status, and geographic location; and

c. describes the availability and accessibility of SV and IPV prevention and intervention programs for the intervention population(s), as well as existing gaps and barriers in program delivery, for each proposed intervention, and how they will be addressed.

3. Organizational History and Capacity: (20 Points)

The extent of the applicant's documented experience, capacity, and ability to address the identified needs and implement the proposed activities, including:

a. A description and documentation of the organization's record of services to the target population. A minimum of two years experience is required;

b. A description of the organizational management, administrative and program components;

c. A description of collaborating organizations or networks;

d. A description of how the organizational structure will support the proposed intervention activities; and how the structure facilitates the capacity to reach targeted populations;

e. A description of how the organizational structure includes, or has the ability to obtain meaningful input and representation from, members of each proposed intervention populations;

f. A description of the applicants experience in developing and implementing effective SV or IPV prevention and/or intervention strategies and activities, and in developing and implementing interventions similar to the one(s) proposed in this application;

g. A description of the mechanisms used by the organization to monitor program implementation and quality assurance;

h. A description of the organizations experience in coordinating and collaborating with other organizations and agencies providing SV and IPV prevention and intervention services to the proposed intervention population(s). Universities, academic institutions of higher education or research institutes applying for funding are required to establish and maintain a full working partnership with a either a community-based organization or health department to carry out the proposed intervention or prevention activities;

i. A description of the organizations capacity to provide the proposed interventions in a manner that is culturally competent, linguistically and developmentally appropriate, and which responds effectively to the gender, environmental, and social characteristics of the intervention population(s); and

j. For any of the above areas in which the organization does not have direct experience or current capacity, describing how they will ensure that the organization will gain capacity (*e.g.*, through staff development, collaboration with other organizations, or a contract).

4. Program Design and Plan of Operation: (25 Points)

The extent to which the applicant:

a. Describes the specific program goals that remain consistent during the five-year project period, as well a short-term (year one) objectives and long-term (years two-five) objectives related to the project and the extent to which the goals are feasible and objectives are clear, time-phased, specific, measurable, and will achieve the desired program results;

b. Describes a theoretical framework outlining the rationale for the development, implementation and evaluation of proposed activities;

c. Describes outcomes, which are theoretically or empirically justified to result from program activities;

d. Describes or provides samples of proposed data collection instruments that are appropriate for collecting information relevant to the project;

e. Program planning time line is realistic and provides sufficient detail about who will do what and when; and

f. Describes how the organization will meet the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed project. Including:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation;

2. The proposed justification when representation is limited or absent;

3. A statement as to whether the design of the project is adequate to measure differences when warranted; and

4. A statement as to whether the plans for recruitment and outreach for participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

5. Program Evaluation Plan: (25 Points)

The extent to which the applicant's evaluation plan:

a. Describes the process to be used in developing and implementing the proposed intervention(s) evaluation;

b. Describes the process to be used in developing and implementing the working partner(s) activities evaluation;

c. Describes the process for identifying existing gaps in programs as well as other needs in the community;

d. Describes the extent to which intended short-term outcomes that may be achieved will be measured;

e. Describes how the change in short-term outcomes resulting from the respective prevention and early intervention activities from baseline to project completion, including, at a minimum, a six-month post-intervention follow-up, will be measured;

f. Describes the evaluation design;

g. Describes the methods for collecting process and outcome data, and for ensuring reliability and validity of all data collected;

h. Describes how data will be maintained (*i.e.,* databases);

i. Describes the applicant's and proposed academic and community working partners' capacity (facilities, computers) for collecting and managing data;

j. Describes the statistical techniques to be used for analyzing the data;

k. Describes how client confidentiality and safety will be addressed and maintained;

l. Describes how staff performance will be assessed to ensure they are providing information and services accurately and effectively.

If the applicant is a community-based organization, the extent to which items (a–l) were developed in full working partnership with a university, academic institution of higher education or research institute.

6. Project Management and Staffing: (15 Points)

The extent to which the applicant has experience in the management and delivery of intimate partner violence primary prevention programs at the community level and:

a. Describes how the proposed project will be managed and staffed, noting existing staff as well as additional staffing needs;

b. Describes the roles and responsibilities, skills and experience of the applicant's program staff and any working partner's staff;

c. Provides an organizational chart of the applicant's and working partner's organizations showing how the proposed project will be integrated into these organizations; and

d. Provides evidence that a full-time Program Manager (one individual, one full-time equivalent) and the equivalent of a full-time Program Evaluator will be available for the entire project.

7. Budget/Staffing Breakdown and Justification: (Not Scored)

The extent to which the budget request is clearly explained, adequately justified, reasonable, sufficient for the proposed project activities, and consistent with the intended use of the cooperative agreement funds.

8. Human Subjects: (Not Scored)

The extent to which the applicant complies with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects.

9. Required Attachments: (Not Scored)

The extent to which the applicant complies with providing the following:

a. Memoranda of understanding or agreement as evidence of established or agreed-upon collaborative relationships. Memoranda of agreement should specifically describe the proposed collaborative activities. Evidence of continuing collaboration must be submitted each year to ensure that the relationships are still in place; and

b. Resolutions from the tribal councils in support of their applications, if the applicant is proposing to serve American Indian/Alaskan Native tribal entities.

H. Other Requirements

Technical Reporting Requirements

1. Provide CDC with the original and two copies of semi-annual progress reports.

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1—Human Subjects Requirements
AR–2—Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7—Executive Order 12372 Review
AR–8—Public Health System Reporting Requirements
AR–9—Paperwork Reduction Act Requirements
AR–10—Smoke-Free Workplace Requirements
AR–11—Healthy People 2010
AR–12—Lobbying Restrictions
AR–13—Prohibition on Use of CDC Funds for Certain gun Control Activities
AR–14—Accounting System Requirements

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 393 and 394 of the Public Health Service Act (42 U.S.C. 280b–1a and 280b–2) as amended and section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)). The Catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

This and other CDC announcements are available through the CDC homepage on the Internet. The address for the CDC homepage is http://www.cdc.gov.

To receive additional information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all documents, business management technical assistance may be obtained from: Carrie Clark, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number 770 488–2719, E-mail Address zri4@cdc.gov.

For program technical assistance, contact: John Hemphill, Project Officer, National Center for Injury Prevention and Control, National Centers for Disease Control and Prevention, 4770 Buford Highway, N.E.; MS K60, Atlanta, GA.30341, 770 488–1285, E-mail Address jdh2@cdc.gov.

Dated: April 21, 2000.

John L. Williams,

Director, Procurement and Grants Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–10487 Filed 4–26–00; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1256]

Over-the-Counter Drug Products; Public Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing about the agency's approach to regulating over-the-counter (OTC) drug products. The purpose of the hearing is to solicit information from, and the views of, interested persons, including scientists, professional groups, and consumers. FDA intends to elicit comment on general issues regarding the status of OTC drug products, including the criteria the agency should consider in rendering decisions on OTC availability of drugs, the classes of products, if any, that are not currently available OTC that should or should not be available OTC, how FDA can be assured that consumers understand the issues relating to OTC availability of drug products, how rational treatment decisions are affected by coexisting prescription and OTC therapies for a given disease, whether the current structure for marketing OTC products in the United States is adequate, and FDA's role in switching products from prescription to OTC status.

DATES: The public hearing will be held on Wednesday, June 28, and Thursday, June 29, 2000, from 8:30 a.m. to 4:30 p.m. Submit written notices of participation and comments for consideration at the hearing by June 2, 2000. Written comments will be accepted after the hearing until August 25, 2000.

ADDRESSES: The public hearing will be held at the Gaithersburg Holiday Inn, 2 Montgomery Village Ave., Gaithersburg, MD 20879. Submit written notices of participation to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852; email: FDADockets@oc.fda.gov; or through the Internet at http://www.accessdata.fda.gov/scripts/oc/dockets/meetings/meetingdocket.cfm. Submit comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852; email: FDADockets@oc.fda.gov; or through the Internet at http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm. Transcripts of the hearing will be available for review at the Dockets Management Branch (address above) and on the Internet at http://www.fda.gov/ohrms/dockets.

FOR FURTHER INFORMATION CONTACT: Patricia L. DeSantis, Center for Drug Evaluation and Research (HFD–2), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5400, e-mail: desantis@cder.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA regulates all prescription and OTC drug products marketed in the United States. Section 503(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 353(b)) describes the criteria for determining whether a drug product is subject to prescription classification. Under section 503(b)(1) of the act, a drug requires a prescription if:

> (A) because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, [it] is not safe for use except under the supervision of a practitioner licensed by law to administer such drug; or
>
> (B) [it] is limited by an approved application under section 505 [of the act] to use under the professional supervision of a practitioner licensed by law to administer such drug.

All drug products not meeting the above criteria may be sold OTC.

In 1972, FDA initiated rulemaking procedures (the OTC Drug Review) to determine which OTC drugs can be generally recognized among qualified experts as safe and effective and not misbranded under prescribed, recommended, or suggested conditions of use. Through the OTC Drug Review, FDA establishes monographs for classes of OTC drug products (*e.g.*, antacids, skin protectants) that are found to be generally recognized as safe and effective and not misbranded when the products contain the ingredients and are labeled according to the monograph. OTC drug monographs describe the active ingredients, amount of drug, formulation, labeling, and other general requirements for drugs to be lawfully sold OTC.

The regulations for the OTC Drug Review are found in part 330 (21 CFR part 330) and the monographs are in 21 CFR parts 331 through 358. The regulations set forth standards for safety, effectiveness, benefit-to-risk considerations, and labeling of OTC drug products.

The standards for safety, effectiveness, and labeling for OTC products are described in § 330.10(a)(4). Safety for OTC use means a low incidence of adverse reactions or significant side effects under adequate directions for use and warnings against unsafe use, as well as low potential for harm which may result from abuse under conditions of widespread availability. Effectiveness means a reasonable expectation that, in a significant proportion of the target population, the pharmacological effect of the drug, when used under adequate directions for use and warnings against unsafe use, will provide clinically significant relief of the type claimed. The benefit-to-risk ratio of a drug must be considered in determining both safety and effectiveness.

The labeling of OTC drug products must be clear and truthful in all respects and may not be false or misleading in any particular. The labeling must state: (1) The intended uses and results of product use; (2) the adequate directions for proper use; and (3) the warnings against unsafe use, side effects, and adverse reactions in terms that render them likely to be read and understood by the ordinary individual, including individuals of low comprehension, under customary conditions of purchase and use (§ 330.10(a)(4)(v)).

During the course of the OTC Drug Review, advisory review panels of nongovernment experts evaluated the various classes of OTC drug products and recommended that a number of drugs be switched from prescription to OTC status. FDA acted on these recommendations and switched a number of products to OTC status, including antihistamines (*e.g.*, diphenhydramine hydrochloride (HCl), doxylamine succinate), topical nasal decongestants (*e.g.*, oxymetazoline HCl, xylometazoline HCl), topical hydrocortisone, topical antifungals (*e.g.*, haloprogin, miconazole nitrate), an anthelmintic (pyrantel pamoate), an oral anesthetic (dyclonine HCl), and various fluoride dental rinses.

FDA has also approved the switch of a number of drugs from prescription to OTC status under new drug applications. These include an antidiarrheal (loperamide), topical antifungals (*e.g.*, clotrimazole, terbinafine HCl), antihistamines (*e.g.*,

clemastine fumarate), a pediculicide (permethrin), an ocular vasoconstrictor (oxymetazoline HCl), vaginal antifungals (*e.g.*, clotrimazole, miconazole nitrate), analgesics (*e.g.*, ketoprofen, naproxen sodium), acid reducers (*e.g.*, cimetidine, famotidine), a hair growth treatment (minoxidil), and smoking cessation drugs (*e.g.*, nicotine polacrilex).

In allowing these drugs to be sold OTC, the agency considered the safety and effectiveness criteria stated above, the benefit-to-risk ratio, and whether clear and understandable labeling could be written for self-medication without the intervention of a health professional. In some cases, manufacturers were required to conduct labeling comprehension studies to determine if consumers would understand the proposed OTC labeling for the products.

FDA has received comments in the past suggesting that a number of other types of drugs should be considered for OTC status. These types of products include diuretics, antihypertensive agents, cholesterol-lowering drugs, antidiabetic drugs, treatments for osteoporosis, topical agents for the treatment of perioral herpetic lesions, drugs for problems of the stomach and intestines, asthma treatments, and oral contraceptives.

Drugs found appropriate for OTC sale have an increasingly vital role in the U.S. health care system by providing consumers easy access to certain drugs that can be used safely for conditions that consumers can self-treat without the help of a health care practitioner. Consumers have access to more than 100,000 OTC drug products encompassing more than 800 active ingredients and covering more than 100 therapeutic categories or classes.

In light of the continuously changing health care environment, including the growing self-care movement, the agency continues to examine its overall philosophy and approach to regulating OTC drug products. FDA is soliciting information from, and the views of, interested persons, including health professional groups, scientists, industry, and consumers, on the agency's regulation of OTC drug products.

II. Scope of the Hearing

The regulation of OTC drug products raises many complex public health issues. To promote a more useful discussion at the public hearing, FDA has developed a list of questions and issues. This list is not intended to be exclusive, and presentations and comments on other issues related to the development and regulation of OTC drugs are encouraged. Issues that are of specific interest to the agency include the following:

A. Criteria

- In the context of the present environment, what criteria should FDA consider in rendering decisions on OTC availability of drug products?
- What types of drugs are or are not appropriate for OTC distribution?
- What types of diseases are or are not suitable for treatment with products marketed OTC (*e.g.*, chronic illnesses; diseases that require initial diagnosis by a physician; diseases that if left untreated, or are inadequately treated, can lead to serious morbidity or mortality)?
- How should the risks and benefits to individuals and risks and benefits to the public health be assessed and weighed in any decision on OTC marketing? For example, how should the agency balance the potential benefits of OTC antimicrobial agents with the potential risks to society at large of the development of resistant organisms associated with increased, and potentially improper, use?

B. Classes of Products

- Are there specific classes of products that are not currently marketed OTC that should be available OTC? If so, which ones and why? What specific evidence should be required to support such approvals?
- Are there specific classes of products that should not be available OTC? What specific concerns do these classes raise?

Examples of specific classes that might be discussed in brief include: Diuretics, antihypertensive agents, cholesterol-lowering drugs, oral antidiabetic agents, treatments for osteoporosis (including its prevention), antimicrobials, and oral contraceptives.

C. Consumer Understanding

- How can FDA be assured of consumer understanding of the benefits and risks of specific drug products and the ability of consumers to use products safely and effectively were the drug products to be marketed OTC? Issues that may be discussed include: (1) Sampling criteria for comprehension studies; (2) language barriers; (3) appropriate use and interpretation of self-administered diagnostic tests; (4) ramifications of misdiagnosis; (5) ability of consumers to appreciate, without required intervention by a physician, the need for continuous (sometimes life-long) treatment, appropriate followup, and need for other treatment; (6) consumer confusion between trade names and generic/chemical names; and (7) consumer confusion with brand extensions (*e.g.*, when the active ingredients generally associated with a brand are not present in some of the brand's extended product line).
- What methodologies can be employed to demonstrate consumer understanding?
- How can information on efficacy be adequately conveyed to consumers through labeling? For example, how can the label adequately convey this efficacy information for: (1) Therapies with marginal benefit or (2) therapies with preventive claims that may provide benefit to a specific population but the benefit to the individual consumer is unclear?
- Can prevention claims encourage ill-advised behavior, and if so, how could this potential be minimized? For example, would use of a cholesterol-lowering drug allow patients to ignore other needed interventions such as smoking cessation, dietary discretion, and management of other risk factors?

D. Selection of Treatment

- With regard to the choice of treatment regimens, how can rational selection be ensured when there are coexisting prescription and OTC therapies for a given disease?
- In an environment with coexisting products, what are the most effective means to ensure that patients know the best ways to treat their illnesses?
- How should the availability of OTC options and prescription options for the same indication be reconciled? Are there examples where this dichotomy would raise public health concerns?
- Within a therapeutic class, should the first drug to enter the OTC market be the "best" drug, in terms of the benefit-to-risk ratio? How should the availability of a "better" OTC product, in terms of efficacy or safety, affect the status of products already on the OTC market for treatment of the same condition? Should older therapies that may provide less benefit or more risk be removed from the OTC market, or should the labeling be revised? Suppose the more effective drug is more difficult to use and must remain prescription—might that encourage use of the less satisfactory drug?

E. OTC Marketing System

- Is the current structure for marketing OTC products in the United States adequate? What lessons can we learn from different OTC marketing systems? For example, what can be learned from the countries and those U.S. states where some nonprescription drug products are sold OTC and others are sold "behind the counter"?

F. FDA's Role in Switches

- Under what circumstances should FDA actively propose OTC marketing for a drug in the absence of support from the drug sponsor?
- Should FDA be more active in initiating switches of prescription products to OTC use?

III. Notice of Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs (the Commissioner) is announcing that the public hearing will be held in accordance with part 15 (21 CFR part 15). The presiding officer will be the Commissioner or her designee. The presiding officer will be accompanied by a panel of Public Health Service employees with relevant expertise.

Persons who wish to participate in the part 15 hearing must file a written notice of participation with the Dockets Management Branch (address above) prior to June 2, 2000. To ensure timely handling, any outer envelope should be clearly marked with the Docket No. 00N–1256 and the statement "FDA Regulation of OTC Drug Products Hearing." Groups should submit two copies. The notice of participation should contain the person's name; address; telephone number; affiliation, if any; the sponsor of the presentation (e.g., the organization paying travel expenses or fees), if any; brief summary of the presentation; and approximate amount of time requested for the presentation. The agency requests that interested persons and groups having similar interests consolidate their comments and present them through a single representative. FDA will allocate the time available for the hearing among the persons who file notices of participation as described above. If time permits, FDA may allow interested persons attending the hearing who did not submit a written notice of participation in advance to make an oral presentation at the conclusion of the hearing.

After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant by telephone of the time allotted to the person and the approximate time the person's oral presentation is scheduled to begin. The hearing schedule will be available at the hearing. After the hearing, the hearing schedule will be placed on file in the Dockets Management Branch under Docket No. 00N–1256.

Under § 15.30(f), the hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of each presentation.

Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (part 10, subpart C (21 CFR part 10, subpart C)). Under § 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b). The transcript of the hearing will be available on the Internet at http://www.fda.gov/ohrms/dockets and orders for copies of the transcript can be placed at the meeting or through the Freedom of Information Staff (HFI–35), 5600 Fishers Lane, Rockville, MD 20857.

Any handicapped persons requiring special accommodations to attend the hearing should direct those needs to the contact person listed above.

To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

IV. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written notices of participation and comments for consideration at the hearing by June 2, 2000. To permit time for all interested persons to submit data, information, or views on this subject, the administrative record of the hearing will remain open following the hearing until August 25, 2000. Persons who wish to provide additional materials for consideration should file these materials with the Dockets Management Branch (address above) by August 25, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 17, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–10456 Filed 4–26–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products 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: Vaccines and Related Biological Products 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 May 11, 2000, 8 a.m. to 5:30 p.m. and on May 12, 2000, 8 a.m. to 3 p.m.

Location: Holiday Inn, Kennedy Grand Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Contact Person: Nancy T. Cherry or Denise H. Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12391. Please call the Information Line for up-to-date information on this meeting.

Agenda: On May 11, 2000, the committee will hear updates on activities in the Office of Vaccines Research and Review. The committee will also be informed of issues pertaining to the status of vaccines for the prevention of rotavirus disease. On May 12, 2000, the committee will review issues relating to the development of policy regarding the use of various types of neoplastic cells as substrates for vaccine manufacture.

Procedure: On May 11, 2000, from 9:15 a.m. to 1:45 p.m., and on May 12, 2000, from 9:15 a.m. to 3 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 May 4, 2000. Oral presentations from the public will be scheduled between approximately 12:20 p.m. to 12:50 p.m. on May 11, 2000, and between approximately 10:35 a.m. to 10:50 a.m. and between approximately

1:30 p.m. to 1:45 p.m. on May 12, 2000. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 4, 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 May 11, 2000, from 8 a.m. to 9 a.m., and from approximately 1:45 p.m. to 5:30 p.m., and on May 12, 2000, from 8 a.m. to 9 a.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)). These portions will be closed to permit discussion of pending investigational new drug applications or pending product licensing applications.

FDA regrets that it was unable to publish this notice 15 days prior to the May 11 and 12, 2000, Vaccines and Related Biological Products Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Vaccines and Related Biological Products Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 21, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–10457 Filed 4–26–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0315]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* Collection of Data on Physician Encounters from Medicare+Choice Organizations; *HCFA Form Number:* HCFA–R–0315 (OMB#0938–NEW); *Use* HCFA requires physician encounter data from Medicare+Choice organizations to develop and implement a risk adjustment payment methodology as required by the Balanced Budget Act of 1997; *Frequency:* Monthly; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 300; *Total Annual Responses:* 75.6 million; *Total Annual Hours:* 938,700.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail you request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 17, 2000.

John P. Burke, III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–10478 Filed 4–26–00; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1133–N]

Medicare Program; May 12, 2000, Meeting of the Citizens Advisory Panel on Medicare Education

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

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Citizens Advisory Panel on Medicare Education (the Panel) on May 12, 2000. This Committee advises and makes recommendations to the Secretary of the Department of Health and Human Services (the Secretary) and the Administrator of the Health Care Financing Administration (HCFA) on opportunities for HCFA to optimize the effectiveness of the National Medicare Education Program and other HCFA programs that help Medicare beneficiaries understand Medicare and the range of Medicare options available with the passage of the Medicare+Choice Program. The Panel meeting is open to the public.

DATES: The meeting is scheduled for May 12, 2000, from 8:00 a.m. until 4:30 p.m.

ADDRESSES: The meeting will be held at the Phoenix Park Hotel, 520 North Capitol Street, NW., Washington, DC 20001, (202) 638–6900.

FOR FURTHER INFORMATION CONTACT: Susana Perry, Executive Director, CBS, Partnership Development Group, Health Care Financing Administration, 7500 Security Boulevard S1–08–07, Baltimore, MD 21244–1850, (410) 786–1076.

Please refer to the HCFA Advisory Committees Information Line (1–877–449–5659 toll free 410–786–9379 local) or the Internet (http://www.hcfa.gov/events/apme/homepage.htm) for additional information and updates on committee activities or by contacting the Executive Director at (http://www.APME@hcfa.gov). Press inquiries are handled through the HCFA Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION: The Federal Advisory Committee Act (5 U.S.C. App. 2, Section 10(a)), Public Law 92–463, grants the Secretary the authority to establish an advisory committee if the Secretary finds the committee necessary and in the public interest. The Secretary signed the

charter establishing this committee on January 21, 1999 (64 FR 7899, February 17, 1999). The Citizen's Advisory Panel on Medicare Education (the Panel) advises us on opportunities to enhance the effectiveness of consumer education materials serving the Medicare program.

The goals of the Panel are as follows:

- Develop and implement a national Medicare education program that describes the options for selecting a health plan under Medicare.
- Enhance the Federal government's effectiveness in informing the Medicare consumer, including the appropriate use of public-private partnerships.
- Expand outreach to vulnerable and underserved communities, including racial and ethnic minorities; in the context of a national Medicare education program.
- Assemble an information base of best practices for helping consumers evaluate health plan options and building a community infrastructure for information, counseling, and assistance.

The current members are: Carol Cronin, Director, Center for Beneficiary Services, HCFA; Diane Archer, J.D., President, Medicare Rights Center; Bruce Bradley, M.B.A., Director, Managed Care Plans, General Motors Corporation; Joyce Dubow, M.U.P., Senior Policy Advisor, Public Policy Institute, AARP; Elmer Huerta, M.D., M.P.H., Director, Cancer Risk and Assessment Center, Washington Hospital Center; Bonita Kallestad, J.D., M.S., Western Minnesota Legal Services, Mid Minnesota Legal Assistance; Steven Larsen, J.D., M.A., Maryland Insurance Commissioner, Maryland Insurance Administration; Brian Lindberg, M.M.H.S., Executive Director, Consumer Coalition for Quality Health Care; Heidi Margulis, B.A., Vice President, Government Affairs, Humana, Inc.; Patricia Neuman, Sc.D., Director, Medicare Policy Project, Henry J. Kaiser Family Foundation; Elena Rios, M.D., M.S.P.H, President, National Hispanic Medical Association; Samuel Simmons, B.A., President and CEO, The National Caucus and Center on Black Aged, Inc.; Nina Weinberg, M.A., President, National Health Council; and Edward Zesk, B.A., Executive Director, Aging 2000.

The agenda for the May 12, 2000, meeting will include the following:

- An overview of current state of communication about health care quality.
- A discussion of HCFA's quality agenda.
- A discussion of the communication of quality through health plans providers.
- A discussion of HCFA's efforts in consumer information on quality and satisfaction.
- A wrap-up discussion of tentative findings.
- A discussion of the Panel's future direction.
- A period for public comments.

Individuals or organizations that wish to make 5-minute oral presentations on the agenda issues should contact the Executive Director, by 12 noon, May 5, 2000, to be scheduled. The number of oral presentations may be limited by the time available. A written copy of the oral remarks should be submitted to the Executive Director, no later than 12 noon, May 11, 2000. Anyone who is not scheduled to speak, may submit written comments to the Executive Director, by 12 noon, May 11, 2000.

The meeting is open to the public, but attendance is limited to the space available. Individuals requiring sign language interpretation for the hearing impaired or other special accommodation should contact the Executive Director at least 10 days before the meeting.

(5 U.S.C. App.2, section 10(a)(1) and (a)(2))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 24, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–10553 Filed 4–26–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4562–N–03]

Notice of Proposed Information Collection for Public Comment: Study of Rent Burden of Residents Living in HOME-Assisted Rental Units

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* June 26, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vincent M. Mani, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410; telephone (202) 708–3700, ext. 5714 (this is not a toll free number). Copies of the proposed forms and other available documents to be submitted to OMB may be obtained from Mr. Mani.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Study of Rent Burden of Residents Living in HOME-Assisted Rental Units.

Description of the need for the information and proposed use: The Department is conducting, under a contract with Abt Associates, Inc., a study of the rent burden of residents living in rental housing developed under the HOME Program. The main objective is to examine the rent burdens of residents living in HOME-assisted units. Rent burden is the percentage of gross income paid toward rent and utilities. Because the rents in HOME-assisted units are unrelated to individual household income but are based instead of affordable rents for households earning 50 percent or 65

percent of area median income adjusted for family size, residents can have high rent burdens, even if their unit is in compliance with rent standards. The study of rent burden will yield important information about the affordability of rental housing developed under the Home Program.

Agency Form Numbers, if Applicable: None.

Members of the affected public: Residents sampled in 250 properties that are selected for the study.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The researchers will administer a one-time telephone survey to 1,000 residents. The interviews are expected to last five minutes, for a total burden hour estimate of 83.3 hours.

Status of the proposed information collection: Awaiting OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 18, 2000.

Lawrence L. Thompson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 00–10450 Filed 4–26–00; 8:45 am]

BILLING CODE 4120–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4562–N–02]

Notice of Proposed Information Collection for Public Comment: Survey of Manufactured (Mobile) Home Placements

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 26, 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: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Robert A. Knight, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410; telephone (202) 708–1060, Ext. 5893 (this is not a toll-free number), (or via the Internet at Robert_A._Knight@hud.gov) or Michael Davis, U.S. Census Bureau, Manufacturing and Construction Division, Room 2126 FOB 4, Washington, DC 20233–6900, at (301) 457–1605 (or via the Internet at Michael.Davis@ccmail.census.gov).

SUPPLEMENTARY INFORMATION: The Department will submit 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 the appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. This notice is requesting a revision of a currently approved collection.

This Notice also lists the following information:

Title of Proposal: Survey of Manufactured (Mobile) Home Placements.

OMB Control Number: 2528–0029.

Description of the need for the information and proposed use: The Survey of Manufactured (Mobile) Home Placements collects data on the characteristics of newly manufactured homes placed for residential use including number, sales price, location, and other selected characteristics. HUD uses the statistics to respond to a Congressional mandate in the Housing and Community Development Act of 1980, 42 U.S.C. 5424 note, which requires HUD to collect and report manufactured home sales and price information for the nation, census regions, states, and selected metropolitan areas and to monitor whether new manufactured homes are being placed on owned rather than rented lots. HUD also used these data to monitor total housing production and its affordability.

Agency Form Numbers: C–MH–9A.

Member of affected public: Business firms or other for-profit institutions.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents: 4,000.

Estimate Responses per Respondent: 2.

Time per respondent: 30 minutes.

Total hours to respond: 4,000.

Respondent's Obligation: Voluntary.

Status of the proposed information collection: Pending OMB approval.

Authority: Title 42 U.S.C. 5424 note, Title 13 U.S.C. Section 8(b), and Title 12, U.S.C., Section 1701z–1.

Dated: April 18, 2000.

Lawrence L. Thompson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 00–10451 Filed 4–26–00; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected under the Wild Bird Conservation Act of 1992. This notice is provided under section 112, paragraph 4, of the Wild Bird Conservation Act of 1992, and title 50, of the Code of Federal Regulations, section 15.26(c).

Applicant: G.A. Abbate, Elizabeth, NJ. The applicant wishes to establish a cooperative breeding program for the Venezuelan Black hooded Red siskin (*Carduelis cucullata*). The applicant wishes to be an active participant in this program with one other private individual. COM USA Inc. and its affiliate, The International Association for the Propagation and Conservation of All Avian Species (IAPCAAS) have assumed the responsibility for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of these documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2095); FAX: (703/358–2298).

Dated: April 24, 2000.

Mark Phillips,

Acting Chief, Branch of Operations, Office of Management Authority.

[FR Doc. 00–10490 Filed 4–26–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Proposed Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposed information collection described below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Comments and suggestions on the proposal should be made directly to the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, (703–648–7313).

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used:

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Public knowledge and perception of Black Tailed Prairie Dogs in the Midwest region of the United States.

OMB Approval No.: New collection.

Abstract: The ability to identify knowledge gaps in the public's understanding of the issues concerning Black-tailed Prairie Dogs (*Cynomys ludovicianus*) is necessary while conservation efforts involving this species are in the early planning stages. The object of this study is to provide information that is needed to understand the complexities of wildlife/human interactions and current land use and management practices. Any additional information about this species can provide data that can help determine if the species needs to be included on the Federal list of threatened and endangered wildlife and plants. As a result of rapidly declining populations, increased pressure to develop habitats, and controversies about disease vectors associated with prairie dog communities attention has focused in the past few years on the status of this species. The issue of listing Prairie Dogs as threatened or endangered species has become a very important subject for fish and wildlife managers, political leaders, and community groups in a 10 state areas of the Midwest (Texas, New Mexico, Colorado, Kansas, Arizona, Utah, Montana, Wyoming, North Dakota, South Dakota, and Nebraska). Although the subject has achieved wide attention, no studies have been conducted that evaluate public knowledge, perception, or economic value of prairie dog communities and management practices in these areas. Understanding public knowledge, perception, and values is a vital component of wildlife management. Improved understanding will guide future management practices.

Bureau Form No.: None.

Frequency: One time.

Description of Respondents: Individual or households.

Estimated Completion Time: 14 minutes per respondent (approximate).

Number of Respondents: 1,740 (2,900 mail surveys).

Burden hours: 406 hours. (The burden estimates are based on 14 minutes to complete each questionnaire and a 60% return rate.)

For Additional Information Please Contact: Phadrea Ponds, (970) 226–9445, phadrea_ponds@usgs.gov.

Bureau clearance officer: John Cordyack (703) 648–7313.

Dated: February 18, 2000.

Carol F. Aten,

Acting Chief Biologist.

[FR Doc. 00–10491 Filed 4–26–00; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–XU; GPO–0197]

Notice of Meeting of the Eastern Washington Resource Advisory Council

AGENCY: Bureau of Land Management, Spokane District, Interior.

ACTION: Field-trip and meeting of the Eastern Washington Resource Advisory Council; May 25, 2000, Whitman and Adams Counties, Washington.

SUMMARY: The Eastern Washington Resource Advisory Council (RAC) will hold a field-trip and meeting on May 25, 2000. The field-trip will commence at 9:00 a.m., at the Spokane District Office of the Bureau of Land Management (BLM), 1103 N. Fancher, Spokane, WA 99212–1275. The RAC will visit BLM lands along Rock Creek in Whitman and Adams Counties formerly known as the Escure ranch. The field-trip will adjourn upon conclusion of business, but no later than 4:00 p.m. Public comments will be heard from 10:00 a.m. until 10:30 a.m. at the Escure Ranch headquarters site. This field-trip is in lieu of a trip scheduled for April 20, 2000 but canceled due to weather conditions. If necessary to accommodate all wishing to make public comments, a time limit may be placed upon each speaker. Topics to be discussed include management of the Rock Creek lands. Transportation will be provided for RAC members only.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212–1275; or call 509–536–1200.

Dated: April 21, 2000.

Joseph K. Buesing,

District Manager.

[FR Doc. 00–10485 Filed 4–26–00; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1430–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of the following described lands were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., on the dates specified: The field notes representing the correction and superceding of original page 16 of M.S. No. 3680 (Mineral Survey Volume M–167, page 203) in T. 12 N., R. 37 E., were approved on January 18, 1999. The field notes were prepared to meet certain administrative requirements of the Lands and Mineral section (ID–933), Bureau of Land Management, Idaho State Office.

A supplemental plat was prepared to correctly depict lotting in section 32, T. 18 N., R. 23 E., and to correct a portion of the plat accepted January 19, 2000. The supplemental plat was approved March 23, 2000. The plat was prepared to meet certain administrative needs of the Bureau of Land Management, Idaho.

A supplemental plat was prepared to correctly depict the lotting in section 7, T. 7 S., R. 3 E., and to correct a portion of the plat accepted August 31, 1999. The supplemental plat was approved March 23, 2000. The plat was prepared to meet certain administrative needs of the Bureau of Land Management, Idaho.

The plat representing the dependent resurvey of portions of the Fourth Standard Parallel North, the south boundary of the Lemhi Indian Reservation, and of the subdivisional lines, and the subdivision of sections 29 and 33, T. 18 N., R. 23 E., Boise Meridian, Idaho, Group 910, was accepted January 19, 2000. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing certain metes-and-bounds surveys within the Fort Lapwai Military Reservation, in section 11, T. 35 N., R. 4 W., Boise Meridian, Idaho, Group 1035, was accepted February 7, 2000. The plat was prepared to meet certain administrative needs of the Bureau of Indian Affairs, Northen Idaho Agency.

The plats representing the dependent resurvey of portions of the south and west boundaries and of the subdivisional lines, and the subdivision of sections 2, 3, 4, 5, 7, 11, 14, 15, 17, 18, 20, 21, 22, 23, 29, 30, and 31, T. 3 S., R. 1 W., Boise Meridian, Idaho, Group 1021, were accepted February 16, 2000.

The plats were prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the subdivisional lines, T. 9 S., R. 13 E., Boise Meridian, Idaho, Group 1056, was accepted March 24, 2000. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the east boundary, and of a portion of the subdivisional lines in T. 15 S., R. 21 E., Boise Meridian, Idaho, Group 1059, was accepted March 29, 2000. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of portions of the subdivisional lines, and of the subdivision of section 12, and the additional subdivision of section 12, T. 12 S., R. 19 E., Boise Meridian, Idaho, Group 1038, was accepted March 29, 2000. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Duane Olsen, Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657, 208–373–3980.

Dated: April 11, 2000.

Harry K. Smith,

Acting Chief, Cadastral Surveyor for Idaho.

[FR Doc. 00–10401 Filed 4–26–00; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

Outer Continental Shelf (OCS) Policy Committee of the Minerals Management Advisory Board; Notice and Agenda for Meeting

AGENCY: Minerals Management Service, Interior.

SUMMARY: The OCS Policy Committee of the Minerals Management Advisory Board will meet at the Atlantic Oakes Hotel in Bar Harbor, Maine, on May 16–17, 2000.

The agenda will cover the following principal subjects:

National Energy Overview. This presentation will address the price forecast and ramifications of high prices on the economy.

National Petroleum Council's Natural Gas Study Results. This panel presentation will address the final results of the Study, Meeting the Challenges of the Nation's Growing Natural Gas Demand.

North Atlantic Energy Issues—Regional Energy Profile. This panel presentation will address how the New England States are impacted by increases in oil prices and Canadian offshore activities.

North Atlantic Energy Issues—Implications of Canadian Activity on New England. This panel presentation will address the status of development offshore Nova Scotia and Newfoundland. It will also address the gas line from the Scotian Shelf through Maine, including a discussion of routing considerations and environmental impacts.

Gulf of Maine Ocean Observing System. This presentation will address the ocean technology/communications proposal to provide real time ocean information from satellites and buoys to a broad array of users. Similar systems are being developed around the country, and will likely have useful applications for the offshore oil and gas industry.

Hard Minerals Update. This presentation will provide an update on subcommittee activities, the status of the potential commercial sand and gravel lease offering offshore New Jersey, and other pertinent hard minerals information.

OCS Sand and Gravel Coastal Issues. This presentation will address the status and purpose of the National Coastal Study which has been authorized under the Fiscal Year 2000 Water Resources Development Act; current funding and initiatives of the sand and gravel program; and regional initiatives being pursued for beach nourishment.

Deepwater Gulf of Mexico. This panel presentation will address floating production, storage and offloading systems, and methane hydrates.

Impact Assistance Update. This presentation will provide an update on the status of the Conservation and Reinvestment Act, the Lands Legacy proposal, and any other pertinent information related to this issue.

Congressional Update. This presentation will focus on the status of timely congressional issues related to the OCS Program.

MMS Regional Updates. The Regional Directors will highlight activities in the Gulf of Mexico (GOM) and off the California and Alaska coasts.

OCS Scientific Committee Update. This presentation will provide an update on the activities of the Scientific Committee. It will also highlight the

activities that are related to energy issues/concerns, North Atlantic activity, GOM deepwater activity, hard mineral activity, and other topics that are relevant to both Committees.

The meeting is open to the public. Upon request, interested parties may make oral or written presentations to the OCS Policy Committee. Such requests should be made no later than May 10, 2000, to the Minerals Management Service, 381 Elden Street, MS–4001, Herndon, Virginia, 20170, Attention: Jeryne Bryant.

Requests to make oral statements should be accompanied by a summary of the statement to be made. For more information, call Jeryne Bryant at (703) 787–1211.

Minutes of the OCS Policy Committee meeting will be available for public inspection and copying at the MMS in Herndon, Virginia.

DATES: Tuesday, May 16 and Wednesday, May 17, 2000.

ADDRESSES: The Atlantic Oakes Hotel, 119 Eden Street, Bar Harbour, Maine 04609, (207) 288–5801.

FOR FURTHER INFORMATION CONTACT: Jeryne Bryant at the address and phone number listed above.

Authority: Federal Advisory Committee Act, Public Law 92–463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: April 24, 2000.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 00–10532 Filed 4–26–00; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Section of Anthropology, Carnegie Museum of Natural History, Pittsburgh, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10(a)(3), of the intent to repatriate cultural items in the possession of the Section of Anthropology, Carnegie Museum of Natural History, Pittsburgh, PA which meet the definition of "unassociated funerary object" under Section 2 of the Act.

The 326 cultural items consist of a metal pipe (#01187), an English clay pipe (#01269); two shell ornaments (#15236); a shell bead (#15260); 214 shell beads (#16159); 9 shell beads (#16164); 95 shell disc beads , one cylindrical catlinite bead, one round catlinite bead (#16196); and one kettle fragment (#16404).

In 1968, these cultural items were donated by Miss Rhea E. Beck and Mrs. Hazel Beck Lees to the Carnegie Museum as part of the John A. Beck Archaeological and Ethnographic Collection. During the early 20th century, these cultural items were purchased from Wm. W. Adams, an individual known for digging into graves and sites for objects to sell.

Based on catalog information, these cultural items have been determined to come from locations within "old Indian Reservation, Cayuga, (Co.), NY", or Upper Cayuga, NY. Consultations with a representative of the Cayuga Nation of New York indicates these cultural items were taken from Cayuga tribal land.

Based on the above mentioned information, officials of the Carnegie Museum of Natural History have determined that, pursuant to 43 CFR 10.2(d)(2)(ii), these 326 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Carnegie Museum of Natural History have also determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity which can be reasonably traced between these items and the Cayuga Nation of New York.

This notice has been sent to officials of the Cayuga Nation of New York and the Seneca-Cayuga Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Verna L. Cowin, Associate Curator, Section of Anthropology, Carnegie Museum of Natural History, 5800 Baum Blvd., Pittsburgh, PA 15206–3706; telephone: (412) 665–2601 before May 30, 2000. Repatriation of these objects to the Cayuga Nation of New York may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: April 21, 2000.

Veletta Canouts,

Acting Departmental Consulting Archeologist, Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 00–10534 Filed 4–26–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Repatriate Cultural Items in the Control of the Denver Art Museum, Denver, CO

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Denver Art Museum (DAM), Denver, CO which meet the definition of "sacred object" under Section 2 of the Act.

The 17 cultural items are: A Motoki Society snake headdress bundle (1946.60) consisting of a beaded leather snake, shell, paint stick, two paint bags, three grass braids, three eagle feather uprights, and an eagle bone whistle; a Motoki Society snake headdress bundle (1946.208) consisting of a beaded leather snake, leather bag, braid of sweetgrass, gut tubular bag for feathers, four sticks with eagle feathers, a paint stick, and an eagle bone whistle; a Motoki Society snake headdress bundle component (1946.103) consisting of a bag containing green paint; a Motoki Society buffalo headdress bundle (1938.143) consisting of a parfleche and a headdress of bison fur; an imitation Motoki Society headdress bundle (1946.216) consisting of a parfleche, a cloth wrapping, a headdress made of bison fur, a parfleche containing nine paint containers, three shells, and a paint stick; a component (1946.186) of the preceding imitation Motoki Society bundle consisting of an eagle bone whistle with attached string of blue glass beads; a Motoki Society bird headdress bundle (1938.254) consisting of a parfleche, a headdress made of bison fur and feathers, an eagle bone whistle, two shells, two cloth wrappings, a paint stick, and four braids and tassel of sweetgrass, a Motoki Society bird headdress bundle (1946.129) consisting of a headdress made of bison fur and feathers, and a pair of wooden sticks (a shell attributed to this bundle actually goes with 1946.208); a Dog Society headdress (1938.135) consisting of a feather bonnet with red flannel trailer with attached eagle feathers; a rattle (1938.217) associated with the preceding headdress and consisting of wood stick with attached ermine tails, feathers, and bells; a Dog Society rattle (1938.225) consisting of a wood stick with a fringe of bells and an attached feather; an All Brave Dog Society headdress bundle

(1938.265) consisting of a parfleche and headdress made of red strouding with feathers, weasel tails, strands of quill, and bells; an All Brave Dog Society rattle bundle (1939.129) consisting of a parfleche and rattle with feathers; an All Brave Dog Society headdress bundle (1939.132) consisting of a parfleche, headdress made of red strouding with two bear claws, feathers, and weasel tails, and rattle with attached feathers; a Children's Medicine Pipe Bundle (1946.207) consisting of a parfleche pipe with black Micmac-type bowl, deerskin and cloth wrappers for pipe, eagle bone whistle, and sweetgrass; and a beaver bundle pipe bowl (1942.178) made of sandstone and bladder bag.

A Motoki Society snake headdress bundle (1946.60) was kept by a society member named Mrs. Healy until her death about 1921. In 1939, her daughter, Katy, either sold the headdress bundle to Madge Hardin Walters via Percy Creighton, a Blood man, or she sold it to Creighton who sold it to Walters. Walters loaned the bundle to DAM in 1940 and sold it to DAM in 1946.

A Motoki Society snake headdress bundle (1946.208) was sold by Percy Creighton in 1943 to Madge Hardin Walters. It is possible, but uncertain, that this headdress bundle was kept by a society member named Mrs. Scratching Chief until her death about 1930, and her daughter, Mrs. Black Plume, sold it to Percy Creighton, and he sold it to Walters. In 1943, Walters loaned the bundle to DAM and sold it to DAM in 1946.

A Motoki Society snake headdress bundle (1940.103) was originally kept by one of two members of the Motoki Society, named Small Face Woman and Separate Spear Woman, but it is not clear which was the keeper. In 1938, this bundle was sold by Percy Creighton to Madge Hardin Walters. In 1953, this bundle was exchanged by DAM to the National Museum of Natural History, but a component consisting of a bag containing green paint was retained by DAM.

In 1938, a Motoki Society buffalo headdress bundle (1938.143) was sold by Madge Hardin Walters to DAM. This bundle was mistakenly associated with an object history authored by Ethel Tail Feathers and consequently identified incorrectly as a "Beaver Bundle buffalo headdress." It may have been sold to Walters by Percy Creighton or by a party who used Creighton as an intermediary. Consultation with the Blood Tribe Motoki Society in 1998 confirmed that this headdress conforms to the style of a Motoki Society buffalo headdress.

In 1939, a probable imitation Motoki Society buffalo headdress bundle (1946.216) was sold by Frank Red Crow, a Blood man, to Madge Hardin Walters. In 1940, Walters loaned this bundle to DAM, and DAM purchased this bundle from Walters in 1946. Red Crow provided two conflicting accounts of the history of this headdress. In correspondence to Walters in 1939, Red Crow wrote that a man inherited the headdress from his mother who had died "some time ago." Red Crow asserted that he was simply acting as an intermediary between this man and Walters. In 1951, however, Red Crow told John Ewers that he arranged the sale to Walters of the headdress from a member of the society named Owl Woman. Also in 1951, Cecile Black Boy told Ewers that, in her opinion, Red Crow had simply "just made up" the headdress for sale to Walters. Following extensive research on Blood conveyance patterns, DAM is skeptical that any living member of the Motoki Society would have sold her headdress bundle during the 1930s. In a 1977 publication, Adolph Hungry Wolf presented oral information that Red Crow was known to reproduce objects for sale, an accusation supported by other information collected by John Ewers in 1951 from Chewing Black Bones. In DAM's opinion, this headdress was probably made as a replica by Frank Red Crow for sale to Walters. DAM finds that this headdress does not fit a NAGPRA category.

A Motoki Society headdress bundle component (1946.186) consisting of an eagle bone whistle with attached string of blue glass beads is probably associated with the above buffalo headdress bundle (1946.216) on the basis of an uncontested association made in a DAM accession record. As discussed above, this headdress bundle component was probably made as a replica by Frank Red Crow for sale to Walters. DAM finds that this headdress bundle component does not fit a NAGPRA category.

In 1938, a Motoki Society bird headdress bundle (1938.254) was sold to DAM by Madge Hardin Walters. An attribution of unknown significance is made on one DAM record: "From Hungry Crow."

A Motoki Society bird headdress bundle (1938.136) was kept by a member of the society named Awl Body until her death sometime around 1904–1910. Her daughter, Mrs. Mountain Horse, sold the bundle either to Percy Creighton or to Madge Hardin Walters via Creighton in 1939. In 1940, Walters sold this bundle to DAM.

In 1940, a Motoki Society bird headdress bundle (1946.129) was loaned to DAM by Madge Hardin Walters, who sold this bundle to DAM in 1946.

In 1936, a Dog Society headdress (1938.135) and rattle (1938.217) were sold by Percy Creighton, probably acting as an intermediary on behalf of an unnamed person, to Madge Hardin Walters, who loaned this headdress and rattle to the DAM. In 1938, Walters sold this headdress and rattle to DAM.

In 1938, a Dog Society rattle (1938.225) was sold to DAM by Madge Hardin Walters.

In 1937, an All Brave Dog Society headdress bundle (1938.265) was sold by a man named Gambler to Madge Hardin Walters via Percy Creighton. In February, 1938, Walters loaned this bundle to DAM, and sold it to DAM in April, 1938.

Prior to 1939, an All Brave Dog Society headdress bundle (1939.132) was sold by a Blood man named Dick Black Plume to Madge Hardin Walters via Percy Creighton. In 1939, Walters sold this bundle to DAM.

In 1941, a Children's Medicine Pipe Bundle (1946.207) was sold by a Blood man named Charlie Davis to Madge Hardin Walters via Percy Creighton. Also in 1941, Walters loaned this bundle to DAM, and sold it to DAM in 1946. DAM finds that the Blackfoot Confederacy has not presented sufficient evidence to show this bundle meets the NAGPRA definition for sacred object.

In 1942, a beaver bundle (1942.178) was sold by Madge Hardin Walters to DAM. In 1952, the bundle was exchanged to the Peabody Museum of Archaeology and Ethnology, Cambridge, MA, but a pipe bowl was retained by DAM. DAM finds that the Blackfoot Confederacy has not presented sufficient evidence to show this pipe bowl meets the NAGPRA definition for sacred object.

Denver Art Museum records show that the above cultural items originated from citizens of the Blood Tribe during the 1930s and 1940s. Consultation with officials and religious leaders of the Blackfoot Confederacy in 1998 confirm the identifications of the cultural items as originating from the tribe and that the items associated with the societies are needed for ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. The Blood Tribe is one of four tribes comprising the Blackfoot Confederacy, which includes the Blackfeet Nation of Montana, the Peigan Nation, and the Siksika Nation. The present-day Blackfoot Confederacy is descended from the four tribes of the Blackfoot Confederacy as it existed

during the 1930s. The Denver Art Museum holds right of possession to all of these items pursuant to Section 2 of the Act, and offers the items as gifts to the Blackfeet Nation of Montana and the Blood Tribe of Alberta, Canada.

Based on the above-mentioned information, officials of the Denver Art Museum have determined that, pursuant to 43 CFR 10.2 (d)(3), these 13 cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Denver Art Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these 17 items and the Blackfeet Nation of Montana on behalf of the Blackfoot Confederacy (Blackfeet Nation of Montana, the Peigan Nation, the Blood Tribe, and the Siksika Nation).

This notice has been sent to officials of the Blackfeet Nation of Montana on behalf of the Blackfoot Confederacy (Blackfeet Nation of Montana, the Peigan Nation, the Blood Tribe, and the Siksika Nation). Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Nancy J. Blomberg, Curator of Native Arts, Denver Art Museum, 100 West 14th Avenue Parkway, Denver, CO 80204; telephone: (720) 913–0161 before May 30, 2000. Repatriation of these objects to the Blackfeet Nation of Montana on behalf of the Blackfoot Confederacy (Blackfeet Nation of Montana, the Peigan Nation, the Blood Tribe, and the Siksika Nation) may begin after that date if no additional claimants come forward.

Dated: April 20, 2000.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 00–10464 Filed 4–26–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of the Alaska State Office, Bureau of Land Management, Anchorage, AK

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the control of the Alaska State Office, Bureau of Land Management, Anchorage, AK.

A detailed assessment of the human remains was made by Bureau of Land Management and University of Alaska Museum professional staff in consultation with representatives of the Native Village of Eagle, AK.

In 1939, human remains representing one individual were uncovered during legally authorized construction of the Civilian Aeronautics Administration building in Eagle, AK. No known individual was identified. The 115 associated funerary objects include glass beads, one dentalium shell, 13 pieces of wood with red color, and one bag of wood fragments and particles.

In 1949, human remains representing one individual were uncovered in the same vicinity as the 1939 individual during legally authorized collections by Dr. Otto Geist of the University of Alaska Museum. No known individual was identified. The 19 associated funerary objects are birch bark pieces with lacing holes.

Both of these individual are curated at the University of Alaska Museum.

Based on skeletal morphology, geographic location, and associated artifacts, these two individuals have been identified as Native American, affiliated with Han Athabaskan culture and specifically with the Native Village of Eagle, AK. This determination of cultural affiliation has been based upon the continuity of Native Americans in the Eagle area and their oral tradition that the area where the remains were found is a traditional burial site.

Based on the above mentioned information, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Bureau of Land Management have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 134 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Native Village of Eagle, Alaska.

This notice has been sent to officials of the Native Village of Eagle, Alaska. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Robert King, Alaska State NAGPRA Coordinator, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599; telephone: (907) 271–5510, before May 30, 2000. Repatriation of the human remains and associated funerary objects to the Native Village of Eagle, Alaska may begin after that date if no additional claimants come forward.

Dated: April 20, 2000.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 00–10463 Filed 4–26–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Repatriate Cultural Items in the Possession of the South Dakota State Archaeological Research Center, Rapid City, SD

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the South Dakota State Archaeological Research Center, Rapid City, SD which meet the definition of "unassociated funerary object" under Section 2 of the Act.

The 107 cultural items consist of two pipes, three stones, a large metal ring, five lots of beads, 31 buttons, 11 wristlets, two bear tooth pendants, an elk tooth pendant, two pairs of earrings, a watch fob, a ball and chain ornament, two armbands, a metal disc with scarf, a bullet mold, a powder flask, a percussion cap box, two metal knives, a pistol cleaning rod, a fishhook, a strike-a-light, four spoons, a hand-mirror with case, seven bells, a pair of scissors, two bone tubes, an ivory gaming chip, a stoneware ink bottle, a nail, a metal fragment, six leather fragments, three wood fragments, six textile fragments, a fur fragment, and a gunstock club.

Between 1923–1941, these cultural items were removed with human remains representing nine individuals from burials at the Vermillion Bluff

Village (39CL1) by workmen during home construction activities. These human remains and objects were donated to the W.H. Over Museum, Vermillion, SD. In 1974, these human remains and objects were transferred to the South Dakota State Archaeological Research Center. In 1982, the human remains were repatriated to Frank Fools Crow, Oglala Sioux Tribe, Pine Ridge Reservation, SD.

Based on oral tradition, archeological evidence, historical accounts, and geographic location, the burials at the Vermillion Bluff Village have been identified as Yankton dating to the historic period (post-AD 1800).

The 65 cultural items consist of a shell hairpipe, ten lots of beads, seven bells, four wristlets, an armband, four bear claws, an elk tooth, a roach spreader, an earring, a pair of brass tubes and tinklers, two tack necklaces and tack, a dance mirror, two files, two strike-a-lights, two fishhooks, an antler powder measure, a flintlock gun, a metal knife, a metal projectile point, a stone biface, a pair of sandstone abraders, a pair of scissors, a thimble, a catlinite pipe and stem, a catlinite tobacco tamper, a horse bit, a plate glass item, two wood fragments, two leather fragments, and eight metal fragments.

In 1917, these cultural items and human remains representing one individual were excavated from site 39CL6 by the private landowner, A.A. Norgren, on his farm near Centerville, SD. These human remains and objects were donated to the W.H. Over Museum in Vermillion, SD. In 1974, these human remains and objects were transferred to the South Dakota State Archaeological Research Center. In 1982, the human remains were repatriated to Frank Fools Crow, Oglala Sioux Tribe, Pine Ridge Reservation, SD.

Based on oral tradition, archeological evidence, historical accounts, and geographic location, the burials at the Vermillion Bluff Village have been identified as Yankton dating to the historic period (post-AD 1800).

Based on the above mentioned information, officials of the South Dakota State Archaeological Research Center have determined that, pursuant to 43 CFR 10.2(d)(2)(ii), these cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the South Dakota State Archaeological Research Center have also determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity which can be reasonably traced between these items and the Yankton Sioux Tribe of South Dakota.

This notice has been sent to officials of the Yankton Sioux Tribe of South Dakota, and the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Renee Boen, Curator, State Archaeological Center, South Dakota Historical Society, P.O. Box 1257, Rapid City, SD 57709–1257; telephone: (605) 394–1936 before May 30, 2000. Repatriation of these objects to the Yankton Sioux Tribe of South Dakota may begin after that date if no additional claimants come forward.

Dated: April 21, 2000.

Veletta Canouts,

Acting Departmental Consulting Archeologist, Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 00–10533 Filed 4–26–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

TIME AND DATE: 8:30 a.m. to 5 p.m. on Monday, June 5, 2000 and 8 a.m. to 12 noon on Tuesday, June 6, 2000.

PLACE: On Monday, June 5—National Institute of Corrections Offices, 1960 Industrial Circle, Longmont, Colorado 80501. On Tuesday, June 6—Raintree Plaza Hotel and Conference Center, 1900 Ken Pratt Boulevard, Longmont, Colorado 80501.

STATUS: Open.

MATTERS TO BE CONSIDERED: Tours/Presentations Concerning National Institute of Corrections Training Space, Information Center and Computer Lab; Report on Office of Offender Job Training and Placement; Updates on Mental Health Program Options, the NIC Strategic Plan, Interstate Compact Activities, Advisory Board Hearings; and Reports by Program Divisions Concerning Technical Assistance.

CONTACT PERSON FOR MORE INFORMATION: Larry Solomon, Deputy Director, (202) 307–3106, ext. 155.

Morris L. Thigpen,

Director.

[FR Doc. 00–10480 Filed 4–26–00; 8:45 am]

BILLING CODE 4410–36–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–038]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee.

DATES: Thursday, May 18, 2000, 8:30 a.m. to 5 p.m.; and Friday, May 19, 2000, 8 a.m. to 12 Noon.

ADDRESSES: Center for Advanced Space Studies (CASS), 3600 Bay Area Blvd., 1045–Hess Room, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen C. Davison, Code UG, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0647.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Overview of JSC: Roles and Responsibilities
- JSC: The Challenges
- OLMSA Overview: 2001 Budget Status and Issues
- Workshop Results: NASA/NCI Collaboration on Bio-Molecular Systems and Technology
- Ad Hoc Committee Report on Selection and Balancing of Mission Payloads
- NRC Report: Institutional Arrangements for Space Station Research
- JSC Bioastronautics Program
- JSC Cellular Biotechnology
- Discussion of Committee Findings and Recommendations

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: April 24, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–10495 Filed 4–26–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–039]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Life Sciences Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Life Sciences Advisory Subcommittee.

DATES: Wednesday, May 17, 2000, 8:00 a.m. to 5:30 p.m.

ADDRESSES: Center for Advanced Space Studies (CASS), 3600 Bay Area Blvd., 1045–Hess Room, Houston, TX, 77058.

FOR FURTHER INFORMATION CONTACT: David Tomko, Code UL, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2211.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Action Status
—Life Sciences Division Update
—Biology Research Project Status Report
—Biology Pillars—Organization, Management, and Budget Briefing
—FY 2000 Budget Status and FY 2001 Budget Plan
—IRB and IACUC Process in NASA Status
—Review of LSAS Archiving Task Force
—HRF Status Report
—FY 2000 Performance Metrics
—Review of Committee Findings and Recommendations

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: April 24, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–10496 Filed 4–26–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–037]

Notice of Prospective Copyright License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Knowledge Technologies, Inc., of Miami, FL, has applied for an exclusive copyright license in North, Central and South America, to ARC–15008, "Postdoc," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Ames Research Center.

DATE: Responses to this notice must be received by June 26, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Padilla, Patent Counsel, NASA Ames Research Center, M/S 202A–3, Moffett Field, CA 94035–1000, (650) 604–5104.

Dated: April 21, 2000.

Edward A. Frankle,

General Counsel.

[FR Doc. 00–10494 Filed 4–26–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–040]

Notice of Prospective Copyright License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Reality Capture Technologies, Inc., of San Jose, CA, has applied for a worldwide exclusive copyright license to ARC–14345, "MarsMap," ARC–14326, "Mars Virtual Explorer Control Program," and ARC–15008, "Postdoc," which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Ames Research Center.

DATES: Responses to this notice must be received by June 26, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Padilla, Patent Counsel, NASA Ames Research Center, M/S 202A–3, Moffett Field, CA 94035–1000, (650) 604–5104.

Dated: April 24, 2000.

Edward A. Frankle,

General Counsel.

[FR Doc. 00–10497 Filed 4–26–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL SCIENCE FOUNDATION

Committee Management; Notice of Establishment

The Director of the National Science Foundation has determined that the establishment of the Advisory Committee for Environmental Research and Education is necessary and in the public interest in connection with the performance of duties imposed upon the National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Advisory Committee for Environmental Research and Education (5326).

Purpose: Advise NSF on the impact of its research support and NSF-wide policies on the scientific community; provide input into developing long range plans; and perform oversight of program management, overall program balance, and other aspects of program performance for the environmental research portfolio with NSF.

Responsible NSF Official: Marge Cavanaugh, Staff Associate for the Environment, National Science Foundation, 4201 Wilson Boulevard, Suite 1205, Arlington, VA 22230, telephone, (703) 306–1003.

Dated: April 24, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–10525 Filed 4–26–00; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF ENERGY

Nuclear Regulatory Commission

[Docket Nos. 50–277 and 50–278]

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, Atlantic City Electric Company; Peach Bottom Atomic Power Station, Units 2 and 3; Order Approving Transfer of Licenses and Conforming Amendments

I

PECO Energy Company (PECO), Public Service Electric and Gas Company (PSE&G), Delmarva Power and Light Company (DP&L), and Atlantic City Electric Company (ACE) are the joint owners of the Peach Bottom Atomic Power Station, Units 2 and 3 (Peach Bottom), located in York County, Pennsylvania. They hold Facility Operating Licenses Nos. DPR–44 and DPR–56 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) on October 25, 1973, and July 2, 1974, respectively, pursuant to part 50 of title 10 of the Code of Federal Regulations (10 CFR Part 50). Under these licenses, PECO (currently owner of 42.49 percent of each Peach Bottom unit) is authorized to possess, use, and operate the Peach Bottom units. The current, non-operating ownership interests of the other joint owners for each Peach Bottom unit are as follows: PSE&G, 42.49 percent; DP&L, 7.51 percent; and ACE, 7.51 percent.

II

By an application dated December 21, 1999, which was supplemented on February 11, March 2, and March 16, 2000 (collectively referred to herein as the application), PECO, PSE&G, PSEG Nuclear Limited Liability Company (PSEG Nuclear), DP&L, and ACE, requested approval by the NRC of the transfer to PECO and PSEG Nuclear of the Peach Bottom licenses, to the extent held by DP&L and ACE, in conjunction with the proposed acquisition of DP&L's and ACE's ownership interests in the Peach Bottom units by PECO and PSEG Nuclear. According to the application, depending upon the timing of regulatory approvals sought by PSEG Nuclear concerning other transfer matters not involving DP&L and ACE, as an interim step the interests of DP&L and ACE to be acquired by PSEG Nuclear may be transferred first to PSE&G, and then to PSEG Nuclear. No physical changes or significant changes in the day-to-day management and operations of the Peach Bottom units are proposed in the application. The proposed transfer does not involve any change with respect tothe exclusive operating authority of the Peach Bottom units, currently held by PECO.

PECO also requested approval of conforming license amendments to reflect the transfer. The amendments would replace references to DP&L and ACE, with PSEG Nuclear.

Approval of the transfer and conforming license amendments was requested pursuant to 10 CFR 50.80 and 50.90. A notice of the application for transfer approval as well as the request for amendments and an opportunity for a hearing was published in the **Federal Register** on February 18, 2000 (65 FR 8451). No hearing requests were filed.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. After reviewing the information submitted in the application and other information before the Commission, the NRC staff has determined that PECO and PSEG Nuclear are qualified to hold the licenses for each Peach Bottom unit, to the same extent the licenses are now held by DP&L and ACE and that the transfer of the licenses, as previously described herein, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions described herein. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed license amendments will be in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied. These findings are supported by a Safety Evaluation dated April 21, 2000.

III

Accordingly, pursuant to sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2201(b), 2201(i), and 2234; and 10 CFR 50.80, *It Is Hereby Ordered* That the license transfers from DP&L and ACE to PECO and PSEG Nuclear referenced above are approved, subject to the following conditions:

1. Any interim transaction described in the application whereby DP&L's and ACE's interests in Peach Bottom Units 2 and 3 are first acquired by PSE&G, or any other entity prior to the acquisition by PSEG Nuclear of such interest, shall not result in the acquisition, possession, or use of Peach Bottom Units 2 and 3, or any activity for which a license is required under the Atomic Energy Act of 1954, as amended, by any entity other than PSEG Nuclear, unless such result is expressly approved by a separate order upon further application. This Order shall not be deemed to provide consent under 10 CFR 50.80 to the transfer of the licenses for Peach Bottom Units 2 and 3 with respect to DP&L's and ACE's interests in Peach Bottom Units 2 and 3 to any entities other than PECO and PSEG Nuclear.

2. ACE and DP&L will transfer on or about the closing date to the respective PECO and PSEG Nuclear decommissioning trusts in equal shares a minimum of $42.4 million for Peach Bottom Unit 2, and $43.7 million for Peach Bottom Unit 3.

3. The decommissioning trust agreement(s) for Peach Bottom Units 2 and 3 shall provide that:

a. The use of assets in both the qualified and non-qualified funds shall be limited to expenses related to decommissioning of the unit as defined by the NRC in its regulations and issuances, and as provided in the unit's license and any amendments thereto. However, upon completion of decommissioning, as defined above, the assets may be used for any purpose authorized by law.

b. Investments in the securities or other obligations of PSE&G or affiliates thereof, or their successors or assigns, shall be prohibited. In addition, except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants shall be prohibited.

c. No disbursements or payments from the trust shall be made by the trustee until the trustee has first given the NRC 30 days notice of the payment. In addition, no disbursements or payments from the trust shall be made if the trustee receives prior written

notice of objection from the Director, Office of Nuclear Reactor Regulation.

d. The trust agreement shall not be modified in any material respect without prior written notification to the Director, Office of Nuclear Reactor Regulation.

e. The trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(3) of the Federal Energy Regulatory Commission's regulations.

4. After receipt of all required regulatory approvals of the subject transfer, PECO shall inform the Director, Office of Nuclear Reactor Regulation, in writing of such receipt, and of the date of closing of the transfer no later than 7 business days prior to the date of closing. Should the transfer not be completed by December 31, 2000, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

It Is Further Ordered That, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform each Peach Bottom license to reflect the subject transfers are approved. Such amendments shall be issued and made effective at the time the proposed license transfer is completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the transfer application dated December 21, 1999, and supplements dated February 11, March 2, and March 16, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. Publically available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 21st day of April 2000.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–10505 Filed 4–26–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–387 and 50–388]

PP&L, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–14 and NPF–22 issued to PP&L, Inc. (the licensee) for operation of the Susquehanna Steam Electric Station (SSES), Units 1 and 2, located in Luzerne County, Pennsylvania.

The proposed amendment would amend the licenses to change the required implementation date for previously issued license Amendment No. 184 to Facility Operating License NPF–14 and Amendment No. 158 to Facility Operating License NPF–22. The proposed amendment would not alter any of the requirements of the SSES Unit 1 and 2 Technical Specifications (TSs). The previously issued amendments incorporate long-term power stability solution instrumentation into the SSES Unit 1 and 2 TSs. When implemented, these amendments will incorporate into the TSs the licensee's final response to GL 94–02, "Long Term Solutions and Upgrade of Interim Operating Recommendations for Thermal-Hydraulic Instabilities in Boiling Water Reactors." Specifically, these amendments will, in part, add TS requirements related to the operating power range monitoring (OPRM) system. The licensee stated that design deficiencies have adversely affected its ability to install and operate the OPRM system. Therefore, the licensee requested that the required implementation date for Amendment No. 184 to License NPF–14 and Amendment No. 158 to License No. NPF–22 be revised to become effective no later than November 1, 2001. The licensee stated that the revised date would provide sufficient time to complete efforts necessary to ensure the OPRM system's final readiness for operation.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment implementation date extension is administrative in nature and does not require any physical plant modifications, physically affect any plant systems or components, nor entail changes in plant operation. The resulting consequences of transients and accidents will remain within the NRC approved criteria. Therefore, the proposed action does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment implementation date extension is administrative in nature and does not require any physical plant modifications, physically affect any plant systems or components, nor entail changes in plant operation. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed amendment implementation date extension is administrative in nature and does not require any physical plant modifications, physically affect any plant systems or components, nor entail changes in plant operation. Since the proposed changes do not affect the physical plant or have any impact on plant operation, the proposed changes will not jeopardize or degrade the function or operation of any plant system or component. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be

considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 30, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Bryan A. Snapp, Esquire, Assoc. General Counsel, PP&L, Inc., 2 North Ninth St., GENTW3, Allentown, PA 18101–1179, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 14, 2000, and supplement dated March 27, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building,

2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 19th day of April 2000.

For the Nuclear Regulatory Commission.

Robert G. Schaaf,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–10296 Filed 4–26–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–354]

Public Service Electric and Gas Company, Atlantic City Electric Company, (Hope Creek Generating Station); Order Approving Transfer of License and Conforming Amendment

I

Public Service Electric and Gas Company (PSE&G) and the Atlantic City Electric Company (ACE) are the joint owners of the Hope Creek Generating Station (HCGS), located in Salem County, New Jersey. They hold Facility Operating License No. NPF–57, issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) on July 25, 1986, pursuant to Part 50 of title 10 of the Code of Federal Regulations (10 CFR Part 50). Under this license, PSE&G (currently owner of 95 percent of HCGS) is authorized to act as agent for ACE (owner of the remaining 5 percent) and has exclusive responsibility and control over the physical construction, operation, and maintenance of the facility.

II

By application dated December 20, 1999, as supplemented February 11 and February 25, 2000 (collectively referred to herein as the application), PSE&G, ACE, and PSEG Nuclear Limited Liability Company (PSEG Nuclear), requested approval by the NRC of the transfer to PSEG Nuclear of the HCGS license, to the extent it is held by ACE, in conjunction with the proposed acquisition of ACE's ownership interest in HCGS by PSEG Nuclear. According to the application, depending upon the timing of regulatory approvals sought by PSEG Nuclear concerning other transfer matters not involving ACE, as an interim step the interest of ACE to be acquired by PSEG Nuclear may be transferred first to PSEG Power LLC, the parent of PSEG Nuclear, or to PSE&G, and then to PSEG Nuclear. No physical changes or significant changes in the day-to-day management and operations of HCGS are proposed in the application.

PSE&G also requested approval of a conforming license amendment to reflect the transfer. The amendment would replace references to ACE with PSEG Nuclear.

Approval of the transfer and conforming license amendment was requested pursuant to 10 CFR 50.80 and 50.90. A notice of the application for transfer approval as well as the request for amendment and an opportunity for a hearing was published in the **Federal Register** on February 18, 2000 (65 FR 8453). No hearing requests were filed.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission consents in writing. After reviewing the information submitted in the application and other information before the Commission, the NRC staff has determined that PSEG Nuclear is qualified to hold the license to the same extent the license is now held by ACE, and that the transfer of the license, as previously described herein, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions described herein. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed license amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. These findings are supported by a Safety Evaluation dated April 21, 2000.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234, and 10 CFR 50.80, *It Is Hereby Ordered* That the license transfer from ACE to PSEG Nuclear referenced above is approved, subject to the following conditions:

1. Any interim transaction described in the application whereby ACE's interest in HCGS is first acquired by PSE&G, PSEG Power, or any other entity prior to the acquisition by PSEG Nuclear of such interest, shall not result in the acquisition, possession, or use of HCGS, or any activity for which a license is required under the Atomic Energy Act of 1954, as amended, by any entity other than PSEG Nuclear, unless such result is expressly approved by a separate order upon further application. This Order shall not be deemed to provide consent under 10 CFR 50.80 to the transfer of the license for HCGS with respect to ACE's interest in HCGS to any entity other than PSEG Nuclear.

2. ACE will transfer on or about the closing date to the PSEG Nuclear decommissioning trusts for HCGS, a minimum of $9.9 million.

3. The decommissioning trust agreement(s) for HCGS shall provide that:

a. The use of assets in both the qualified and non-qualified funds shall be limited to expenses related to decommissioning of the unit as defined by the NRC in its regulations and issuances, and as provided in the unit's license and any amendments thereto. However, upon completion of decommissioning, as defined above, the assets may be used for any purpose authorized by law.

b. Investments in the securities or other obligations of PSE&G or affiliates thereof, or their successors or assigns, shall be prohibited. In addition, except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants shall be prohibited.

c. No disbursements or payments from the trust shall be made by the trustee until the trustee has first given the NRC 30 days notice of the payment. In addition, no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation.

d. The trust agreement shall not be modified in any material respect without prior written notification to the Director, Office of Nuclear Reactor Regulation.

e. The trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(3) of the Federal Energy Regulatory Commission's regulations.

4. After receipt of all required regulatory approvals of the subject transfer, PSE&G shall inform the Director, Office of Nuclear Reactor Regulation, in writing of such receipt, and of the date of closing of the transfer no later than 7 business days prior to the date of closing. Should the transfer not be completed by December 31, 2000, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

It Is Further Ordered That, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject license transfer is approved. Such amendment shall be issued and made effective at the time the proposed license transfer is completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated December 20, 1999, and supplements dated February 11, and February 25, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. Publically available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 21st day of April 2000.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–10503 Filed 4–26–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

Public Service Electric and Gas Company, Philadelphia Electric Company (PECO Energy Company, Delmarva Power and Light Company, Atlantic City Electric Company (Salem Nuclear Generating Station, Units 1 and 2); Order Approving Transfer of Licenses and Conforming Amendments

I

Public Service Electric and Gas Company (PSE&G), Philadelphia Electric Company (PECO Energy Company), Delmarva Power and Light Company (DP&L), and Atlantic City Electric Company (ACE) are the joint owners of the Salem Nuclear Generating Station, Unit Nos. 1 and 2 (Salem), located in Salem County, New Jersey. They hold Facility Operating Licenses Nos. DPR–70 and DPR–75, issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) on August 13, 1976, and May 20, 1981, respectively, pursuant to part 50 of title 10 of the Code of Federal Regulations (10 CFR Part 50). Under these licenses, PSE&G (currently owner of 42.59 percent of each Salem unit) is authorized to possess, use, and operate the Salem units. The current, non-operating combined ownership interests of DP&L and ACE are 14.82 percent of each Salem unit.

II

By application dated December 20, 1999, as supplemented February 11 and February 25, 2000 (collectively referred to herein as the application), PSE&G, PSEG Nuclear Limited Liability Company (PSEG Nuclear), DP&L, and ACE requested approval by the NRC of the transfer to PSEG Nuclear of the Salem licenses, to the extent held by DP&L and ACE, in conjunction with the proposed acquisition of DP&L's and ACE's combined ownership interests in the Salem units by PSEG Nuclear. According to the application, depending upon the timing of regulatory approvals sought by PSEG Nuclear concerning other transfer matters not involving DP&L and ACE, as an interim step the interests of DP&L and ACE to be acquired by PSEG Nuclear may be transferred first to PSEG Power LLC, the parent of PSEG Nuclear, or to PSE&G, and then to PSEG Nuclear. No physical changes or significant changes in the day-to-day management and operations of the Salem units are proposed in the application.

PSE&G also requested approval of conforming license amendments to reflect the transfers. The amendments would replace references to DP&L and ACE with PSEG Nuclear.

Approval of the transfers and conforming license amendments was requested pursuant to 10 CFR 50.80 and 50.90. A notice of the application for transfer approval as well as the request for amendments and an opportunity for a hearing was published in the **Federal Register** on February 18, 2000 (65 FR 8452). No hearing requests were filed.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. After reviewing the information submitted in the application and other information before the Commission, the NRC staff has determined that PSEG Nuclear is qualified to hold the license for each Salem unit to the same extent the licenses are now held by DP&L and ACE, and that the transfer of the licenses, as previously described herein, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions described herein. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed license amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. These findings are supported by a Safety Evaluation dated April 21, 2000.

III

Accordingly, pursuant to sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80, It Is Hereby Ordered that

the license transfers from DP&L and ACE to PSEG Nuclear referenced above are approved, subject to the following conditions:

1. Any interim transaction described in the application whereby DP&L's and ACE's interests in Salem Units 1 and 2 are first acquired by PSE&G, PSEG Power, or any other entity prior to the acquisition by PSEG Nuclear of such interest, shall not result in the acquisition, possession, or use of Salem Units 1 and 2, or any activity for which a license is required under the Atomic Energy Act of 1954, as amended, by any entity other than PSEG Nuclear, unless such result is expressly approved by a separate order upon further application. This Order shall not be deemed to provide consent under 10 CFR 50.80 to the transfer of the licenses for Salem Units 1 and 2 with respect to DP&L's and ACE's interests in Salem Units 1 and 2 to any entity other than PSEG Nuclear.

2. ACE and DP&L will transfer on or about the closing date to the respective PSEG Nuclear decommissioning trusts a minimum of $41.9 million for Salem Unit 1, and $31.0 million for Salem Unit 2.

3. The decommissioning trust agreement(s) for Salem Units 1 and 2 shall provide that:

a. The use of assets in both the qualified and non-qualified funds shall be limited to expenses related to decommissioning of the unit as defined by the NRC in its regulations and issuances, and as provided in the unit's license and any amendments thereto. However, upon completion of decommissioning, as defined above, the assets may be used for any purpose authorized by law.

b. Investments in the securities or other obligations of PSE&G or affiliates thereof, or their successors or assigns, shall be prohibited. In addition, except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants shall be prohibited.]

c. No disbursements or payments from the trust shall be made by the trustee until the trustee has first given the NRC 30 days notice of the payment. In addition, no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation.

d. The trust agreement shall not be modified in any material respect without prior written notification to the Director, Office of Nuclear Reactor Regulation.

e. The trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(3) of the Federal Energy Regulatory Commission's regulations.

4. After receipt of all required regulatory approvals of the subject transfer, PSE&G shall inform the Director, Office of Nuclear Reactor Regulation, in writing of such receipt, and of the date of closing of the transfer no later than 7 business days prior to the date of closing. Should the transfer not be completed by December 31, 2000, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

It Is Further Ordered That, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform each Salem license to reflect the subject license transfers are approved. Such amendments shall be issued and made effective at the time the proposed license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated December 20, 1999, and supplements dated February 11 and February 25, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. Publically available documents will be accessible electronically from the ADAMS Public Library component on the NRC Web site *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 21st day of April 2000.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–10504 Filed 4–26–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF STATE

[Public Notice 3300]

Culturally Significant Objects Imported for Exhibition Determinations: "Chardin"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, I hereby determine that the objects to be included in the exhibition "Chardin," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY from on or about June 19 to on or about September 3, 2000 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44; 301 4th Street, SW., Room 700. Washington, DC 20547–0001.

Dated: April 19, 2000.

William P. Kiehl,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–10510 Filed 4–26–00; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF STATE

[Public Notice 3299]

Culturally Significant Objects Imported for Exhibition Determinations: "The Faberge Collection & 1000 Years of Russian Craftsmanship"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, I hereby determine that the objects to be included in the exhibition "The Faberge Collection & 1000 Years of Russian Craftsmanship," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display

of the exhibit objects at the Resorts, Atlantic City, NJ from on or about May 25, 2000 to on or about October 10, 2000 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44; 301–4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: April 19, 2000.

William P. Kiehl,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–10509 Filed 4–26–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3298]

Culturally Significant Objects Imported for Exhibition Determinations: "Raphael and his Circle: Drawings from Windsor Castle"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, I hereby determine that the objects to be included in the exhibition "Raphael and his Circle: Drawings from Windsor Castle," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art Washington, DC from May 14–July 23, 2000 and at the J. Paul Getty Museum, Los Angeles, CA from October 31–January 9, 2001 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44; 301–4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: April 19, 2000.

William P. Kiehl,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–10508 Filed 4–26–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3301]

Bureau of Educational and Cultural Affairs; Fulbright Teacher Exchange Program

ACTION: Request for Proposals.

SUMMARY: The Office of Global Educational Programs/Fulbright Teacher and Administrator Program of the Bureau of Educational and Cultural Affairs announces an open competition. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to provide administrative and program services for the Fulbright Teacher and Administrator Exchange Program. The total FY2001 grant award for program and administrative expenses may not exceed $1,322,000. Examples of services provided by the cooperating agency include: creating and updating handbooks and publicity materials; conducting recruitment campaigns and mailings; processing of all U.S. applications; pre-matching U.S. participants with foreign counterparts; monitoring program activities; paying stipends to and withholding taxes for selected foreign grantees; supporting special projects; administering alumni activities; and providing logistical support for Fall regional meetings and pre-orientation May workshops.

Program Information

Overview: The Fulbright Teacher and Administrator Program provides opportunities for teachers, administrators, and other school or college faculty to participate in direct exchanges of positions with colleagues from other countries for six weeks, a semester, or a full academic year.

The program provides a rich professional growth opportunity while enhancing mutual understanding among foreign and U.S. teachers, administrators, and their students. The major program components include alumni relations, recruitment and outreach, participant matching, the administration of training and professional meeting programs, and monitoring and evaluation protocols. The cooperating agency must maintain a flexible approach in response to changing program needs and priorities. Effective and direct communications between the cooperating agency and the Fulbright Teacher Exchange Branch will be necessary at all times. Bi-monthly meetings, and other meetings pertaining to the grant's core program components will be held on a regular basis. The cooperating agency will also be responsible for maintaining telephone, e-mail, and fax communications with appropriate Branch and ECA staff.

Alumni Program

A new alumni program initiative emphasizes the development of alumni groups throughout the United States. The cooperating agency will provide support to individual American alumni and assist them in developing their respective alumni groups. Alumni groups may develop small projects funded through this grant to enhance the program.

Recruitment and Outreach

U.S. program participants are recruited through a nation-wide recruitment campaign conducted by the cooperating agency, based on teachers' and administrators' professional background and leadership potential. Foreign exchange participants are recruited and nominated by U.S. embassies or overseas Fulbright Commissions. To qualify for the program, participants must have a minimum of three years professional experience, hold an equivalent full-time teaching position and a Bachelor's degree, and be fluent in English.

The cooperating agency will submit a yearly recruitment and outreach plan to the Branch and will be responsible for all recruitment activities including attendance at conferences, mass mailings of promotional materials, web site development, and responses to general inquires.

Matching

All U.S. candidates are interviewed by volunteer peer review committees and are matched with foreign partners whose professional and personal backgrounds are congruent with the backgrounds of their American partner. The cooperating agency forwards candidate dossiers to over 30 countries for consideration. The dossiers are evaluated and matched by either the Fulbright Commission, the public affairs section of the U.S. Embassy, or an in-country hosting organization depending upon which organization implements the program in country. All final

matches must be mutually agreed upon by the U.S. and foreign program representatives.

Professional Meeting Program

Regional meetings for U.S.-based foreign teachers are held at seven locations in the U.S. in the Fall of each academic year and are designed to broach the challenges of adjusting to teaching and living in the U.S. In addition, Spring meetings are held at about 20 to 25 regional sites in the U.S., and represent the first step in preparing U.S. teachers for their overseas exchanges. Spring meetings also assist the foreign teachers in preparing for re-entry in their own countries. The cooperating agency will be responsible for obtaining local administrative and program support for both Fall and Spring meetings and will assist in staffing a portion of the meetings.

Monitoring

During the academic year, the cooperating agency monitors the professional and personal well-being of the foreign teachers. Staff members from the cooperating organization evaluate and counsel foreign participants at approximately seven Fall and 20 to 25 May meetings. In addition, the cooperating agency will staff a full-time position solely for monitoring and supporting program participants. The cooperating agency consults with Branch staff and provides written reports on any issue that may adversely affect an exchange or the program in general.

Evaluation

The cooperating agency will also be responsible for developing a summative program evaluation at the end of each academic year. The evaluation will include, but not be limited to, an assessment of the effectiveness of each of the program components and may include suggestions for program improvement and innovation.

Guidelines

Approximately 200 exchanges (400 participants) are conducted yearly. The grant will begin on October 1, 2000 and will run through September 30, 2003. The administrative portion of the grant will only cover October 1, 2000 to September 30, 2001. The grant may be renewed annually for up to three years. Program participants will be recruited nationwide and from the full range of the teaching profession from primary to university level. The cooperating agency will also provide support for approximately 200 foreign teachers and administrators from approximately 30 countries.

Applicants are requested to submit a narrative outlining their overall strategy for the administration and implementation of the Fulbright Teacher and Administrator Exchange Program as outlined in the RFP. In developing this strategy, applicants should provide a vision of the Program as a whole, interpreting the goals of the Program with creativity, as well as providing innovative ideas and recommendations. All administrative costs submitted for this competition must be reasonable and appropriate.

This grant will include both the administrative and program portions of the Fulbright Teacher Exchange Program as noted in this RFP and in the POGI. The FY 2001 cooperative agreement, which this announcement covers, will be a transition year during which the successful organization will have responsibility for all aspects of the program with the exception of the monitoring of program participants through December 30, 2001, and implementation of Fall meetings which will be funded out of the FY 2000 cooperative agreement budget.

The FY 2000 administrative agreement with the current administering organization will be amended (with approximately $67,000 in FY 2001 funds allocated to the amended FY 2000 cooperative agreement). The amendment would cover personnel and facility costs for supporting Fall meetings (budgeted in the FY 2000 cooperative agreement) and the monitoring of all U.S.-based program participants from October 1, 2000 to December 30, 2000. The new contract agency will take over responsibility for program monitoring and all meetings beginning January 1, 2001. In FY 2002 and subsequent years, if the grant is renewed, the successful organization would additionally be responsible for monitoring the program of current year participants for the full year and implementation of Fall meetings.

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $1,322,000. Applicants who submit a budget exceeding $1,322,000 will be deemed technically ineligible. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. The administrative budget should not exceed $791,000, which includes the $67,000 that would be allocated to the previous cooperating agency for monitoring and Fall meeting activities for the first quarter of the fiscal year. The program budget should include costs for stipends and tax payments, and transportation and per diem cost for Fall meeting participants and the cost of compensation provide to hosting organizations. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Personnel Overhead and G & A costs must not exceed the rate negotiated between the grantee organizations and their cognizant agency. Allowable costs for the program include salaries and benefits of grantee organization, and administrative and program costs for the program as outlined in the POGI.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFP should reference the above title and number ECA/A/S/X–01–01.

FOR FURTHER INFORMATION, CONTACT: The Fulbright Teacher Exchange Branch of the Department of State's Bureau of Educational and Cultural Affairs, (ECA/A/S/X) SA–44, 301 4th Street, S.W., Washington, D.C. 20547, telephone (202) 619–4569 and fax number (202) 401–1433 to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer John Cox on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download A Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the ECA's website at http://exchanges.state.gov/education/rfps. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs

(ECA) by 5 p.m., Washington, DC time on Friday, June 9, 2000. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 10 copies of the application should be sent to:

U.S. Department of State, Bureau of Educational and Cultural Affairs, SA—44, Ref.: ECA/A/S/X–01–01, Office of Program Management, ECA/EX/PM, Room 336, 301 4th Street, SW., Washington, DC 20547.

Diversity, Freedom and Democracy Guidelines: Pursuant to the ECA's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," ECA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with ECA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

ECA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

ECA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Affairs section of U.S. Embassies, where appropriate. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Under Secretary for Public Diplomacy and Public Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the ECA's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality and Clarity of the Program planning: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

2. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

3. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposals should demonstrate an institutional record of successful program planning and implementation, including responsible fiscal management and full compliance with all reporting requirements. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

4. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives are recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

5. Cost-effectiveness and Cost-sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by ECA that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. ECA reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: April 20, 2000.

Evelyn S. Liebermann,

Under Secretary for Public Diplomacy and Public Affairs, Department of State.

[FR Doc. 00–10507 Filed 4–26–00; 8:45 am]

BILLING CODE 4710–11–P

STATE JUSTICE INSTITUTE

Sunshine Act Meeting

DATES: Friday, May 5, 2000, 9:00 am–5:00 pm; Saturday, May 6, 2000, 8:00 am–11:00 pm.

PLACE: Amelia Island Plantation, Amelia Island, FL.

MATTERS TO BE CONSIDERED: Consideration of proposals submitted for Institute funding and internal Institute business.

PORTIONS OPEN TO THE PUBLIC: All matters.

PORTIONS CLOSED TO THE PUBLIC: None.

CONTACT PERSON: David Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314, (703) 684–6100.

David I. Tevelin,

Executive Director.

[FR Doc. 00–10588 Filed 4–25–00; 10:15 am]

BILLING CODE 6820–SC–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 20, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 30, 2000, to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1505–0139.

Form Number: TD F 90–22.44.

Type of Review: Extension.

Title: Request for Research.

Description: This form allows the efficient intake of requests for investigative support sent to the Financial Crimes Enforcement Network ("FinCEN") by federal, state, and local law enforcement. It provides the information necessary to determine the lawful parameters of data base searches in response to the requests.

Respondents: State, Local or Tribal Governments.

Estimated Number of Respondents: 7,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Other (once per request).

Estimated Total Reporting Burden: 3,500 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–10458 Filed 4–26–00; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 20, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 30, 2000, to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0060.

Form Number: PD F 2488–1.

Type of Review: Extension.

Title: Certificate by Legal Representative(s) of Decedent's Estate During Administration of Authority to Act and of Distribution Where Estate Holds No More Than $1,000 (face amount) U.S. Savings and Retirement Securities.

Description: PD F 2488–1 is used by legal representatives of decedent's estate to establish authority to act and to request disposition of securities.

Respondents: Individuals or households.

Estimated Number of Respondents: 6,300.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 1,575 hours.

OMB Number: 1535–0118.

Form Number: PD F 5336.

Type of Review: Extension.

Title: Application for Disposition, United States Savings Bonds/Notes and/or Related Checks Owned by Decedent Whose Estate is Being Settled Without Administration.

Description: PD F 4881 is used by person(s) entitled to a decedent's estate not being administered to request payment or reissue of Savings Bonds/Notes and/or related checks.

Respondents: Individuals or households.

Estimated Number of Respondents: 80,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 40,000 hours.

Clearance Officer: Vicki S. Thorpe, (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860,

Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–10459 Filed 4–26–00; 8:45 am]

BILLING CODE 4810–40–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 20, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by

calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 30, 2000, to be assured of consideration.

Customs Service (CUS)

OMB Number: 1515–0021.
Form Number: Customs Form 3499.
Type of Review: Extension.
Title: Application and Approval to Manipulate, Examine, Sample, or Transfer Goods.
Description: Customs Form 3499 is prepared by importers or consignees as an application to request examination, sampling, or transfer of merchandise under Customs supervision. This form is also an application for the manipulation of merchandise in a bonded warehouse and abandonment or destruction of merchandise.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 2,290.
Estimated Burden Hours Per Respondent: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 13,740 hours.

OMB Number: 1515–0054.
Form Number: Customs Form 3173.
Type of Review: Extension.
Title: Application for Extension of Bond for Temporary Importation.
Description: Importers merchandise which is to remain in the U.S. Customs territory for one year or less without duty payment is entered as a temporary importation. The importer may apply for an extension of this period on Customs Form 3173.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Recordkeepers: 1,200.
Estimated Burden Hours Per Recordkeeper: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 348 hours.
Clearance Officer: J. Edgar Nichols, (202) 927–1426, U.S. Customs Service, Printing and Records Management Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 00–10460 Filed 4–26–00; 8:45 am]
BILLING CODE 4820–02–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 18, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 30, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0066.
Form Number: IRS Form 2688.
Type of Review: Extension.
Title: Application for Additional Extension of Time To File Income Tax Return.
Description: Internal Revenue Code (IRC) section 6081 permits the Secretary to grant a reasonable extension of time for filing any return, declaration, statement, or other document. This form is used by individuals to ask for an additional extension of time to file U.S. income tax returns after filing for the automatic extension, but still needing more time.
Respondents: Individuals or households.
Estimated Number of Respondents: 1,453,000.
Estimated Burden Hours Per Respondent:

Learning about the law or the form.	13 min.
Preparing the form	16 min.
Copying, assembling, and sending the form to the IRS.	17 min.

Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,104,280 hours.
OMB Number: 1545–0177.
Form Number: IRS Form 4684.
Type of Review: Extension.
Title: Casualties and Thefts.
Description: Form 4684 is sued by taxpayers to compute their gain or loss from casualties or thefts, and to summarize such gains and losses. The data is used to verify that the correct gain or loss has been computed.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 300,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	1 hr., 58 min.
Learning about the law or the form	26 min.
Preparing the form	1 hr., 5 min.
Copying, assembling, and sending the form to the IRS.	35 min.

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 1,221,000 hours.
OMB Number: 1545–0441.
Form Number: IRS Forms 6559 and 6559–A.
Type of Review: Extension.
Title: Transmitter Report and Summary of Magnetic Media (6559); and Continuation Sheet for Form 6559 (6559–A).
Description: Forms 6559 and 6559–A are used by filers of Form W–2 wage and tax data to transmit on magnetic media, SSA and IRS need signed and summary data for processing purposes. The forms are used primarily by large employers and tax filing services (service bureaus).
Respondents: Business or other for-profit, not-for-profit institutions, farms, Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents: 90,000.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 27,000 hours.
OMB Number: 1545–0619.
Form Number: IRS Form 6765.
Type of Review: Revision.
Title: Credit for Increasing Research Activities.
Description: Internal Revenue Code (IRC) section 38 allows a credit against income tax (Determined under IRC section 41) for an increase in research activities in a trade or business. Form 6765 is used by businesses and individuals engaged in a trade or business to figure and report to the credit. The data is used to verify that the credit claimed is correct.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/Recordkeepers: 23,947.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	18 hr., 39 min.
Learning about the law or the form.	1 hr. 47 min.
Preparing and sending the form to the IRS.	2 hr., 10 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 541,442 hours.

OMB Number: 1545–1131.

Regulation Project Number: INTL–485–89 Final.

Type of Review: Extension.

Title: Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions (Section 988 Transactions).

Description: Sections 988(c)(1)(D) and (E) require taxpayers to make elections which determine whether section 988 applies. In addition sections 988(a)(1)(B) and 988(d) require taxpayers to identify transactions which generate capital gain or loss or which are hedges of other transactions.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/Recordkeepers: 5,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 40 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 3,333 hours.

OMB Number: 1545–1240.

Regulation Project Number: INTL–116–90 NPRM.

Type of Review: Extension.

Title: Allocation of Charitable Contributions.

Description: The recordkeeping requirement affects businesses or other for-profit institutions. This information is required by the IRS to ensure the proper application of section 1.861–8(e)(iv) of the regulations. This information will be used to verify the U.S. source allocation of certain charitable contributions.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 500.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Estimated Total Recordkeeping Burden: 500 hours.

OMB Number: 1545–1502.

Form Number: IRS Forms 5304–SIMPLE and 5305–SIMPLE and Notice 98–4 (Formerly Notice 97–6).

Type of Review: Extension.

Title: Form 5304–SIMPLE—Savings Incentive Match Plan for Employees of Small Emplcyers (SIMPLE) (Not Subject to the Designated Financial Institution Rules); Form 5305–SIMPLE—Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) (For Use With a Designated Financial Institution); and Notice 98–4—Simple IRA Plan Guidance.

Description: Forms 5304–SIMPLE and 5305–SIMPLE are used by an employer to permit employees to make salary reduction contributions to a savings incentive match plan (SIMPLE IRA) described in Code section 408(p). These forms are not to be filed with IRS, but to be retained in the employers' records as proof of establishing such a plan, thereby justifying a deduction for contributions made to this SIMPLE IRA. The data is used to verify the deduction. Notice 98–4—provides guidance for employers and trustees regarding how they can comply with the requirements of Code section 408(p) in establishing and maintaining a SIMPLE Plan, including information regarding the notification and reporting requirements under Code section 408.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 600,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form/Notice	Recordkeeping	Learning about the law or the form	Preparing the form
5304–SIMPLE	3 hr., 38 min	2 hr., 26 min	47 min.
5305–SIMPLE	3 hr., 38 min	2 hr., 26 min	47 min.
Notice 98–4	15 min		

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 2,127,000 hours.

OMB Number: 1545–1531.

Notice Number: Notice 97–19 and Notice 98–34.

Type of Review: Extension.

Title: Guidance for Expatriates Under Sections 877, 2501, 2107, and 6039F.

Description: Notice 97–19 and Notice 98–34 provide guidance for individuals affected by amendments to Code sections 877, 2107, and 2501, as amended by the Health Insurance Portability and Accountability Act. These notices also provide guidance on Code section 6039F.

Respondents: Individuals or households.

Estimated Number of Respondents: 12,350.

Estimated Burden Hours Per Respondent: 32 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 6,525 hours.

OMB Number: 1545–1533.

Revenue Procedure Number: Revenue Procedure 97–22.

Type of Review: Extension.

Title: 26 CFR 601.105 Examination of Returns and Claims for Refund, Credits, or Abatement, Determination of Correct Tax Liability.

Description: The information requested in Revenue Procedure 97–22 under sections 4 and 5 is required to ensure that records maintained in an electronic storage system will constitute records within the meaning of section 6001.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Recordkeepers: 50,000.

Estimated Burden Hours Per Recordkeeper: 20 hours, 1 minute.

Estimated Total Recordkeeping Burden: 1,000,400 hours.

OMB Number: 1545–1539.

Regulation Project Number: REG–208172–91 Final.

Type of Review: Extension.

Title: Basis Reduction Due to Discharge of Indebtedness.

Description: The IRS will use the information provided by taxpayers owning interests in partnerships and owning section 1221(l) real property to verify compliance with sections 1017(b)(3)(C), 1017(b)(3)(E), 1017(b)(F), and 1017(b)(4)(X).

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 2,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 1,000.

Estimated Total Recordkeeping Burden: 10,000 hours.

OMB Number: 1545–1540.

Regulation Project Number: REG–209813–96 NPRM.

Type of Review: Extension.

Title: Reporting Requirements for Widely Held Fixed Investment Trusts.

Description: The regulations clarify the reporting requirements of trustees and middlemen involved with widely held fixed investment trusts.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,200.

Estimated Burden Hours Per Respondent: 2 hours.

Estimated Total Recordkeeping Burden: 2,400 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 00–10461 Filed 4–26–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 20, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 30, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0066.

Regulation Project Number: INTL–15–91 NPRM.

Type of Review: Extension.

Title: Taxation of Gain or Loss From Certain Nonfunctional Currency Transactions (Section 988 Transactions).

Description: Certain taxpayers are allowed to elect a mark to market method of accounting for currency gains and losses and to integrate certain foreign currency denominated dividend, rent and royalty payments with hedges thereof.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeeping: 1,500.

Estimated Burden Hours Per Respondent/Recordkeeping: 40 minutes.

Frequency of Response: Annually, Other (one-time only).

Estimated Total Reporting/ Recordkeeping Burden: 1,000 hours.

OMB Number: 1545–1517.

Form Number: IRS Form 1099–MSA.

Type of Review: Extension.

Title: Distribution From Medical Savings Account (MSA) or Medicare+Choice MSA.

Description: This form is used to report distributions from a medical savings account as set forth in section 220(h).

Respondents: Business or other for-profit.

Estimated Number of Respondents: 10,336.

Estimated Burden Hours Per Respondent: 8 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 3,617 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 00–10462 Filed 4–26–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

April 6, 2000.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Interested persons may obtain copies of the submission(s) by calling the OTS Clearance Officer listed. Send comments regarding this information collection to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

DATES: Submit written comments on or before May 30, 2000.

OMB Number: 1550–0092.

Form Number: Not applicable.

Type of Review: Regular.

Title: Deposits.

Description: 12. CFR Part 557 relies on the disclosure requirements applicable to savings associations under the Federal Reserve Board's Regulation DD (12 CFR Part 230). The information required by Regulation DD is needed by OTS in order to supervise savings associations and develop regulatory policy.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Responses: 1,104.

Estimated Burden Hours Per Response: 1,484 hours.

Frequency of Response: Once per event.

Estimated Total Reporting Burden: 1,638,704 hours.

Clearance Officer: Mary Rawlings-Milton, (202) 906–6028, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, D.C. 20503.

John E. Werner,

Director, Information & Management Services Division.

[FR Doc. 00–10449 Filed 4–26–00; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Thursday,
April 27, 2000

Part II

Office of Personnel Management

Privacy Act of 1974; Publication of Notice of Systems of Records and Proposed New Routine Uses; Notice

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Publication of Notice of Systems of Records and Proposed New Routine Uses

AGENCY: Office of Personnel Management.

ACTION: Notice; publication of the eight Governmentwide systems of records managed by the Office of Personnel Management, proposing routine uses for various systems of records, the amending of one of OPM's Governmentwide systems of records, and making needed administrative changes necessitated by various changes in office titles.

SUMMARY: The revisions result from a review of agency information practices conducted in accordance with the President's May 14, 1998, memorandum on privacy and information in federal records. The revisions reflect the changes and clarify OPM's Governmentwide systems of records. This notice provides an accurate and complete text with administrative changes of the Office of Personnel Management's notices for its eight Governmentwide systems of records. This notice proposes to add one identical routine use to three systems of records and a separate routine use to one system of records. In addition, records that are presently in one of OPM's systems of records will be moved to another system of records for administrative purposes. These actions reflect the administrative changes that have occurred in the Office's reorganization since the last publication of these notices on June 15, 1996, and more importantly, makes readily available in one issue of the **Federal Register** an accurate and complete text of the Office notices most widely used by individuals and Privacy Act officers.

DATES: The notice with the administrative (non-substantive) changes are effective on April 27, 2000. The proposed routine uses will become effective without further notice, on June 26, 2000, unless comments dictate otherwise.

ADDRESSES: Written comments may be sent delivered to: Assistant Director for Workforce Information, Room 7439, U. S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: John Sanet, Privacy Act Advisor, Office of Workforce Information, (202) 606–1955.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (the Office) last published its Governmentwide systems notices on July 15, 1996. To conform with a reorganization and name change of some Governmentwide systems managers' offices since the prior publication, this notice reflects revised internal designation of the system managers and their respective offices. In addition, we propose to add one identical routine use to three systems of records, to add one routine use to one system of records, and to move records relating to the Fair Labor Standards Act from OPM/Central-2 to OPM/GOVT–9 system of records. This change will not affect any Privacy Act rights afforded individuals who are the subject of such records; we propose to make the change for administrative purposes only. The Governmentwide system is being updated and expanded to cover these FLSA records. The present OPM/Central-2, Complaints and Inquiries Records system, will continue to exist and will contain records relating to the processing and adjudication of a complaint made to OPM under our regulations, except for Fair Labor Standard Act claims and complaints. A revised OPM/Central-2 notice will be published in the future.

The first proposed routine use is offered to allow relevant records within the OPM/GOVT–1, General Personnel Records; OPM/GOVT–2, Employee Performance File System Records; and OPM/GOVT–10, Employee Medical File System Records of individuals who formerly worked for the Panama Canal Commission, to be accessible by the Republic of Panama. This routine use is needed because the individuals involved are no longer Federal employees because the Panama Canal Commission is no longer a Federal agency. Access to the employment records, however, is required to make employment decisions on these individuals. These records that are needed by the Republic of Panama are often stored at the National Personnel Records Center in St. Louis, Missouri. This routine use will allow the records to be provided to the Republic of Panama for use primarily when those individuals are employed by Panama. The identical routine use is being proposed as routine use "mm" for OPM/GOVT–1, routine use "q" for OPM/GOVT–2, and routine use "w" for OPM/GOVT–10. The other routine use proposed would allow certain relevant information contained in the OPM/GOVT–10 system of records to be made available when individuals have contracted an illness or potentially been exposed to health hazards while employed in the Federal workforce. This routine use will apply in those limited cases where access and review of individuals' records is necessary. Such access and review will facilitate any necessary treatment of those individuals. This routine use is identical to one already in existence for OPM/GOVT–1, and is being proposed as routine use "x" for OPM/GOVT–10.

The system report, as required by 5 U.S.C. 552a(r), has been submitted to the Committee on Governmental Affairs of the United States Senate, the Committee on Government Reform and Oversight of the House of Representatives, and the Office of Management and Budget.

Following is a complete text of these eight Office of Personnel Management systems of records.

Office of Personnel Management.

Janice R. Lachance,

Director.

OPM/GOVT–1

SYSTEM NAME:

General Personnel Records.

System Location.

Records on current Federal employees are located at the Office and with Personnel Officers or other designated offices of the local installation of the department or agency that currently employs the individual. When agencies determine that duplicates of these records need to be located in a second office, *e.g.,* an administrative office closer to where the employee actually works, such copies are covered by this system. Former Federal employees' Official Personnel Folders (OPFs) are located at the National Personnel Records Center, National Archives and Records Administration, 111 Winnebago Street, St. Louis, Missouri 63118. Records not considered long-term records, but which may be retained in the OPF or elsewhere during employment, and which are also included in this system, may be retained by agencies for a period of time after the employee leaves service.

The use of the phrase "long-term" to describe those records filed on the right-hand-side of OPFs is used throughout this notice because these records are not actually permanently retained. The term "temporary" is used when referencing short-term records filed on the left-hand-side of OPFs and all other records not filed in the OPF, but covered by this notice.

Note 1 —The records in this system are "owned" by the Office of Personnel Management (Office) and should be provided to those Office employees who have an official need or use for those records. Therefore, if an employing agency is asked by

an Office employee to access the records within this system, such a request should be honored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees as defined in 5 U.S.C. 2105. (Volunteers, grantees, and contract employees on whom the agency maintains records may also be covered by this system).

CATEGORIES OF RECORDS IN THE SYSTEM:

All categories of records may include identifying information, such as name(s), date of birth, home address, mailing address, social security number, and home telephone. This system includes, but is not limited to, contents of the OPF as specified in OPM's Operating Manual, "The Guide to Personnel Recordkeeping." Records in this system are:

a. Records reflecting work experience, educational level achieved, and specialized education or training obtained outside of Federal service.

b. Records reflecting Federal service and documenting work experience and specialized education received while employed. Such records contain information about past and present positions held; grades; salaries; duty station locations; and notices of all personnel actions, such as appointments, transfers, reassignments, details, promotions, demotions, reductions-in-force, resignations, separations, suspensions. Office approval of disability retirement applications, retirement, and removals.

c. Records on participation in the Federal Employees' Group Life Insurance Program and Federal Employees Health Benefits Program.

d. Records relating to an Intergovernmental Personnel Act assignment or Federal-private sector exchange program.

Note 2 —Some of these records may also become part of the OPM/CENTRAL–5, Intergovernmental Personnel Act Assignment Record system.

e. Records relating to participation in an agency Federal Executive or SES Candidate Development Program.

Note 3 —Some of these records may also become part of the OPM/CENTRAL–3, Federal Executive Development Records; or OPM/CENTRAL–13, Senior Executive Service Records systems.

f. Records relating to Government-sponsored training or participation in an agency's Upward Mobility Program or other personnel program designed to broaden an employee's work experiences and for purposes of advancement (*e.g.*, an administrative intern program).

g. Records contained in the Central Personnel Data File (CPDF) maintained by OPM and exact substantive representations in agency manual or automated personnel information systems. These data elements include many of the above records along with handicap and race and national origin codes. A definitive list of CPDF data elements is contained in OPM's Operating Manual, The Guide to the Central Personnel Data File.

h. Records on the Senior Executive Service (SES) maintained by agencies for use in making decisions affecting incumbents of these positions, *e.g.*, relating to sabbatical leave programs, reassignments, and details, that are perhaps unique to the SES and that may be filed in the employee's OPF. These records may also serve as the basis for reports submitted to OPM for implementing OPM's oversight responsibilities concerning the SES.

i. Records on an employee's activities on behalf of the recognized labor organization representing agency employees, including accounting of official time spent and documentation in support of per diem and travel expenses.

Note 4 —Alternatively, such records may be retained by an agency payroll office and thus be subject to the agency's internal Privacy Act system for payroll records. The OPM/GOVT–1 system does not cover general agency payroll records.

j. To the extent that the records listed here are also maintained in an agency electronic personnel or microform records system, those versions of these records are considered to be covered by this system notice. Any additional copies of these records (excluding performance ratings of record and conduct-related documents maintained by first line supervisors and managers covered by the OPM/GOVT–2 system) maintained by agencies at field/administrative offices remote from where the original records exist are considered part of this system.

Note 5 —It is not the intent of OPM to limit this system of records only to those records physically within the OPF. Records may be filed in other folders located in offices other than where the OPF is located. Further, as indicated in the records location section, some of these records may be duplicated for maintenance at a site closer to where the employee works (*e.g.*, in an administrative office or supervisors work folder) and still be covered by this system. In addition, a working file that a supervisor or other agency official is using that is derived from OPM/GOVT–1 is covered by this system notice. This system also includes working files derived from this notice that management is using in its personnel management capacity.

k. Records relating to designations for lump sum death benefits.

l. Records relating to classified information nondisclosure agreements.

m. Records relating to the Thrift Savings Plan (TSP) concerning the starting, changing, or stopping of contributions to the TSP as well as the how the individual wants the investments to be made in the various TSP Funds.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347, and Executive Orders 9397, 9830, and 12107.

PURPOSE(S):

The OPF and other general personnel records files are the official repository of the records, reports of personnel actions, and the documents and papers required in connection with these actions effected during an employee's Federal service. The personnel action reports and other documents, some of which are filed as long-term records in the OPF, give legal force and effect to personnel transactions and establish employee rights and benefits under pertinent laws and regulations governing Federal employment.

These files and records are maintained by OPM and the agencies for the Office in accordance with Office regulations and instructions. They provide the basic source of factual data about a person's Federal employment while in the service and after his or her separation. Records in this system have various uses by agency personnel offices, including screening qualifications of employees; determining status, eligibility, and employee's rights and benefits under pertinent laws and regulations governing Federal employment; computing length of service; and other information needed to provide personnel services. These records and their automated or microform equivalents may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEMS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to Government training facilities (Federal, State, and local) and to non-Government training facilities (private vendors of training courses or programs, private schools, etc.) for training purposes.

b. To disclose information to education institutions on appointment of a recent graduate to a position in the Federal service, and to provide college

and university officials with information about their students working in the Student Career Experiment Program, Volunteer Service, or other similar programs necessary to a student's obtaining credit for the experience gained.

c. To disclose information to officials of foreign governments for clearance before a Federal employee is assigned to that country.

d. To disclose information to the Department of Labor, Department of Veterans Affairs, Social Security Administration, Department of Defense, or any other Federal agencies that have special civilian employee retirement programs; or to a national, State, county, municipal, or other publicly recognized charitable or income security, administration agency (*e.g.,* State unemployment compensation agencies), when necessary to adjudicate a claim under the retirement, insurance, unemployment, or health benefits programs of the Office or an agency cited above, or to an agency to conduct an analytical study or audit of benefits being paid under such programs.

e. To disclose to the Office of Federal Employees Group Life Insurance, information necessary to verify election, declination, or waiver of regular and/or optional life insurance coverage, eligibility for payment of a claim for life insurance, or to TSP election change and designation of beneficiary.

f. To disclose, to health insurance carriers contracting with the Office to provide a health benefits plan under the Federal Employees Health Benefits Program, information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination or audit of benefit provisions of such contracts.

g. To disclose information to a Federal, State, or local agency for determination of an individual's entitlement to benefits in connection with Federal Housing Administration programs.

h. To consider and select employees for incentive awards and other honors and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee recognition.

i. To consider employees for recognition through quality-step increases, and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee recognition.

j. To disclose information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

k. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

l. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to an agency decision to hire or retain an employee, issue a security clearance, conduct a security or suitability investigation of an individual, classify jobs, let a contract, or issue a license, grant, or other benefits.

m. To disclose to a Federal agency in the executive, legislative, or judicial branch of government, in response to its request, or at the initiation of the agency maintaining the records, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

n. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

o. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual.

p. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

q. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, when the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

r. By the National Archives and Records Administration in records management inspections and its role as Archivist.

s. By the agency maintaining the records or by the Office to locate individuals for personnel research or survey response, and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

t. To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

u. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's record may be disclosed to any person who is responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

v. To disclose to the agency-appointed representative of an employee all notices, determinations, decisions, or other written communications issued to the employee, in connection with an examination ordered by the agency

under fitness-for-duty examination procedures.

w. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

x. To disclose to a requesting agency, organization, or individual the home address and other relevant information on those individuals who it reasonably believed might have contracted an illness or might have been exposed to or suffered from a health hazard while employed in the Federal workforce.

y. To disclose specific civil service employment information required under law by the Department of Defense on individuals identified as members of the Ready Reserve to assure continuous mobilization readiness of Ready Reserve units and members, and to identify demographic characteristics of civil service retirees for national emergency mobilization purposes.

z. To disclose information to the Department of Defense, National Oceanic and Atmospheric Administration, U.S. Public Health Service, Department of Veterans Affairs, and the U.S. Coast Guard needed to effect any adjustments in retired or retained pay required by the dual compensation provisions of section 5532 of title 5, United States Code.

aa. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. chapter 12, or as may be authorized by law.

bb. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

cc. To disclose information to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator's awards when a question of material fact is raised, to investigate representation petitions and to conduct or supervise representation elections, and in connection with matters before the Federal Service Impasses Panel.

dd. To disclose to prospective non-Federal employers, the following information about a specifically identified current or former Federal employee:

(1) Tenure of employment;

(2) Civil service status;

(3) Length of service in the agency and the Government; and

(4) When separated, the date and nature of action as shown on the Notification of Personnel Action—Standard Form 50 (or authorized exception).

ee. To disclose information on employees of Federal health care facilities to private sector (*i.e.*, other than Federal, State, or local government) agencies, boards, or commissions (*e.g.*, the Joint Commission on Accreditation of Hospitals). Such disclosures will be made only when the disclosing agency determines that it is in the Government's best interest (*e.g.*, to comply with law, rule, or regulation, to assist in the recruiting of staff in the community where the facility operates or to avoid any adverse publicity that may result from public criticism of the facility's failure to obtain such approval, or to obtain accreditation or other approval rating). Disclosure is to be made only to the extent that the information disclosed is relevant and necessary for that purpose.

ff. To disclose information to any member of an agency's Performance Review Board or other panel when the member is not an official of the employing agency; information would then be used for approving or recommending selection of candidates for executive development or SES candidate programs, issuing a performance rating of record, issuing performance awards, nominating for meritorious and distinguished executive ranks, and removal, reduction-in-grade, and other personnel actions based on performance.

gg. To disclose, either to the Federal Acquisition Institute (FAI) or its agent, information about Federal employees in procurement occupations and other occupations whose incumbents spend the predominant amount of their work hours on procurement tasks; provided that the information shall only be used for such purposes and under such conditions as prescribed by the notice of the Federal Acquisition Personnel Information System as published in the **Federal Register** of February 7, 1980 (45 FR 8399).

hh. To disclose relevant information with personal identifiers of Federal civilian employees whose records are contained in the Central Personnel Data File to authorized Federal agencies and non-Federal entities for use in computer matching. The matches will be performed to help eliminate waste, fraud, and abuse in Governmental programs; to help identify individuals who are potentially in violation of civil or criminal law or regulation; and to collect debts and overpayments owed to Federal, State, or local governments and their components. The information disclosed may include, but is not limited to, the name, social security number, date of birth, sex, annualized salary rate, service computation date of basic active service, veteran's preference, retirement status, occupational series, health plan code, position occupied, work schedule (full time, part time, or intermittent), agency identifier, geographic location (duty station location), standard metropolitan service area, special program identifier, and submitting office number of Federal employees.

ii. To disclose information to Federal, State, local, and professional licensing boards, Boards of Medical Examiners, or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications or registration necessary to practice an occupation, profession or specialty, in order to obtain information relevant to an Agency decision concerning the hiring retention or termination of an employee or to inform a Federal agency or licensing boards or the appropriate non-government entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal agency.

jj. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

kk. To disclose information to a Federal, State, or local governmental entity or agency (or its agent) when necessary to locate individuals who are owed money or property either by a

Federal, State, or local agency, or by a financial or similar institution.

ll. To disclose to a spouse or dependent child (or court-appointed guardian thereof) of a Federal employee enrolled in the Federal Employees Health Benefits Program, upon request, whether the employee has changed from a self-and-family to a self-only health benefits enrollment.

mm. To disclose information to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, Federal Parent Locator System and Federal Offset System for use in locating individuals, verifying social security numbers, and identifying their incomes sources to establish paternity, establish and modify orders of support and for enforcement action.

nn. To disclose records on former Panama Canal Commission employees to the Republic of Panama for use in employment matters.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, on lists and forms, microfilm or microfiche, and in computer processable storage media.

RETRIEVABILITY:

These records are retrieved by various combinations of name, birth date, social security number, or identification number of the individual on whom they are maintained.

SAFEGUARDS:

Paper or microfiche/microfilmed records are located in locked metal file cabinets or in secured rooms with access limited to those personnel whose official duties require access. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

The OPF is maintained for the period of the employee's service in the agency and is then transferred to the National Personnel Records Center for storage or, as appropriate, to the next employing Federal agency. Other records are either retained at the agency for various lengths of time in accordance with the National Archives and Records Administration records schedules or destroyed when they have served their purpose or when the employee leaves the agency.

a. Long-term records. The OPF is maintained by the employing agency as long as the individual is employed with that agency.

Within 90 days after the individual separates from the Federal service, the OPF is sent to the National Personnel Records Center for long-term storage. In the case of administrative need, a retired employee, or an employee who dies in service, the OPF is sent to the Records Center within 120 days.

Destruction of the OPF is in accordance with General Records Schedule-1 (GRS–1).

b. Other records. Other records are retained for varying periods of time. Generally they are maintained for a minimum of 1 year or until the employee transfers or separates.

c. Records contained on computer processable media within the CPDF (and in agency's automated personnel records) may be retained indefinitely as a basis for longitudinal work history statistical studies. After the disposition date in GRS–1, such records should not be used in making decisions concerning employees.

SYSTEM MANAGER(S) AND ADDRESS:

a. Assistant Director for Workforce Information, Office of Merit Systems Oversight and Effectiveness, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415.

b. For current Federal employees, OPM has delegated to the employing agency the Privacy Act responsibilities concerning access, amendment, and disclosure of the records within this system notice.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate Office or employing agency office, as follows:

a. Current Federal employees should contact the Personnel Officer or other responsible official (as designated by the employing agency), of the local agency installation at which employed regarding records in this system.

b. Former Federal employees who want access to their Official Personnel Folders should contact the National Personnel Records Center (Civilian), 111 Winnebago Street, St. Louis, Missouri 63118, regarding the records in this system. For other records covered by the system notice, individuals should contact their former employing agency.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social security number.

d. Last employing agency (including duty station) and approximate date(s) of the employment (for former Federal employees).

e. Signature.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should contact the appropriate OPM or agency office, as specified in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Full name(s).

b. Date of birth.

c. Social security number.

d. Last employing agency (including duty station) and approximate date(s) of employment (for former Federal employees).

e. Signature.

Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR Part 297).

CONTESTING RECORD PROCEDURE:

Current employees wishing to request amendment of their records should contact their current agency. Former employees should contact the system manager. Individuals must furnish the following information for their records to be located and identified.

a. Full name(s).

b. Date of birth.

c. Social security number.

d. Last employing agency (including duty station) and approximate date(s) of employment (for former Federal employees).

e. Signature.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR Part 297).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual on whom the record is maintained.

b. Educational institutions.

c. Agency officials and other individuals or entities.

d. Other sources of information for long-term records maintained in an employee's OPF, in accordance with Code of Federal Regulations 5 CFR Part 293, and OPM's Operating Manual, "The Guide to Personnel Recordkeeping."

OPM/GOVT–2

SYSTEM NAME :

EMPLOYEE PERFORMANCE FILE SYSTEM RECORDS:

SYSTEM LOCATION:

Records maintained in this system may be located as follows:

a. In an Employee Performance File (EPF) maintained in the agency office responsible for maintenance of the employee's Official Personnel Folder (OPF) or other agency-designated office. This includes those instances where the agency uses an envelope within the OPF in lieu of a separate EPF folder.

b. In the EPF of Senior Executive Service (SES) appointees where the agency elects to have the file maintained by the Performance Review Boards required by 5 U.S.C. 4314(c)(1), or the administrative office supporting the Board.

c. In any supervisor/manager's work folder maintained in the office by the employee's immediate supervisor/manager or, where agencies have determined that records management is better served, in such folders maintained for supervisors/managers in a central administrative office.

d. In an agency's electronic personnel records system.

e. In an agency microformed EPF.

Note 1 —Originals or copies of records covered by this system may be located in more than one location, but if they become part of an agency internal system (*e.g.*, administrative or negotiated grievance file), those copies then would be subject to the agency's internal Privacy Act implementation guidance regarding their use within the agency's system.

Note 2 —The records in this system are "owned" by the Office of Personnel Management (Office) and should be provided to those Office employees who have an official need or use for those records. Therefore, if an employing agency is asked by an Office employee for access to the records within this system, such a request should be honored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees (including SES appointees).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system, wherever they are maintained, may include any or all of the following:

a. Annual summary performance ratings of record issued under employee appraisal systems and any document that indicates that the rating is being challenged under administrative procedures (*e.g.*, when the employee files a grievance on the rating received).

b. A document (either the summary rating form itself or a form affixed to it) that identifies the job elements and the standards for those elements upon which the rating is based.

c. Supporting documentation for employee ratings of records, as required by agency rating systems or implementing instructions, and which may be filed physically with the rating of record (*e.g.*, productivity and quality control records, records of employee counseling, individual development plans, or other such records as specified in agency issuances) and maintained, for example in a work folder by supervisors/managers at the work site.

d. Records on SES appraisals generated by Performance Review Boards, including statements of witnesses and transcripts of hearings.

e. Written recommendations for awards, removals, demotions, denials of within-grade increases, reassignments, training, pay increases, cash bonuses, or other performance-based actions (*e.g.*, nominations of SES employees for Meritorious or Distinguished Executive), including supporting documentation.

f. Statements made (letter on or appended to the performance rating document) by the employee (*e.g.*, a statement of disagreement with the rating or recommendation), in accordance with agency performance plans and implementing instructions, regarding a rating given and any recommendations made based on them.

Note 3 —When a recommendation by a supervisor/manager or a statement made by the employee regarding the rating issued (or a copy) becomes part of another Governmentwide system or internal agency file (*e.g.*, an SF 52 when the action is effected or when documents or statements of disagreement are placed in a grievance file), that document then becomes subject to that system's notice and appropriate Office or employing agency Privacy Act requirements, respectively, for the system of records covering that file.

g. Records created by Executive Resource Boards regarding performance of an individual in an executive development program.

h. Records concerning performance during the supervisory or managerial probationary period, the SES appointment probationary period, or the employee's initial period of probation after appointment.

i. Notices of commendations, recommendations for training, such as an Individual Development Plan, and advice and counseling records that are based on work performance.

j. Copies of supervisory ratings used in considering employees for promotion or other position changes originated in conjunction with agency merit promotion programs when specifically authorized for retention in the EPF or work folder.

k. Performance-related material that may be maintained in the work folder to assist the supervisor/manager in accurately assessing employee performance. Such material may include transcripts of employment and training history, documentation of special licenses, certificates, or authorizations necessary in the performance of the employee duties, and other such records that agencies determine to be appropriate for retention in the work folder.

l. Standard Form 7B cards. (While the use of the SF 7B Card system was cancelled effective December 31, 1992, this system notice will cover any of those cards still in existence.)

Note 4 —To the extent that performance records covered by this system are maintained in either an EPF, supervisor/manager work folder, or an agency's electronic or microform record system, they are considered covered under this system of records. Further, when copies of records filed in the employee's OPF are maintained as general records related to performance (item k above), those records are to be considered as being covered by this system and not the OPM/GOVT–1 system.

This notice does *not* cover these records (or copies) when they become part of a grievance file or a 5 CFR parts 432, 752, or 754 file (documents maintained in these files are covered by the OPM/GOVT–3 system of records, while grievance records are covered under an agency-specific system), or when they become part of an appeal or discrimination complaint file as such documents are considered to be part of either the system of appeal records under the control of the Merit Systems Protection Board (MSPB) or discrimination complaints files under the control of the Equal Employment Opportunity Commission (EEOC).

When an agency retains copies of records from this system in another system of records, not covered by this or another OPM, MSPB, or EEOC Government-wide system notice, the agency is solely responsible for responding to any Privacy Act issues raised concerning these documents.

The Office has adopted a position that when supervisors/managers retain personal "supervisory" notes, *i.e.*, information on employees that the agency exercises no control and does not require or specifically describe in its performance system, which remain solely for the personal use of the author and are not provided to any other person, and which are retained or discarded at the author's sole discretion,

such notes are not subject to the Privacy Act and are, therefore, not considered part of this system. Should an agency choose to adopt a position that such notes are subject to the Act, that agency is solely responsible for dealing with Privacy Act matters, including the requisite system notice, concerning them.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1104, 3321, 4305, and 5405 of title 5, U.S. Code, and Executive Order 12107.

PURPOSE:

These records are maintained to ensure that all appropriate records on an employee's performance are retained and are available (1) To agency officials having a need for the information; (2) to employees; (3) to support actions based on the records; (4) for use by the Office in connection with its personnel management evaluation role in the executive branch; and (5) to identify individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

a. To disclose information to the Merit Systems Protection Board or the Office of Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and other functions as promulgated in 5 U.S.C. chapter 12, or for such other functions as may be authorized by law.

b. To disclose information to the EEOC when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal Affirmative Action programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

c. To disclose information to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator's awards where a question of material fact is raised, and matters before the Federal Service Impasses Panel.

d. To consider and select employees for incentive awards, quality-step increases, merit increases and performance awards, or other pay bonuses, and other honors and to publicize those granted. This may include disclosure to public and private organizations, including news media, which grant or publicize employee awards or honors.

e. To disclose information to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

f. To disclose to an agency in the executive, legislative, or judicial branch, or to the District of Columbia's government in response to its request, or at the initiation of the agency maintaining the records, information in connection with hiring or retaining of an employee; issuing a security clearance; conducting a security or suitability investigation of an individual; classifying jobs; letting a contract; issuing a license, grant, or other benefits by the requesting agency; or the lawful statutory, administrative, or investigative purposes of the agency to the extent that the information is relevant and necessary to the decision on the matter.

g. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

h. To disclose information to a congressional office from the record or an individual in response to an inquiry from that congressional office made at the request of the individual.

i. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

j. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, when the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

k. By the National Archives and Records Administration in records management inspections and its role as Archivist.

l. By the Office or employing agency to locate individuals for personnel research or survey response and in producing summary descriptive statistics and analytical studies to support the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

m. To disclose pertinent information to the appropriate Federal, State, or local government agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the agency maintaining the record becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

n. To disclose information to any member of an agency's Performance Review Board or other board or panel when the member is not an official of the employing agency. The information would then be used for approving or recommending performance awards, nominating for meritorious and distinguished executive ranks, and removal, reduction-in-grade, and other personnel actions based on performance.

o. To disclose to Federal, State, local, and professional licensing boards or Boards of Medical Examiners, when such records reflect on the qualifications of individuals seeking to be licensed.

p. To disclose to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

q. To disclose records on former Panama Canal Commission employees to the Republic of Panama for use in employment matters.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, envelopes, and on magnetic tapes, disks, microfilm, or microfiche.

RETRIEVABILITY:

Records are retrieved by the name and social security number of the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in file folders or envelopes, on electronic media, magnetic tape, disks, or microforms and are stored in locked desks, metal filing cabinets, or in a secured room with access limited to those whose official duties require access. Additional safeguarding procedures include the use of sign-out sheets and restrictions on the number of employees able to access electronic records through use of access codes and logs.

RETENTION AND DISPOSAL:

Records on former non-SES employees will generally be retained no longer than 1 year after the employee leaves his or her employing agency. Records on former SES employees may be retained up to 5 years under 5 U.S.C. 4314.

a. Summary performance appraisals (and related records as the agency prescribes) on SES appointees are retained for 5 years and ratings of record on other employees for 4 years, except as shown in paragraph b. below, and are disposed of by shredding, burning, erasing of disks, or in accordance with agency procedures regarding destruction of personnel records, including giving them to the individual. When a non-SES employee transfers to another agency or leaves Federal employment, ratings of record and subsequent ratings (4 years old or less) are to be filed on the temporary side of the OPF and forwarded with the OPF.

b. Ratings of unacceptable performance and related documents, pursuant to 5 U.S.C. 4303(d), are destroyed after the employee completes 1 year of acceptable performance from the date of the proposed removal or reduction-in-grade notice. (Destruction to be no later than 30 days after the year is up.)

c. When a career appointee in the SES accepts a Presidential appointment pursuant to 5 U.S.C. 3392(c), the employee's performance folder remains active so long as the employee remains employed under the Presidential appointment and elects to have certain provisions of 5 U.S.C. relating to the Service apply.

d. When an incumbent of the SES transfers to another position in the Service, ratings and plans 5 years old or less shall be forwarded to the gaining agency with the individual's OPF.

e. Some performance-related records (*e.g.*, documents maintained to assist rating officials in appraising performance or recommending remedial actions or to show that the employee is currently licensed or certified) may be destroyed after 1 year.

f. Where any of these documents are needed in connection with administrative or negotiated grievance procedures, or quasi-judicial or judicial proceedings, they may be retained as needed beyond the retention schedules identified above.

g. Generally, agencies retain records on former employees for no longer than 1 year after the employee leaves.

Note 5 —When an agency retains an electronic or microform version of any of the above documents, retention of such records longer than shown is permitted (except for those records subject to 5 U.S.C. 4303(d)) for agency use or for historical or statistical analysis, but only so long as the record is not used in a determination directly affecting the individual about whom the record pertains (after the manual record has been or should have been destroyed).

SYSTEM MANAGER(S) AND ADDRESS:

a. Assistant Director for Workforce Information, Office of Merit System Oversight and Effectiveness, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

b. For current Federal employees, OPM has delegated to the employing agency the Privacy Act responsibilities concerning access, amendment, and disclosure of the record within this system notice.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact their servicing personnel office, supervisor/manager, Performance Review Board office, or other agency designated office maintaining their performance-related records where they are or were employed. Individuals must furnish the following information for their records to be located and identified:

a. Full name(s).

b. Social Security number.

c. Position occupied and unit where employed.

RECORDS ACCESS PROCEDURE:

Individuals wishing access to their records should contact the appropriate office indicated in the Notification Procedure section where they are or were employed. Individuals must furnish the following information for their records to be located and identified:

a. Full name(s).

b. Social security number.

c. Position occupied and unit where employed.

Individuals requesting access to records must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment to their records should contact the appropriate office indicated in the Notification Procedure section where they are or were employed. Individuals must furnish the following information for their records to be located and identified:

a. Full name(s).

b. Social security number.

c. Position occupied and unit where employed.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORDS SOURCE CATEGORIES:

Records in this system are obtained from:

a. Supervisors/managers.

b. Performance Review Boards.

c. Executive Resource Boards.

d. Other individuals or agency officials.

e. Other agency records.

f. The individual to whom the records pertain.

OPM/GOVT–3

SYSTEM NAME:

Records of Adverse Actions, Performance Based Reduction in Grade and Removal Actions, and Termination of Probationers

SYSTEM LOCATION:

These records are located in personnel or designated offices in Federal agencies in which the actions were processed.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees (including Senior Executive Service (SES) employees) against whom such an action has been proposed or taken in accordance with 5 CFR parts 315 (subparts H and I), 432, 752, or 754 of the Office's regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records and documents on: (1) The processing of adverse actions, performance based reduction in grade and removal actions, and (2) the termination of employees serving initial appointment probation and return to their former grade of employees serving supervisory or managerial probation. The records include, as appropriate, copies of the notice of proposed action, materials relied on by the agency to support the reasons in the notice, replies by the employee, statements of witness, hearing notices, reports, and agency decisions.

Note: This system does not include records, including the action file itself, compiled when such actions are appealed to the Merit Systems Protection Board (MSPB) or become part of a discrimination complaint record at the Equal Employment Opportunity Commission (EEOC). Such appeal and discrimination complaint file records are covered by the appropriate MSPB or EEOC system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3321, 4303, 7504, 7514, and 7543.

PURPOSE(S):

These records result from the proposal, processing, and documentation of these actions taken either by the Office or by agencies against employees in accordance with 5 CFR parts 315 (subparts H and I), 432, 752, or 754 of the Office's regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To provide information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

b. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose information to any source from which additional information is requested for processing any of the covered actions or in regard to any appeal or administrative review procedure, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

d. To disclose information to a Federal agency, in response to its request, in connection with hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, or classifying jobs, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

g. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, when the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

h. By the National Archives and Records Administration in records management inspections and its role as Archivist.

i. By the agency maintaining the records or the Office to locate individuals for personnel research or survey response and in producing summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

k. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, as promulgated in 5 U.S.C. 1205 and 1206, and as specified in 5 U.S.C. 7503(c) and 5 U.S.C. 7513(e), or as may be authorized by law.

l. To disclose information to the EEOC when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

m. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

n. To provide an official of another Federal agency information he or she needs to know in the performance of his or her official duties or reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

o. To disclose information to the Department of Labor, Department of Veterans Administration, Social Security Administration, Department of Defense, or any other Federal agencies that have special civilian employee retirement programs; or to a national, State, county, municipal, or other publicly recognized charitable or income security, administration agency (*e.g.*, State unemployment compensation agencies), when necessary to adjudicate a claim under the retirement, insurance, unemployment, or health benefits programs of the Office or an agency to conduct an analytical study or audit of benefits being paid under such programs.

p. To disclose to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, in automated media, or on microfiche or microfilm.

RETRIEVABILITY:

These records are retrieved by the names and social security number of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in locked metal filing cabinets or in automated media to which only authorized personnel have access.

RETENTION AND DISPOSAL:

Records documenting an adverse action, performance-based removal or demotion action, or covered actions against probationers are disposed of not sooner than four years nor later than seven years after the closing of the case in accordance with each agency's records disposition manual. Disposal is by shredding, or erasure of tapes (disks).

SYSTEM MANAGER AND ADDRESS:

Chief, Office of Employee Relations and Health Services, Office of Workforce Relations, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415 for actions taken under parts 432, 752 (subparts A through D only), and 754. Assistant Director for Executive Policy and Services, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415 for actions taken against SES appointees under subparts E and F, of part 752. Associate Director for Employment Service for actions taken under part 315.

NOTIFICATION PROCEDURE:

Individuals receiving notice of a proposed adverse, removal, or demotion action must be provided access to all documents supporting the notice. At any time thereafter, individuals subject to the action will be provided access to the complete record. Individuals should contact the agency personnel or designated office where the action was processed regarding the existence of such records on them. They must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

RECORD ACCESS PROCEDURE:

Individuals against whom such actions are taken must be provided access to the record. However, after the action has been closed, an individual may request access to the official file by contacting the agency personnel or designated office where the action was processed. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Individuals requesting access must also follow the Office's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Review of requests from individuals seeking amendment of their records that have or could have been the subject of a judicial, quasi-judicial, or administrative action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment of their records to correct factual errors should contact the agency personnel or designated office where the actions were processed. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Individuals requesting amendment must also follow the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

a. By supervisors/managers.

b. By the individual on whom the record is maintained.

c. By testimony of witnesses.

d. By other agency officials.

e. By other agency records.

f. From related correspondence from organizations or persons.

OPM/GOVT–4 [Reserved]
OPM/GOVT–5

SYSTEM NAME:

Recruiting, Examining, and Placement Records.

SYSTEM LOCATION:

Associate Director for Employment Service, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, OPM regional and area offices; and personnel or other designated offices of Federal agencies that are authorized to make appointments and to act for the Office by delegated authority.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Persons who have applied to the Office or agencies for Federal employment and current and former Federal employees submitting applications for other positions in the Federal service.

b. Applicants for Federal employment believed or found to be unsuitable for employment on medical grounds.

CATEGORIES OF RECORDS IN THE SYSTEM:

In general, all records in this system contain identifying information including name, date of birth, social security number, and home address. These records pertain to assembled and unassembled examining procedures and contain information on both competitive examinations and on certain noncompetitive actions, such as determinations of time-in-grade restriction waivers, waiver of qualification requirement determinations, and variations in regulatory requirements in individual cases.

This system includes such records as:

a. Applications for employment that contain information on work and education, military service, convictions for offenses against the law, military service, and indications of specialized training or receipt of awards or honors. These records may also include copies of correspondence between the applicant and the Office or agency.

b. Results of written exams and indications of how information in the application was rated. These records also contain information on the ranking of an applicant, his or her placement on a list of eligibles, what certificates applicant's names appeared on, an agency's request for Office approval of the agency's objection to an eligible's qualifications and the Office's decision in the matter, an agency's request for Office approval for the agency to pass over an eligible and the Office's decision in the matter, and an agency's

decision to object/pass over an eligible when the agency has authority to make such decisions under agreement with the Office.

c. Records regarding the Office's final decision on an agency's decision to object/pass over an eligible for suitability or medical reasons or when the objection/pass over decision applies to a compensable preference eligible with 30 percent or more disability. (Does not include a rating of ineligibility for employment because of a confirmed positive test result under Executive Order 12564.)

d. Responses to and results of approved personality or similar tests administered by the Office or agency.

e. Records relating to rating appeals filed with the Office or agency.

f. Registration sheets, control cards, and related documents regarding Federal employees requesting placement assistance in view of pending or realized displacement because of reduction in force, transfer or discontinuance of function, or reorganization.

g. Records concerning non-competitive action cases referred to the Office for decision. These files include such records as waiver of time-in-grade requirements, decisions on superior qualification appointments, temporary appointments outside a register, and employee status determinations. Authority for making decisions on many of these actions has also been delegated to agencies. The records retained by the Office on such actions and copies of such files retained by the agency submitting the request to the Office, along with records that agencies maintain as a result of the Office's delegations of authorities, are considered part of this system of records.

h. Records retained to support Schedule A appointments of severely physically handicapped individuals, retained both by the Office and agencies acting under the Office delegated authorities, are part of this system.

i. Agency applicant supply file systems (when the agency retains applications, resumes, and other related records for hard-to-fill or unique positions, for future consideration), along with any pre-employment vouchers obtained in connection with an agency's processing of an application, are included in this system.

j. Records derived from the Office-developed or agency-developed assessment center exercises.

k. Case files related to medical suitability determinations and appeals.

l. Records related to an applicant's examination for use of illegal drugs under provisions of Executive Order 12564. Such records may be retained by the agency (*e.g.*, evidence of confirmed positive test results) or by a contractor laboratory (*e.g.*, the record of the testing of an applicant, whether negative, or confirmed or unconfirmed positive test result).

Note 1 —Only Routine Use "p" identified for this system of records is applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within the agency, generally only to the agency Medical Review Official (MRO), the administrator of the agency Employee Assistance Program, and any supervisory or management official within the employee's agency having authority to take the adverse personnel action against the employee.

Note 2 —The Office does not intend that records created by agencies in connection with the agency's Merit Promotion Plan program be included in the term "Applicant Supply File" as used within this notice. It is the Office's position that Merit Promotion Plan records are not a system of records within the meaning of the Privacy Act as such records are usually filed by a vacancy announcement number or some other key that is not a unique personnel identifier. Agencies may choose to consider such records as within the meaning of a system of records as used in the Privacy Act, but if they do so, they are solely responsible for implementing Privacy Act requirements, including establishment and notice of a system of records pertaining to such records.

Note 3 —To the extent that an agency utilizes an automated medium in connection with maintenance of records in this system, the automated versions of these records are considered covered by this system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3109, 3301, 3302, 3304, 3305, 3306, 3307, 309, 3313, 3317, 3318, 3319, 3326, 4103, 4723, 5532, and 5533, and Executive Order 9397.

PURPOSE(S):

The records are used in considering individuals who have applied for positions in the Federal service by making determinations of qualifications including medical qualifications, for positions applied for, and to rate and rank applicants applying for the same or similar positions. They are also used to refer candidates to Federal agencies for employment consideration, including appointment, transfer, reinstatement, reassignment, or promotion. Records derived from the Office-developed or agency-developed assessment center exercises may be used to determine training needs of participants. These records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Note 4 —With the exception of Routine Use "p," none of the Other Routine Uses identified for this system of records are applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within that agency, generally only to the agency Medical Review Officer (MRO), the administrator of the agency's Employee Assistance Program, and the management official empowered to recommend or take adverse action affecting the individual.

a. To refer applicants, including current and former Federal employees to Federal agencies for consideration for employment, transfer, reassignment, reinstatement, or promotion.

b. With the permission of the applicant, to refer applicants to State and local governments, congressional offices, international organizations, and other public offices for employment consideration.

c. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

d. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purposes of the request, and to identify the type of information requested), when necessary to obtain information relevant to an agency decision concerning hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, classifying positions, letting a contract, or issuing a license, grant or other benefit.

e. To disclose information to a Federal agency, in response to its request, in connection with hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, classifying positions, letting a contract, or issuing a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

f. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

g. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

h. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to a judicial or administrative proceeding.

i. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, when the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

j. By the National Archives and Records Administration in records management inspections and its role as Archivist.

k. By the agency maintaining the records or by the Office to locate individuals for personnel research or survey response or in producing summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

l. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions; *e.g.*, as prescribed in 5 U.S.C. chapter 12, or as may be authorized by law.

m. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines or Employee Selection Procedures, or other functions vested in the Commission.

n. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

o. To disclose, in response to a request for discovery or for an appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

p. To disclose the results of a drug test of a Federal employee pursuant to an order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

q. To disclose information to Federal, State, local, and professional licensing boards, Boards of Medical Examiners, or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning the issuance, retention, or revocation of licenses, certifications, or registration necessary to practice an occupation, profession, or specialty, in order to obtain information relevant to an agency decision concerning the hiring, retention, or termination of an employee or to inform a Federal agency or licensing board or the appropriate non-government entity about the health care practice of a terminated, resigned, or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal agency.

r. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tapes, disk, punched cards, microfiche, cards, lists, and forms.

RETRIEVABILITY:

Records are retrieved by the name, date of birth, social security number, and/or identification number assigned to the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in a secured area or automated media with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records in this system are retained for varying lengths of time, ranging from a few months to 5 years, *e.g.*, applicant records that are part of medical determination case files or medical suitability appeal files are retained for 3 years from completion of action on the case. Most records are retained for a period of 1 to 2 years. Some records, such as individual applications, become part of the person's permanent official records when hired, while some records (*e.g.*, non-competitive action case files), are retained for 5 years. Some records are destroyed by shredding or burning while magnetic tapes or disks are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Employment Service, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the agency or the Office where application was made or examination was taken. Individuals must provide the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Social security number.

d. Identification number (if known).

e. Approximate date of record.

f. Title of examination or announcement with which concerned.

g. Geographic area in which consideration was requested.

RECORD ACCESS PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. (c)(3) and (d), regarding access to records.

The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kind of material exempted and the reasons for exempting them from access. Individuals wishing to request access to their non-exempt records should contact the agency or the Office where application was made or examination was taken. Individuals must provide the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Social security number.
d. Identification number (if known).
e. Approximate date of record.
f. Title of examination or announcement with which concerned.
g. Geographic area in which consideration was requested.

Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment of records. The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kinds of material exempted and the reasons for exempting them from amendment. An individual may contact the agency or the Office where the application is filed at any time to update qualifications, education, experience, or other data maintained in the system.

Such regular administrative updating of records should not be requested under the provisions of the Privacy Act. However, individuals wishing to request amendment of other records under the provisions of the Privacy Act should contact the agency or the Office where the application was made or the examination was taken. Individuals must provide the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Social security number.
d. Identification number (if known).
e. Approximate date of record.
f. Title of examination or announcement with which concerned.
g. Geographic area in which consideration was requested.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

Note 5 —In responding to an inquiry or a request for access or amendment, resource specialists may contact the Office's area office that provides examining and rating assistance for help in processing the request.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies or is derived from information the individual supplied, reports from medical personnel on physical qualifications, results of examinations that are made known to applicants, agencies, and Office records, and vouchers supplied by references or other sources that the applicant lists or that are developed.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains investigative materials that are used solely to determine the appropriateness of a request for approval of an objection to an eligible's qualifications for Federal civilian employment or vouchers received during the processing of an application. The Privacy Act, at 5 U.S.C. 552a(k)(5), permits an agency to exempt such investigative material from certain provisions of the Act, to the extent that release of the material to the individual whom the information is about would—

a. Reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or

b. Reveal the identity of a source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

This system contains testing and examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing or examination material and information from certain provisions of the Act, when disclosure of the material would compromise the objectivity or fairness of the testing or examination process. The Office has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relate to access to and amendment of records.

The specific material exempted include, but are not limited to, the following:

a. Answer keys.
b. Assessment center exercises.
c. Assessment center exercise reports.
d. Assessor guidance material.
e. Assessment center observation reports.
f. Assessment center summary reports.
g. Other applicant appraisal methods, such as performance tests, work samples and simulations, miniature training and evaluation exercises, structured interviews, and their associated evaluation guides and reports.
h. Item analyses and similar data that contain test keys and item response data.
i. Ratings given for validating examinations.
j. Rating schedules, including crediting plans and scoring formulas for other selection procedures.
k. Rating sheets.
l. Test booklets, including the written instructions for their preparation and automated versions of tests and related selection materials and their complete documentation.
m. Test item files.
n. Test answer sheets.

OPM/GOVT–6

SYSTEM NAME:

PERSONNEL RESEARCH AND TEST VALIDATION RECORDS:

SYSTEM LOCATION:

Director, Office of Personnel Resources and Development, Employment Service, Room 6500, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415–9200; OPM's Service Centers, and agency personnel offices (or other designated offices) conducting personnel research.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees, applicants for Federal employment, current and former State and local government employees, and applicants for State and local government employment, selected private sector employees, and applicants for sample comparison groups.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include information on education and employment history, test scores, responses to test items and questionnaires, interview data, and ratings of supervisors regarding the individuals to whom the records pertain. Additional information (race, national origin, disability status, and background) is collected from applicants for certain examinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1303, 3301, and 4702.

PURPOSE(S):

These records are collected, maintained, and used by the Office or

other Federal agencies for the construction, analysis, and validation of written tests and other assessment instruments used in personnel selection and appraisal, other assessment instruments used in personnel selection and appraisal, and for research on and evaluation of personnel/organizational management and staffing methods, including workforce effectiveness studies. Agencies and the Office may provide each other with data collected in support of these functions. Such research includes studies extending over a period of time (longitudinal studies). Private sector data are used in research only, to evaluate Federal study results against non-Federal comparison groups. Race and national origin data are used by the Office or other agencies to evaluate the role and effects of selection procedures in the total employee staffing process. Use of these race and national origin data is limited to such evaluation, oversight and research projects conducted by the employing agencies or the Office. The records may also be used by the Office or other Federal agencies to locate individuals for personnel research. Data are collected on a project-by-project basis under conditions assuring the confidentiality of the information. No personnel action or selection is made using these research records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Under normal circumstances, no individually identifiable records will be provided. However, under those unusual circumstances when an individually identifiable record is required, proper safeguards will be maintained to protect the information collected from unwarranted invasion of personal privacy. Such protection must be specified in writing by the requester and, to the satisfaction of the agency official responsible for maintaining the data, indicate that the proposed use of the data is in compliance with the letter and spirit of the Privacy Act. Under these circumstances, the routine uses are as follows:

a. By the OPM or employing agency maintaining the records to locate individuals for personnel research or survey responses and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

b. To furnish personnel records and information to the Equal Employment Opportunity Commission for use in determining the existence of adverse impact in the total selection program, reviewing allegations of discrimination, or assessing the status of compliance with Federal law.

c. To furnish information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with actions by offices relating to allegations of discriminatory practices on the part of an agency or one of its employees.

d. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

e. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

f. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

g. To provide information to a congressional office from the record of an individual in response to a request from that congressional office made at the request of that individual.

h. To provide aggregate data to non-Federal organizations participating in workforce studies. These data will be limited to individuals associated with the organization requesting the data or to data aggregated for all organizations in a study.

i. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

j. To disclose research records to a court or other body in camera when tests and other assessment instruments are involved.

POLICIES AND PRACTICES FOR STORING, RETAINING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, disks, magnetic tape, CD Rom, and optical disks.

RETRIEVABILITY:

Records are generally maintained by project. Personal information can be retrieved by name or personal identifier only for certain research projects such as those involving longitudinal studies.

SAFEGUARDS:

Records are kept in locked files in a locked room with access limited to authorized staff. Access to tape, disk, and other files used in data processing will be only by authorized staff.

RETENTION AND DISPOSAL:

Records are retained for 2 years after completion of the project unless needed in the course of litigation or other administrative actions involving a research or test validation survey. Records collected for longitudinal studies will be maintained indefinitely. Manual records are destroyed by shredding or burning and magnetic tapes and disks are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Resources and Development, Employment Service, Room 6500, Office of Personnel Management, 1900 E Street, NW., Washington, DC. 20415–9200.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the system manager, the OPM regional office servicing the State where they are employed, or their employing agency's personnel office. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. If known, the title, time, and/or place of the research study in which the individual participated.

d. Social security number.

e. Signature.

RECORD ACCESS PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding access to records. The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kinds of material exempted and the reasons for exempting them from access. Individuals wishing to request access to non-exempt records should contact the appropriate office listed in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. If known, the title, time, and/or place of the research study in which the individual participated.

d. Social security number.

e. Signature.

Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d) regarding amendment of records. The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kinds of materials exempted and the reasons for exempting them from amendment. Individuals wishing to request amendment of any non-exempt records should contact the appropriate office listed in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. If known, the title, time, and/or place of the research study in which the individual participated.

d. Social security number.

e. Signature.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Individual applicants and employees; supervisors; assessment center assessors; and agency or Office personnel files and records (*e.g.*, race, sex, national origin, and disability status data from OPM/GOVT–1 and OPM/GOVT–7 systems of records).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains testing and examination materials that are used solely to determine individual qualifications for appointment, career development, or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing and examination material and information from certain provisions of the Act, when the disclosure of the material would compromise the objectivity or fairness of the testing or examination process. The Office has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relates to access to and amendment of records.

This system contains records required to be maintained and used solely for statistical purposes. The Privacy Act, at 5 U.S.C. 552a(k)(4), permits an agency to exempt all such statistical records from certain provisions of the Act, when the disclosure of the material would compromise the objectivity and fairness of these records. The Office has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relates to access to and amendment of records.

The specific materials exempted include, but are not limited to, the following:

a. Answer keys.

b. Assessment center and interview exercises.

c. Assessment center and interview exercise reports.

d. Assessor guidance material.

e. Assessment center observation reports.

f. Assessment center and interview summary reports.

g. Other applicant appraisal methods, such as performance tests, work samples and simulations, miniature training and evaluation exercises, interviews, and reports.

h. Item analyses and similar data that contain test keys and item response data.

i. Ratings given for validating examinations.

j. Rating schedules, including crediting plans and scoring formulas for other selection procedures.

k. Ratings sheets.

l. Test booklets, including the written instructions for their preparation and automated versions of tests and related selection materials and their complete documentation.

m. Test item files.

n. Test answer sheets.

o. Those portions of research and development files that could specifically reveal the contents of the above exempt documents.

p. Performance appraisals for research purposes.

OPM/GOVT–7

SYSTEM NAME:

APPLICANT RACE, SEX, NATIONAL ORIGIN, AND DISABILITY STATUS RECORDS:

SYSTEM LOCATION:

Records in this system may be located in the following offices:

a. Director Office of Personnel Resources and Development, Employment Service, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

b. Office of Diversity, Employment Service, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

c. OPM's Service Centers, and any register-holding offices under the jurisdiction of the Service Center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees and individuals who have applied for Federal employment, including:

a. Applicants for examinations administered either by the Office or by employing agencies.

b. Applicants on registers or in inventories by the Office and subject to its regulations.

c. Applicants for positions in agencies having direct hiring authority and using their own examining procedures in compliance with the Office regulations.

d. Applicants whose records are retained in an agency's Equal Opportunity Recruitment file (including any file an agency maintains on current employees from under-represented groups).

e. Applicants (including current and former Federal employees) who apply for vacancies announced under an agency's merit promotion plan.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records include the individual's name; social security number; date of birth; statement of major field of study; type of current or former Federal employment status (*e.g.*, career or temporary); applications showing work and education experience; and race, sex, national origin, and disability status data.

Note —The race and national origin information in this system is obtained by three alternative methods: (1) Use of an agency's OMB approved form on which individuals identify themselves as to race and national origin; (2) by visual observation

(race) or knowledge of an individual's background (national origin); or (3) at the agency's option, from the OPM/GOVT–1 system in the case of applicants who are current Federal employees. Disability status is obtained by use of Standard Form 256, "Self Identification of Medical Disability," which allows for a description by self-identification of the handicap.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7201, sections 4A, 4B, 15A(1) and (2), 15B(11), and 15D(11); Uniform Guidelines on Employee Selection Procedures (1978); 43 FR 38297 *et seq.* (August 25, 1978); 29 CFR 720.301; and 29 CFR 1613.301.

PURPOSE(S):

These records are used by OPM and agencies to:

a. Evaluate personnel/organizational measurement and selection methods.

b. Implement and evaluate agency affirmative employment programs.

c. Implement and evaluate agency Federal Equal Opportunity Recruitment Programs (including establishment of minority recruitment files).

d. Enable the Office to meet its responsibility to assess an agency's implementation of the Federal Equal Opportunity Recruitment Program.

e. Determine adverse impact in the selection process as required by the Uniform Guidelines cited in the Authority section above. (See also "Questions and Answers," on those Guidelines published at 44 FR 11996, March 2, 1979.)

f. Enable reports to be prepared regarding breakdowns by race, sex, and national origin of applicants (by exams taken, and on the selection of such applicants for employment).

g. To locate individuals for personnel research.

Note 1 —These data are maintained under conditions that ensure that the individual's identification as to race, sex, national origin, or disability status does not accompany that individual's application nor is otherwise made known when the individual is under consideration by a selecting official.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To disclose information to the Equal Employment Opportunity Commission (EEOC), in response to its request for use in the conduct of an examination of an agency's compliance with affirmative action plan instructions and the Uniform Guidelines on Employee Selection Procedures (1978), or other requirements imposed on agencies under EEOC authorities in connection with agency Equal Employment Opportunity programs.

b. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with the processing of appeals, special studies relating to the civil service and other merit systems in the executive branch, investigations into allegations of prohibited personnel practices, and such other functions; e.g., as prescribed in 5 U.S.C. chapter 12, or as may be authorized by law.

c. By the Office or employing agency maintaining the records to locate individuals for personnel research or survey response and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

d. To disclose information to a Federal agency in response to its request for use in its Federal Equal Opportunity Recruitment Program to the extent that the information is relevant and necessary to the agency's efforts in identifying possible sources for minority recruitment.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

f. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is party to a judicial or administrative proceeding.

g. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

h. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant cooperative agreement, or job for the Federal Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on magnetic tape and disks.

RETRIEVABILITY:

Records are retrieved by the name and social security number of the individuals on whom they are maintained.

SAFEGUARDS:

Records are retained in locked metal filing cabinets in a secured room or in a computerized system accessible by confidential passwords issued only to specific personnel.

RETENTION AND DISPOSAL:

Records are generally retained for 2 years, except when needed to process applications or to prepare adverse impact and related reports, or for as long as an application is still under consideration for selection purposes. When records are needed in the course of an administrative procedure or litigation, they may be maintained until the administrative procedure or litigation is completed. Manual records are shredded or burned and magnetic tapes and disks are erased.

Note 2 —When an agency retains an automated version of any of the records in this system, maintenance of that record beyond the above retention schedules is permitted for historical or statistical analysis, but only so long as the record is not used in a determination directly affecting the individual about whom the record pertains after the prescribed destruction date.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Resources and Development, Employment Service, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Those individuals wishing to inquire if this system contains information

about them should contact the system manager; OPM's Service Centers covering the locations where the application for Federal employment was filed; or the personnel, Equal Employment Opportunity, or Equal Employment Opportunity Recruitment office or other designated office where they took an exam, filed an application, or where they are employed. Individuals must furnish the following information for their records to be located and identified:

a. Name.
b. Social security number.
c. Title of examination, position, or vacancy announcement for which they filed.
d. The OPM or employing agency office where they are employed or submitted the information.
e. Signature.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to records about themselves should contact the appropriate office shown in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Name.
b. Social security number.
c. Title of examination, position, or vacancy announcement for which they filed.
d. The OPM or employing agency office where they are employed or submitted the information.
e. Signature.

An individual requesting access must also follow OPM's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of their records should contact the appropriate office shown in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified.

a. Name.
b. Social security number.
c. Title of examination, position, or vacancy announcement for which they filed.
d. The OPM or employing agency office where they are employed or submitted the information.
e. Signature.

An individual requesting amendment must also follow OPM's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information is provided by the individual to whom the record pertains, on forms approved by the Office of Management and Budget or is obtained directly from other agency or OPM records (*e.g.*, race, sex, national origin, and disability status data may be obtained from the OPM/GOVT–1, General Personnel Records system).

OPM/GOVT–8—[Reserved]
OPM/GOVT–9

SYSTEM NAME:

File on Position Classification Appeals, Job Grading Appeals, Retained Grade or Pay Appeals, and Fair Labor Standard Act (FLSA) Claims and Complaints.

SYSTEM LOCATION:

These records are located at the Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, OPM Oversight Division Offices, agency personnel offices (or other designated offices), and Federal records centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former Federal employees who have filed a position classification appeal or a job grading appeal with a U.S. Office of Personnel Management Oversight Division Office, or with their agency.

b. Current and former Federal employees who have filed a retained grade or pay appeal with a U.S. Office of Personnel Management Oversight Division Office.

c. Current and former Federal employees who have filed a claim or complaints under the Fair Labor Standards Act (FLSA) with a U.S. Office of Personnel Management Oversight office or with their agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents relating to the processing and adjudication of a position classification appeal, job grading appeal, retained grade or pay appeal, or FLSA claim or complaint. The records may include information and documents regarding a personnel action of the agency involved and the decision or determination rendered by an agency regarding the classifying or grading of a position, whether an employee is to remain in a retained grade or pay category, the FLSA exemption status of an employee, or other FLSA claims or complaints. This system may also include transcripts of agency hearings and statements from agency employees.

Note 1 —This system notice also covers agency files created when: (a) An employee appeals a position classification or job grading decision to OPM or within the agency regardless of whether that agency appeal decision is further appealed to OPM; and (b) an employee files a retained grade or pay appeal with OPM, and (c) FLSA claims or complaints submitted to OPM or to the agency regardless of whether the agency decision is the subject of an FLSA claim or complaints submitted to OPM.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5112, 5115, 5346, and 5366, for position classification appeals, job grading appeals, and retained grade or pay appeals. 29 U.S.C. 204(f) for FLSA claims and complaints.

PURPOSE:

These records are primarily used to document the processing and adjudication of a position classification appeal, job grading appeal, retained grade or pay appeal, or FLSA claim or complaint. Internally, OPM may use these records to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local government agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose information to any source from which additional information is requested in the course of adjudicating a position classification appeal, job grading appeal, retained grade or pay appeal, or FLSA claim or complaint to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

e. To disclose information to a Federal agency, in response to its request, in connection with the hiring, retaining or assigning of an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, classifying positions, and making FLSA exemption status

determinations, or adjudicating FLSA claims and complaints to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

f. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

g. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

h. By the Office or an agency in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

i. By the National Archives and Records Administration in records management inspections and its role as Archivist.

j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

k. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions; *e.g.*, as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

l. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission, and to otherwise ensure compliance with the provisions of 5 U.S.C. 7201.

m. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

n. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

POLICIES AND PRACTICES FOR STORAGE, RETRIEVAL, SAFEGUARDS, RETINING AND DISPOSAL OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and binders and on index cards, magnetic tape, disks, and microfiche.

RETRIEVAL:

These records are retrieved by the subject's name, and the name of the employing agency of the individual on whom the record is maintained.

SAFEGUARDS:

These records are located in lockable metal filing cabinets or automated media in a secured room, with access limited to those persons whose official duties require and such access.

RETENTION AND DISPOSAL:

Records related to position classification appeal, job grading appeal, retained grade or pay appeal files, and FLSA claims or complaints are maintained for 7 years after closing action on the case. Records are destroyed by shredding, burning, or erasing as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director for Merit Systems Oversight, U. S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should:

a. For records pertaining to retained grade or pay appeals, contact the system manager or the appropriate OPM Oversight Division Office.

b. For records pertaining to a position classification appeal, job grading appeal, or FLSA claim or complaint where the appeal was made only to OPM, contact the system manager or the OPM Oversight Division Office, as appropriate.

c. For records pertaining to a position classification appeal, a job grading appeal, or FLSA claim or complaint filed with both the agency and OPM, contact the agency personnel officer, other designated officer, or the system manager, or the OPM Oversight Division Office, as appropriate.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Agency in which employed when the appeal, or FLSA claim or complaint was filed and the approximate date of the closing of the case.

d. Kind of action (*e.g.*, position classification appeal, job grading appeal, retained grade or pay appeal, or FLSA claim or complaint).

RECORD ACCESS PROCEDURE:

Individuals who have filed a position classification appeal, job grading appeal, a retained grade or pay appeal, or FLSA claim or complaint, must be provided access to the record. However, after the appeal or FLSA claim or complaint has been closed, an individual may request access to the official copy of the records by writing the official indicated in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Agency in which employed when appeal or FLSA claim or complaint was filed and the approximate date of the closing of the case.

d. Kind of action (*e.g.*, position classification appeal, job grading appeal, retained grade or pay appeal, or FLSA claim or complaint).

Individuals requesting access must also follow OPM's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Review of requests from individuals seeking amendment of their records that have previously been or could have been the subject of a judicial or quasi-

judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency or administrative body ruling on the case, and will not include a review of the merits of the action, determination, or finding. Individuals wishing to request an amendment to their records to correct factual errors should contact the appropriate official indicated in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Agency in which employed when the appeal or FLSA claim or complaint was filed and the approximate date of the closing of the case.

d. Kind of action (*e.g.*, position classification appeal, job grading appeal, retained grade or pay appeal, or FLSA claim or complaint).

Individuals requesting amendment of their records must also follow OPM's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

a. Individual to whom the record pertains.

b. Agency and/or OPM records relating to the action.

c. Statements from employees or testimony of witnesses.

d. Transcript of hearings.

OPM/GOVT–10

SYSTEM NAME:

EMPLOYEE MEDICAL FILE SYSTEM RECORDS:

SYSTEM LOCATION:

a. For current employees, records are located in agency medical, personnel, dispensary, health, safety, or other designated offices within the agency, or contractors performing a medical function for the agency.

b. For former employees, most records will be located in an Employee Medical Folder (EMF) stored at the National Personnel Records Center operated by the National Archives and Records Administration (NARA). In some cases, agencies may retain for a limited time (*e.g.*, up to 3 years) some records on former employees.

Note 1 —The records in this system of records are "owned" by the Office of Personnel Management (Office) and should be provided to those Office employees who have an official need or use for those records. Therefore, if an employing agency is asked by an Office employee to access the records within this system, such a request should be honored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal civilian employees as defined in 5 U.S.C. 2105.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system include:

a. Medical records, forms, and reports completed or obtained when an individual applies for a Federal job and is subsequently employed;

b. Medical records, forms, and reports completed during employment as a condition of employment, either by the employing agency or by another agency, State or local government entity, or a private sector entity under contract to the employing agency;

c. Records and pertaining and resulting from the testing of the employee for use of illegal drugs under Executive Order 12564. Such records may be retained by the agency (*e.g.*, by the agency Medical Review Official) or by a contractor laboratory. This includes records of negative results, confirmed or unconfirmed positive test results, and documents related to the reasons for testing or other aspects of test results.

d. Reports of on-the-job injuries and medical records, forms, and reports generated as a result of the filing of a claim for Workers' Compensation, whether the claim is accepted or not. (The official compensation claim file is not covered by this system; rather, it is part of the Department of Labor's Office of Workers' Compensation Program (OWCP) system of records.)

e. All other medical records, forms, and reports created on an employee during his/her period of employment, including any retained on a temporary basis (*e.g.*, those designated to be retained only during the period of service with a given agency) and those designated for long-term retention (*i.e.*, those retained for the entire duration of Federal service and for some period of time after).

Note 2 —Records maintained by an agency dispensary are included in this system only when they are the result of a condition of employment or related to an on-the-job occurrence.

Note 3 —Records pertaining to employee drug or alcohol abuse counseling or treatment, and those pertaining to other employee counseling programs conducted under Health Service Program established pursuant to 5 U.S.C. chapter 79, are not part of this system of records.

Note 4 —Only Routine Use "u" identified for this system of records is applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within the agency, generally only to the agency Medical Review Official (MRO), the administrator of the agency Employee Assistance Program, and any supervisory or management official within the employee's agency having authority to take the adverse personnel action against the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Orders 12107, 12196, and 12564 and 5 U.S.C. chapters 11, 31, 33, 43, 61, 63, and 83.

PURPOSE(S):

Records in this system of records are maintained for a variety of purposes, which include the following:

a. To ensure that records required to be retained on a long-term basis to meet the mandates of law, Executive order, or regulations (*e.g.*, the Department of Labor's Occupational Safety and Health Administration (OSHA) and OWCP regulations), are so maintained.

b. To provide data necessary for proper medical evaluations and diagnoses, to ensure that proper treatment is administered, and to maintain continuity of medical care.

c. To provide an accurate medical history of the total health care and medical treatment received by the individual as well as job and/or hazard exposure documentation and health monitoring in relation to health status and claims of the individual.

d. To enable the planning for further care of the patient.

e. To provide a record of communications among members of the health care team who contribute to the patient's care.

f. To provide a legal document describing the health care administered and any exposure incident.

g. To provide a method for evaluating quality of health care rendered and job-health-protection including engineering protection provided, protective equipment worn, workplace monitoring, and medical exam monitoring required by OSHA or by good practice.

h. To ensure that all relevant, necessary, accurate, and timely data are available to support any medically-related employment decisions affecting the subject of the records (*e.g.*, in connection with fitness-for-duty and disability retirement decisions).

i. To document claims filed with and the decisions reached by the OWCP and the individual's possible reemployment rights under statutes governing that program.

j. To document employee's reporting of on-the-job injuries or unhealthy or unsafe working conditions, including the reporting of such conditions to the OSHA and actions taken by that agency or by the employing agency.

k. To ensure proper and accurate operation of the agency's employee drug testing program under Executive Order 12564.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Note 5 —With the exception of Routine Use "u," none of the other Routine Uses identified for this system of records are applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within the agency, generally only to the agency Medical Review Official (MRO), the administrator of the agency Employee Assistance Program, and the management official empowered to recommend or take adverse action affecting the individual.

These records and information in these records may be used:

a. To disclose information to the Department of Labor, Department of Veterans Affairs, Social Security Administration, Federal Retirement Thrift Investment Board, or a national, State, or local social security type agency, when necessary to adjudicate a claim (filed by or on behalf of the individual) under a retirement, insurance, or health benefit program.

b. To disclose information to a Federal, State, or local agency to the extent necessary to comply with laws governing reporting of communicable disease.

c. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

d. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

e. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

f. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

g. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

h. To disclose information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

i. To disclose information to the Merit System Protection Board or the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel, the Equal Employment Opportunity Commission, arbitrators, and hearing examiners to the extent necessary to carry out their authorized duties.

j. To disclose information to survey team members from the Joint Commission on Accreditation of Hospitals (JCAH) when requested in connection with an accreditation review, but only to the extent that the information is relevant and necessary to meet the JCAH standards.

k. To disclose information to the National Archives and Records Administration in records management inspections and its role as Archivist.

l. To disclose information to health insurance carriers contracting with the Office to provide a health benefits plan under the Federal Employees Health Benefits Program information necessary to verify eligibility for payment of a claim for health benefits.

m. By the agency maintaining or responsible for generating the records to locate individuals for health research or survey response and in the production of summary descriptive statistics and analytical studies (*e.g.*, epidemiological studies) in support of the function for which the records are collected and maintained. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study might be structured in such a way as to make the data individually identifiable by inference.

n. To disclose information to the Office of Federal Employees Group Life Insurance or Federal Retirement Thrift Investment Board that is relevant and necessary to adjudicate claims.

o. To disclose information, when an individual to whom a record pertains is mentally incompetent or under other legal disability, to any person who is responsible for the care of the individual, to the extent necessary.

p. To disclose to the agency-appointed representative of an employee, all notices, determinations, decisions, or other written communications issued to the employee, in connection with an examination ordered by the agency under medical evaluation (formerly Fitness for Duty) examinations procedures.

q. To disclose to a requesting agency, organization, or individual the home address and other information concerning those individuals who it is reasonably believed might have contracted an illness or been exposed to or suffered from a health hazard while employed in the Federal workforce.

r. To disclose information to a Federal agency, in response to its request or at the initiation of the agency maintaining the records, in connection with the retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, or the lawful, statutory, administrative, or investigative purpose of the agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

s. To disclose to any Federal, State, or local government agency, in response to its request or at the initiation of the agency maintaining the records, information relevant and necessary to the lawful, statutory, administrative, or investigatory purpose of that agency as it relates to the conduct of job related epidemiological research or the insurance of compliance with Federal, State, or local government laws on health and safety in the work environment.

t. To disclose to officials of labor organizations recognized under 5 U.S.C. chapter 71, analyses using exposure or medical records and employee exposure records, in accordance with the records access rules of the Department of Labor's OSHA, and subject to the

limitations at 29 CFR 1910.20(e)(2)(iii)(B).

u. To disclose the results of a drug test of a Federal employee pursuant to an order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

v. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement or job for the Federal Government.

w. To disclose records on former Panama Canal Commission employees to the Republic of Panama for use in employment matters.

x. To disclose to a requesting agency, organization, or individual the home address and other relevant information on those individuals who it reasonably believed might have contracted an illness or might have been exposed to or suffered from a health hazard while employed in the Federal workforce.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, on microfiche, in electronic record systems, and on file cards, x-rays, or other medical reports and forms.

RETRIEVABILITY:

Records are retrieved by the employee's name, date of birth, social security number, or any combination of those identifiers.

SAFEGUARDS:

Records are stored in locked file cabinets or locked rooms. Electronic records are protected by restricted access procedures and audit trails. Access to records is strictly limited to agency or contractor officials with a bona fide need for the records.

RETENTION AND DISPOSAL:

The EMF is maintained for the period of the employee's service in the agency and is then transferred to the National Personnel Records Center for storage, or as appropriate, to the next employing Federal agency. Other medical records are either retained at the agency for various lengths of time in accordance with the National Archives and Records Administration's records schedules or destroyed when they have served their purpose or when the employee leaves the agency. Within 90 days after the individual separates from the Federal service, the EMF is sent to the National Personnel Records Center for storage. Destruction of the EMF is in accordance with General Records Schedule-1(21). Records arising in connection with employee drug testing under Executive Order 12564 are generally retained for up to 3 years. Records are destroyed by shredding, burning, or by erasing the disk.

SYSTEM MANAGER(S) AND ADDRESS:

a. Assistant Director for Workforce Information, Office of Merit Systems Oversight and Effectiveness, U. S. Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

b. For current Federal employees, OPM has delegated to the employing agency the Privacy Act responsibilities concerning access, amendment, and disclosure of the records within this system notice.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains records on them should follow the appropriate procedure listed below.

a. *Current Employees.* Current employees should contact their employing agency's personnel, dispensary, health, safety, medical, or other designated office responsible for maintaining the records, as identified in the agency's internal issuance covering this system. Individuals must furnish such identifying information as required by the agency for their records to be located and identified.

b. *Former employees.* Former employees should contact their former agency's personnel, dispensary, health, safety, medical, or other designated office responsible for maintaining the records, as identified in the agency's internal issuance covering this system. Additionally, for access to their EMF, they should submit a request to the National Personnel Records Center (Civilian), 111 Winnebago Street, St. Louis, Missouri 63118.

RECORDS ACCESS PROCEDURE:

a. Current employees should contact the appropriate agency office as indicated in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the records sought.

b. Former employees should contact the appropriate agency office as indicated in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the records sought. Former employees may also submit a request to the National Personnel Records Center (Civilian), 111 Winnebago Street, St. Louis, Missouri, for access to their EMF. When submitting a request to the National Personnel Records Center, the individual must furnish the following information to locate and identify the record sought:

1. Full name.

2. Date of birth.

3. Social security number.

4. Agency name, date, and location of last Federal service.

5. Signature.

c. Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORDS PROCEDURE:

Because medical practitioners often provide differing, but equally valid medical judgments and opinions when making medical evaluations of an individual's health status, review of requests from individuals seeking amendment of their medical records, beyond correction and updating of the records, will be limited to consideration of including the differing opinion in the record rather than attempting to determine whether the original opinion is accurate.

Individuals wishing to amend their records should:

a. For a current employee, contact the appropriate agency office identified in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the records to be amended.

b. For a former employee, contact the appropriate agency office identified in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the record to be amended. Former employees may also submit a request to amend records in their EMF to the system manager. When submitting a request to the system manager, the individual must furnish the following information to locate and identify the records to be amended:

1. Full name.
2. Date of birth.
3. Social security number.
4. Agency name, date, and location of last Federal service.
5. Signature.

c. Individuals seeking amendment of their records must also follow the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORDS SOURCE CATEGORIES:

Records in this system are obtained from:

a. The individual to whom the records pertain.

b. Agency employee health unit staff.

c. Federal and private sector medical practitioners and treatment facilities.

d. Supervisors/managers and other agency officials.

e. Other agency records.

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Federal Register

Thursday,
April 27, 2000

Part III

Department of Education

34 CFR Part 694

Gaining Early Awareness and Readiness for Undergraduate Programs; Final Rule and Notice Inviting Applications for New Awards for Fiscal Year 2000

DEPARTMENT OF EDUCATION

34 CFR Part 694

RIN 1840–AC82

Gaining Early Awareness and Readiness for Undergraduate Programs

AGENCY: Office of Postsecondary Education, Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) program. These amendments are needed because the current regulations applied only to the fiscal year 1999 competition. These final regulations apply to any future GEAR UP competitions. The proposed regulations were drafted subject to the negotiated rulemaking process required by section 492 of the Higher Education Act of 1965, as amended (HEA).

DATES: These regulations are effective May 30, 2000.

FOR FURTHER INFORMATION CONTACT: Rafael Ramirez, U.S. Department of Education, 1990 K Street, NW., room 6107, Washington, DC 20006. Telephone: (202) 502–7676. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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

SUPPLEMENTARY INFORMATION: On December 21, 1999, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (64 FR 71552). There are several significant differences in the final regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 171 parties submitted comments on the proposed regulations. Virtually all of these letters expressed support for the GEAR UP program. An analysis of the comments and of the changes in the regulations follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes and suggested changes the law does not authorize the Secretary to make.

Students Served Under the Cohort Approach (§ 694.2)

Comment: One commenter believed that following individual students from year to year through different middle or high schools and to different States would be impractical, unfeasible, and costly. Another commenter believed that the regulations should provide a definition of what it means to serve a student in a cohort and what records must document that services have been provided.

Discussion: Section 404B(g)(1)(B) requires that Partnerships ensure that services continue to be provided to students in a cohort through the twelfth grade. Section 694.4 of the regulations (which extends this provision to States) addresses which students a GEAR UP program must continue to serve when a single middle school feeds into more than one high school. A GEAR UP program is required to continue to provide services to only those students in the cohort who, after completing the last grade level offered by the school, attend participating schools that enroll a substantial majority of the students of the cohort. Under the regulations, therefore, the GEAR UP program would only have to follow the students from the initial cohort who attend subsequent participating schools that enroll a substantial majority of the students from the initial cohort. The GEAR UP program could follow and provide services to students who attend high schools that enroll less than a substantial majority of the students from the initial cohort, but would not be required to do so.

In addition, the proposed regulations would not require a State or Partnership to follow individual students to different States. As explained in the preamble to the NPRM, GEAR UP programs are not required to serve students who begin in the cohort but leave the participating school before completing the last grade level offered by the school. Once a student leaves the participating school before completing the last grade level offered by the school, the GEAR UP program would no longer be required to follow that student.

Evaluating the success of the program depends upon following as many students from the initial cohort as possible. The regulations as published in the NPRM would allow the maximum number of students from the initial cohort to receive services, without placing an undue burden on Partnerships or States.

With respect to a definition of what it means to serve students in a cohort and what records are required to document that the students have been served, we don't believe that information is necessary in the regulations. Applicants are evaluated based on selection criteria found in 34 CFR 75.210 of the Education General Administrative Regulations (EDGAR). Applicants tell the Department, based on the selection criteria, what services and resources the program will provide the students in the cohort and how they intend to measure the impact of these services and resources. By not regulating the specific services that must be provided, we allow maximum flexibility to the States and Partnerships to develop innovative ways to serve students.

Similarly, we believe that it would be too limiting to specify all forms of acceptable documentation in the regulations. Partnerships and States must be able to document that they are providing the services in their project plans. However, because the services provided will vary from program to program, appropriate documentation will also vary. This approach is consistent with the Department's philosophy on regulating only when necessary.

Changes: None.

Requirements for the Cohort (§ 694.3)

Comments: Two commenters felt that the regulatory language defining the cohort was unduly restrictive and inconsistent with the statute.

Discussion: The statute requires that Partnerships provide GEAR UP services to at least one grade level of students, beginning not later than 7th grade, in a participating school that has a 7th grade and in which at least 50 percent of the students enrolled are eligible for free or reduced price lunch. As explained in the NPRM, the intent of GEAR UP Partnerships is to emphasize the importance of providing services and resources to meet the needs of a cohort of low-income students beginning in the middle grades (*i.e.*, schools that include a 7th grade), and continuing to support those students through high school. The regulatory language follows both the purpose and language of the statute.

Changes: None.

Matching Requirements (§ 694.7)

Comments: Two commenters felt that the reduced matching requirement available to the institutions eligible under the regulations was inadequate. The commenters also suggested that the fact that contributions could be in-kind wouldn't help the most needy institutions, because it would still require the institution to find additional funds to maintain its instruction

program. The commenters suggested completely eliminating the matching requirement for all institutions that qualify for Part B of Title III.

One commenter also felt that the Department should eliminate the requirement that the Partnership include only local educational agencies (LEA) in which at least 50 percent of the students enrolled are eligible for free or reduced-price lunch under the National School Lunch Act.

Discussion: As explained in the preamble to the NPRM, the success of the GEAR UP program depends, at least in part, on a strong community partnership. Additionally, as the preamble explained, the poorest and very rural communities were able to meet the match in the 1999 competition, suggesting that eliminating the match entirely was unnecessary. Therefore, the negotiating committee, in developing the proposed regulations, felt strongly that a complete waiver of the matching requirement, even for a subset of applicants, was unacceptable.

We also feel that the concern that the neediest institutions would not be able to provide an in-kind match, because they would need to hire new staff, isn't accurate. An institution would not be required to use its faculty or staff to provide the in-kind match. Partnerships must include at least two community organizations or entities. The in-kind match could be met by using qualified community or student volunteers, at no additional cost to the institution, so that time and effort could be counted as much, or more, than institutional resources. The in-kind match could also be met through contributions from partners such as non-profit organizations, large and small businesses, service groups, religious organizations, and State and local governments.

The Department also believes that the requirement that a Partnership include only LEAs in which at least 50 percent of the students enrolled are eligible for free or reduced-price lunch is extremely important, and negotiators on the committee to develop the proposed regulations agreed. The negotiating committee felt that those Partnerships that include only the most needy school districts should be eligible for a reduced match. Without the requirement, there could be cases in which Partnerships that included wealthier LEAs could receive the benefit of a reduced match, simply by partnering with an institution of higher education that was eligible for the reduced match. This would allow less needy Partnerships to take advantage of a reduced match. The matching requirement as written allows us to maximize the effects of the program, by encouraging strong community support to ensure that the benefits of the program continue even after the grant has ended.

Changes: None.

Indirect Costs (§ 694.9)

Comments: None.

Discussion: We have determined that the language drafted for the proposed regulations, though accurate, is not as clear as it could be. We have therefore decided to make minor technical changes to the language. The change does not alter the substance of the regulation, and the language now reflects the language from the Education General Administrative Regulations (EDGAR) provision on which it was based, § 75.562 on indirect costs for educational training grants.

Changes: We have revised the language to reflect § 75.562 of EDGAR, the provision on which it was based.

Amount of Scholarship (§ 694.10(a)(2))

Comments: One commenter expressed concern that the regulations would require the State or Partnership to reduce the scholarship amount proportionally for any student who receives a GEAR UP scholarship and attends on a less than full-time basis.

Discussion: The State or Partnership would not be required to reduce the scholarship proportionally. The proposed regulations provide that the State or Partnership may reduce the scholarship for students who attend part-time. The regulation further specifies that if the State or Partnership chooses to reduce the scholarship, then such a reduction cannot be greater than the percentage reduction in tuition and fees charged to that student as a result of attending part-time. This does not require proportional reductions, but merely provides a limit on the maximum reduction in the GEAR UP scholarship. A State or Partnership could choose to reduce the GEAR UP scholarship by an amount that is less than the percentage reduction in tuition and fees.

Changes: None.

Continuation Scholarships (§ 694.10(c))

Comments: One commenter suggested that the regulations should include discretion for the Secretary to waive the requirement that States and Partnerships provide continuation scholarships to students who remain eligible when there are insufficient Federal funds.

Discussion: The preamble to the NPRM clarified that, if Federal funding were discontinued during the life of the grant, grantees would not be required to continue to provide their share of the funds. The same policy would apply if Federal funds were reduced and projects were not fully funded as a result. If Federal funds were reduced, grantees could also reduce an equivalent amount of non-federal funds. A waiver process would be unnecessary. A grantee could only be required to provide full continuation scholarships during the life of the grant for all students who remain eligible if Federal funding remained the same. However, as the preamble to the NPRM explained, as long as some level of Federal funding is provided throughout the life of the grant, a grantee is obligated to provide continuation scholarships to students who remain eligible for scholarships even after the grant period has ended.

Changes: None.

General Scholarship and Disclosure Requirements (§ 694.11)

Comments: Although several commenters supported the NPRM unchanged, most of the comments from institutions of higher education repeated some or all of the following points: (1) States and Partnerships, not the Department, should monitor scholarship procedures. Departmental enforcement would be an unacceptable intrusion by the Federal government into the internal process by which institutions distribute institutional aid; (2) the proposed disclosure of financial aid packaging would be a burden on institutions and potentially inconsistent with existing regulations on disclosure for institutions; (3) the statutory "supplement-not-supplant" provision should not apply to individual student aid packaging, and should apply to States and Partnerships at the program level; (4) it is inappropriate for the Department to establish requirements for student aid packaging; (5) institutions wouldn't always be able to identify which students were GEAR UP recipients, making compliance difficult, with no clear direction for how the Department would monitor compliance; (6) the regulations would apply to all institutions, not just those participating in GEAR UP; and (7) GEAR UP students should not receive preferential treatment over non-GEAR UP students, as could be the case if the restrictions on financial aid packaging in the proposed regulations were retained.

Discussion: After reviewing the comments we received and upon further consideration, we have modified the aid packaging requirements and eliminated the disclosure requirements as published in § 694.11 of the NPRM. The negotiating committee developed

requirements that would have allowed an institution to deviate from certain student financial aid packaging rules, including specific overaward procedures. The proposed packaging provisions and the accompanying proposed disclosure provisions for the packaging of student financial aid have been removed in the final rule. In addition, under the final regulations, institutional monitoring of GEAR UP scholarship awards will rest with States and Partnerships, and not the Department.

We address more specifically each of the points reiterated by the vast majority of the commenters, each under its own heading.

1. Departmental Enforcement

The GEAR UP statute dealing with scholarships closely resembles its predecessor, the National Early Intervention Scholarship and Partnership (NEISP) program statute, in which enforcement for ensuring institutional compliance with the program requirements was placed with State recipients. The GEAR UP statute was modified from NEISP to include Partnerships as eligible entities. In light of the comments regarding Departmental enforcement, States and Partnerships, not the Department, will monitor the treatment of GEAR UP scholarships in relation to other aid, as was the case under both NEISP and the 1999 GEAR UP regulations. The treatment of GEAR UP scholarships under the final regulations, therefore, is the same as the treatment of NEISP scholarships in relation to other aid under the NEISP program, and for GEAR UP scholarships under the fiscal year 1999 GEAR UP regulations. In addition, we expect that States and Partnerships will ensure that institutions, in the case of an overaward, will reduce aid in the reverse order of how it was granted.

2. Disclosure, Burden, and Inconsistency

As mentioned previously, most commenters believed that the disclosure requirements would place an extensive burden on institutions. Additionally, commenters believed that the disclosure requirements were inconsistent with other disclosure requirements for Title IV aid.

The disclosure requirements in the proposed regulations are not part of the final regulations. Individual student financial aid packaging is dealt with in the final regulations by returning to the financial aid ordering language that appeared in both the 1994 NEISP and 1999 GEAR UP regulations. The only difference from the 1999 GEAR UP regulations is that exceptions to financial aid ordering requirements, suggested by the negotiators in developing the NPRM, are retained in the final regulations in order to recognize exceptional circumstances that cannot be handled by a general packaging regulation. States and Partnerships must ensure that institutions document the exceptional circumstances related to the GEAR UP student that are unique to that student. They will also ensure that institutions document and maintain in the GEAR UP student's file the modification made to the GEAR UP student's award package and the reason for the modification. Finally, States and Partnerships will ensure that institutions provide written notice to the GEAR UP student of the reason for and the specific modification that was made to the package. We believe that these requirements are consistent with other Title IV regulations and do not believe that they are overly burdensome for either States and Partnerships or to institutions. The institution would only have to document cases of exceptional circumstances. Finally, institutions would only be required to disclose their policies to a State or Partnership that requests it. Commenters were most concerned with the burden of disclosing their policy to the Department and prospective students. The final regulations therefore eliminate the burden that concerned so many commenters.

3. Supplement-Not-Supplant

Several commenters believed that the proposed regulations implied that States and Partnerships were exempt from the statutory requirement that GEAR UP funds "supplement and not supplant funds expended for existing programs". States and Partnerships are both subject to the statutory "supplement not supplant" requirement and to the assurance required in GEAR UP plan submissions. In drafting the regulations, the negotiating committee adhered to the Department's principles for regulating, and therefore regulated only when necessary. For the most part, we did not repeat statutory language in the regulations. That does not mean that a statutory requirement not in the regulations does not apply. If State or Partnership recipients do supplant, their awards will be subject to cancellation or re-negotiation, or repayment after an audit finding.

Other commenters did not believe that the supplement-not-supplant provision was intended to apply to individual student aid packages. The intent of the GEAR UP program is to benefit individual GEAR UP students. Therefore, we believe that individual GEAR UP students must benefit through their individual financial aid packages. The legislative intent is clear that the GEAR UP scholarship is not intended to replace other gift aid but is in addition to any other aid the student would have received.

4. Inappropriate Establishment of Packaging Requirements

The preamble to the NPRM said the Federal Government had a long history of placing maintenance of effort, supplement not supplant, and similar restrictions on institutional aid as a condition of receiving federal funds. This statement is correct. Many major federal student aid programs have had such requirements at one time or another in their history, including Pell Grants and campus-based programs. Additionally, it should be noted that the NPRM preamble was written to give context to readers of the regulation negotiations. We believe the preamble is faithful both to history and to the statements in the negotiations.

5. Identification of GEAR UP Students

By eliminating the disclosure requirements, institutions will not be required to identify GEAR UP students in order to comply with any disclosure requirements. Under the final regulations, States and Partnerships must monitor the ordering of how aid is packaged. One commenter recommended that we require States to develop systems to provide data to students and institutions on the eligibility of GEAR UP awards in a timely manner. It is the State or Partnership's responsibility to inform the institution in a timely manner that the student is a GEAR UP student. The Department feels it is not necessary to specify the actual process in the regulations.

6. Applicability of the Regulations to All Institutions

Again, because the disclosure requirements are not part of the final regulations, the regulations do not apply to all institutions. The final regulations apply to the responsibility of the States and Partnerships, not to the institution. If, however, in the absence of exceptional circumstances, an institution chooses not to follow the ordering outlined in the regulations, then the State or Partnership, acting consistent with their responsibilities under this regulation, must not provide the GEAR UP scholarship.

7. Preferential Treatment of GEAR UP Students

We believe it is important that the final regulations reflect the legislative history and intent of the GEAR UP program. GEAR UP was designed to provide early intervention services and programs to students in middle schools and high schools and, where scholarships are offered, to link the scholarships specifically to those students in amounts that will significantly reduce what they have to pay for college. GEAR UP scholarships are designed to permit these students to attend college without the fear of incurring significant debt. Because the intent of the GEAR UP program is to benefit GEAR UP students, in some cases, this will mean that they receive preferential treatment over other non-GEAR UP students.

Further, the GEAR UP program was designed to encourage contributions from partners such as non-profit organizations, large and small businesses, service groups, religious organizations, and State and local governments. These partners must not be discouraged from contributing funds out of concern that institutions will simply reduce their own institutional aid to the student, and therefore the GEAR UP students will not benefit from the scholarships.

Additionally, we are obligated under the Government Performance and Results Act (GPRA) to evaluate program performance for Congress. The term used by several commenters, "preferential treatment," is essentially the same as targeting. If funds targeted by Congress to certain populations are redistributed to other populations (which would be the real effect of a revised package that "released" other gift aid when a GEAR UP scholarship was added), there will be no way to effectively evaluate the effects of the program on the target population.

Additional Comments on § 694.11

In addition to the comments already discussed with respect to § 694.11 of the proposed regulations, we also received several other comments on the disclosure requirements that are discussed later in this preamble. However, because all of the comments refer to changes to § 694.11 of the proposed regulations, the changes appear at the end of all of the comments on this section.

GEAR UP and Less Needy Students

Comments: One commenter suggested that not all the students served by GEAR UP will be needy, since for Partnerships, a cohort of students must be from a school in which at least 50 percent of the students enrolled are eligible for free and reduced-price lunch, which could mean that some students could come from less needy families. Since those students would also receive GEAR UP scholarships, the commenter argues funding will have to be taken from other need-based programs that serve truly needy students.

Discussion: We do not believe that the regulations would require an institution to take funding from needy students to give to a less needy GEAR UP student. While GEAR UP early intervention services must be provided to all students in a cohort or students that a State has selected as priority students, not all GEAR UP students are guaranteed a scholarship, as the commenter suggested. We believe that if a GEAR UP student is from a less needy family and therefore not in need of a scholarship, the State or Partnerships may choose not to provide that student with a scholarship. Under § 694.10(b), a State or Partnership must first award a GEAR UP scholarship to students who are eligible to receive a Pell Grant. Students eligible for a Pell Grant are needy students. If, after all the students who participated in the GEAR UP program who are eligible for a Pell Grant are given scholarships, a State or Partnership still has scholarship money available, the State or Partnership may give scholarships to other GEAR UP students, taking into consideration the students' need. Under the regulations therefore, it seems unlikely that less needy students would receive scholarships that would take funding away from needier students.

Redistribution of Aid

Comments: Commenters noted that students who receive GEAR UP scholarships earn the funds. The commenters stated that these students must know that the fruits of their labors will truly benefit them by reducing their higher education costs. The commenters felt that institutions should not be free, in effect, to redistribute those dollars to other students. The commenters believed that this line of thinking is at odds with the statute. The commenters asserted that, if the final regulations do not prevent this practice, then the preferences that are to be given to Partnership applications that include scholarships should be eliminated.

Discussion: We believe that the final regulations contain sufficient protections against redistribution. States and Partnerships are required under the regulations to ensure that institutions package their aid in accordance with the order specified in the regulations. We believe that the ordering specified provides sufficient protection against redistribution. Consequently, we do not plan to eliminate the competitive preference for Partnerships that include a scholarship component in their application.

Students' Knowledge of Institutions' GEAR UP Policies

Comments: One commenter suggested that students who have a GEAR UP scholarship should know how that scholarship will be treated with respect to other aid in the packaging of student financial assistance.

Discussion: In accordance with § 694.10(e), States and Partnerships must ensure that institutions follow the ordering outlined by the regulations when GEAR UP scholarships are involved. States and Partnerships would inform GEAR UP students of any institution that does not intend to treat the GEAR UP scholarship as required, so that students can decide whether to attend a different institution, or give up the scholarship.

Aid Already Disbursed v. Aid Not Yet Disbursed

Comments: One commenter suggested that the regulations detailing the order in which aid is packaged should be modified to distinguish aid already disbursed from aid not yet disbursed, since in overaward situations, the institution might have to seek a return of a disbursed loan.

Discussion: We don't think that such a distinction is necessary in the regulations. Since loans are part of the financial assistance that is awarded last under the regulations, students should not be in a situation in which loans caused them to exceed their cost of attendance. Therefore the recovery of disbursed loans is unlikely.

Supplement-Not-Supplant and Early Intervention

Comments: One commenter believed that the statutory supplement-not-supplant language should apply only to early awareness programs of a similar nature and shouldn't restrict the rights of individual institutions in awarding their own aid to individual students.

Discussion: We disagree that the supplement-not-supplant language applies only to early awareness programs. The existing programs referred to in the statute include State and institutional aid programs as well as early intervention programs. If supplement-not-supplant referred only to early intervention programs similar in nature, States could cut their current

student aid programs. That interpretation would be contrary to statutory intent.

Changes: We have revised § 694.11 to reflect the 1999 regulation, with the addition of a provision for exceptional circumstances.

Cost of Attendance (§ 694.11(a)(2))

Comments: Two commenters suggested that, in determining a student's financial aid package, the regulation should state that the total assistance provided under Title IV should not exceed the student's unmet need, not the student's cost of attendance. The commenters suggested that this would conform the GEAR UP regulation to other Title IV regulations.

Discussion: Some Title IV regulations specify cost of attendance and some unmet need, depending on the underlying statute. In this case, cost of attendance is specified in the statute (section 404E(c)), allowing GEAR UP funds to be used to replace expected family contribution (EFC). This will permit GEAR UP students to carry a reduced loan burden where otherwise they may have been forced to borrow to meet their EFC.

Changes: None.

Master Calendar

Comments: Two commenters noted that even though the GEAR UP regulations were subject to the negotiated rulemaking process, they will be published in final form past the November 1 deadline for regulations subject to the Master Calendar provisions in the law. The commenters questioned whether or not these regulations can take effect before July 1, 2001.

Discussion: The Master Calendar provisions in section 482 of the Higher Education Act (HEA) apply only to the student financial assistance programs. While the Congress has amended section 482 several times to clarify that the scope of the provisions is sweeping with regard to those programs, it has not expanded the scope to encompass the discretionary grant programs in Title IV of the HEA. The paragraph establishing a regulatory deadline of "November 1 prior to the start of the award year" makes clear in particular that the deadline could not apply to the discretionary grant programs, which unlike the student financial assistance programs do not operate on an "award year" basis. In contrast, the statute prescribing negotiated rulemaking, section 492 of the HEA, clearly applies to all Title IV programs.

Changes: None.

Mandatory Priority (§ 694.15)

Comments: None.

Discussion: While the statutory provisions reflected in § 694.15, as proposed in the NPRM, are still applicable, we do not believe that as a practical matter the priority will arise, since States eligible for the priority have received Gear Up grants.

Changes: Section 694.15, as proposed in the NPRM, has been removed.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We discussed the potential costs and benefits of these final regulations in the preamble to the NPRM under the following headings: Executive Order 12866; Summary of Potential Costs and Benefits (64 FR 71560–71561).

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collection of information in these final regulations at the end of the affected section of the regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number does not apply.)

Program Authority: 20 U.S.C. 1070a–21.

List of Subjects in 34 CFR Part 694

Colleges and universities, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: April 6, 2000.

A. Lee Frischler,

Assistant Secretary, Office of Postsecondary Education.

For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by revising part 694 to read as follows:

PART 694—GAINING EARLY AWARENESS AND READINESS FOR UNDERGRADUATE PROGRAMS (GEAR UP)

Sec.

Authority: 20 U.S.C. 1070a–21 to 1070a–28.

§ 694.1 What is the maximum amount that the Secretary may award each fiscal year to a Partnership or a State under this program?

(a) *Partnership grants.* The maximum amount that the Secretary may award each fiscal year for a GEAR UP Partnership grant is calculated by multiplying—

(1) $800; by

(2) The number of students the Partnership proposes to serve that year, as stated in the Partnership's plan.

(b) *State grants.* The Secretary establishes the maximum amount that may be awarded each fiscal year for a GEAR UP State grant in a notice published in the **Federal Register**.

(Authority: 20 U.S.C. 1070a–23)

§ 694.2 Which students must a Partnership, or a State that chooses to use the cohort approach in its project, serve under the program's early intervention component?

A Partnership, or a State that chooses to use a cohort approach in its GEAR UP early intervention component, must, except as provided in § 694.4—

(a) Provide services to at least one entire grade level (cohort) of students (subject to § 694.3(b)) beginning not later than the 7th grade;

(b) Ensure that supplemental appropriate services are targeted to the students with the greatest needs; and

(c) Ensure that services are provided through the 12th grade to those students.

(Authority: 20 U.S.C. 1070a–22)

§ 694.3 What are the requirements for a cohort?

(a) *In general.* Each cohort to be served by a Partnership or State must be from a participating school—

(1) That has a 7th grade; and

(2) In which at least 50 percent of the students are eligible for free or reduced-price lunch under the National School Lunch Act; or

(b) *Public housing exception.* If the Partnership or State determines it would promote program effectiveness, a cohort may consist of all of the students in a particular grade level at one or more participating schools who reside in public housing, as defined in section 3(b)(1) of the United States Housing Act of 1937.

(Authority: 20 U.S.C. 1070a–22)

§ 694.4 Which students must a State or Partnership serve when there are changes in the cohort?

(a) *At the school where the cohort began.* A Partnership or State must serve, as part of the cohort, any additional students who—

(1) Are at the grade level of the students in the cohort; and

(2) Begin attending the participating school at which the cohort began to receive GEAR UP services.

(b) *At a subsequent participating school.* If not all of the students in the cohort attend the same school after the cohort completes the last grade level offered by the school at which the cohort began to receive GEAR UP services, a Partnership or a State—

(1) May continue to provide GEAR UP services to all students in the cohort; and

(2) Must continue to provide GEAR UP services to at least those students in the cohort that attend participating schools that enroll a substantial majority of the students in the cohort.

(Authority: 20 U.S.C. 1070–a22)

§ 694.5 What requirements must be met by a Partnership or State that chooses to provide services to private school students under the program's early intervention component?

(a) *Secular, neutral, and nonideological services or benefits.* Educational services or other benefits, including materials and equipment, provided under GEAR UP by a Partnership or State that chooses to provide those services or benefits to students attending private schools, must be secular, neutral, and nonideological.

(b) *Control of funds.* In the case of a Partnership or State that chooses to provide services under GEAR UP to students attending private schools, the fiscal agent (in the case of a Partnership) or a State agency (in the case of a State) must—

(1) Control the funds used to provide services under GEAR UP to those students;

(2) Hold title to materials, equipment, and property purchased with GEAR UP funds for GEAR UP program uses and purposes related to those students; and

(3) Administer those GEAR UP funds and property.

(Authority: 20 U.S.C. 1070a–21 to 1070a–28)

§ 694.6 Who may provide GEAR UP services to students attending private schools?

(a) GEAR UP services to students attending private schools must be provided—

(1) By employees of a public agency; or

(2) Through contract by the public agency with an individual, association, agency, or organization.

(b) In providing GEAR UP services to students attending private schools, the employee, individual, association, agency, or organization must be independent of the private school that the students attend, and of any religious organization affiliated with the school, and that employment or contract must be under the control and supervision of the public agency.

(c) Federal funds used to provide GEAR UP services to students attending private schools may not be commingled with non-Federal funds.

(Authority: 1070a–21 to 1070a–28)

§ 694.7 What are the matching requirements for a GEAR UP Partnership?

(a) *In general.* A Partnership must—

(1) State in its application the percentage of the cost of the GEAR UP

project the Partnership will provide for each year from non-Federal funds, subject to the requirements in paragraph (b) of this section; and

(2) Comply with the matching percentage stated in its application for each year of the project period.

(b) *Matching requirements.*

(1) Except as provided in paragraph (b)(2) of this section, the non-Federal share of the cost of the GEAR UP project must be not less than 50 percent of the total cost over the project period.

(2) A Partnership that has three or fewer institutions of higher education as members may provide less than 50 percent, but not less than 30 percent, of the total cost over the project period if it includes—

(i) A fiscal agent that is eligible to receive funds under Title V, or Part B of Title III, or section 316 or 317 of the HEA, or a local educational agency;

(ii) Only participating schools with a 7th grade in which at least 75 percent of the students are eligible for free or reduced-price lunch under the National School Lunch Act; and

(iii) Only local educational agencies in which at least 50 percent of the students enrolled are eligible for free or reduced-price lunch under the National School Lunch Act.

(3) The non-Federal share of the cost of a GEAR UP project may be provided in cash or in-kind.

(Authority: 20 U.S.C. 1070a–23)

§ 694.8 What are the requirements that a Partnership must meet in designating a fiscal agent for its project under this program?

Although any member of a Partnership may organize the project, a Partnership must designate as the fiscal agent for its project under GEAR UP—

(a) A local educational agency; or

(b) An institution of higher education that is not pervasively sectarian.

(Authority: 20 U.S.C. 1070a–22)

§ 694.9 What is the maximum indirect cost rate for an agency of a State or local government?

Notwithstanding 34 CFR 75.560–75.562 and 34 CFR 80.22, the maximum indirect cost rate that an agency of a State or local government receiving funds under GEAR UP may use to charge indirect costs to these funds is the lesser of—

(a) The rate established by the negotiated indirect cost agreement; or

(b) Eight percent of a modified total direct cost base.

(Authority: 20 U.S.C. 1070a–21 to 1070a–28)

§ 694.10 What are the requirements for awards under the program's scholarship component under section 404E of the HEA?

(a) *Amount of scholarship.* (1) Except as provided in paragraph (a)(2) of this section, the amount of a scholarship awarded under section 404E of the HEA must be at least the lesser of—

(i) 75 percent of the average cost of attendance, as determined under section 472 of the HEA, for in-State students in 4-year programs of instruction at public institutions of higher education in the State; or

(ii) The maximum Federal Pell Grant award funded for the award year in which the scholarship will be awarded.

(2) If a student who is awarded a GEAR UP scholarship attends an institution on a less than full-time basis during any award year, the State or Partnership awarding the GEAR UP scholarship may reduce the scholarship amount, but in no case shall the percentage reduction in the scholarship be greater than the percentage reduction in tuition and fees charged to that student.

(b) *Pell Grant recipient priority.* A State, or a Partnership that chooses to participate in the scholarship component under section 404E of the HEA in its GEAR UP project—

(1) Must award GEAR UP scholarships first to students who will receive, or are eligible to receive, a Federal Pell Grant during the award year in which the GEAR UP scholarship is being awarded and who are eligible for a GEAR UP scholarship under the eligibility requirements in section 404E(d) of the HEA; and

(2) May, if GEAR UP scholarship funds remain after awarding scholarships to students under paragraph (b)(1) of this section, award GEAR UP scholarships to other eligible students (who will not receive a Federal Pell Grant) after considering the need of those students for GEAR UP scholarships.

(c) *Cost of attendance.* A GEAR UP scholarship, in combination with other student financial assistance awarded under any title IV HEA program and any other grant or scholarship assistance, may not exceed the student's cost of attendance.

(d) *Continuation scholarships.* A State, or a Partnership that chooses to participate in the scholarship component in accordance with section 404E of the HEA in its GEAR UP project, must award continuation scholarships in successive award years to each student who received an initial scholarship and who continues to be eligible for a scholarship.

(e) *Order of Scholarships.* (1) *In general.* Notwithstanding 34 CFR 673.5, in awarding GEAR UP scholarships, a State or Partnership must ensure that, for each recipient of a scholarship under this part who is eligible for and receiving other postsecondary student financial assistance, a Federal Pell Grant, if applicable, be awarded first, any other public or private grants, scholarships, or tuition discounts be awarded second, a GEAR UP scholarship be awarded third, and then any other financial assistance, such as loans or work-study, be awarded.

(2) *Exception.* Notwithstanding paragraph (e)(1) of this section, a State or Partnership is not required to ensure that a GEAR UP scholarship recipient's financial aid be awarded in the order set forth in paragraph (e)(1) only if—

(i) It determines and documents in writing that there are exceptional circumstances related to the GEAR UP student's aid that are unique to that GEAR UP student;

(ii) It documents and maintains in the GEAR UP student's file the modification that was made to the GEAR UP student's award package and the reason for the modification; and

(iii) It provides written notification to the GEAR UP student of the reason for and the specific modification that was made to the package.

(Authority: 20 U.S.C. 1070a–25)

§ 694.11 Under what conditions may a Partnership that does not participate in the GEAR UP scholarship component under section 404E of the HEA provide financial assistance for postsecondary education to students under the GEAR UP early intervention component?

A GEAR UP Partnership that does not participate in the GEAR UP scholarship component may provide financial assistance for postsecondary education, either with funds under this chapter, (Under Chapter 2 of subpart 2 of Part A of Title IV of the HEA,) or with non-Federal funds used to comply with the matching requirement, to students who participate in the early intervention component of GEAR UP if—

(a) The financial assistance is directly related to, and in support of, other activities of the Partnership under the early intervention component of GEAR UP; and

(b) It complies with the requirements in § 694.10.

(Authority: 20 U.S.C. 1070a–21 to 1070a–28)

§ 694.12 How does a State determine which State agency will apply for, and administer, a State grant under this program?

The Governor of a State must designate which State agency applies

for, and administers, a State grant under GEAR UP.

(Authority: 20 U.S.C. 1070a–21 to 1070a–28)

§ 694.13 What requirements must be met by a Partnership or State participating in GEAR UP with respect to 21st Century Scholarship Certificates?

(a) A State or Partnership must provide, in accordance with procedures the Secretary may specify, a 21st Century Scholar Certificate from the Secretary to each student participating in the early intervention component of its GEAR UP project.

(b) 21st Century Scholarship Certificates must be personalized and indicate the amount of Federal financial aid for college that a student may be eligible to receive.

(Authority: 20 U.S.C. 1070a–26)

§ 694.14 What requirements apply to a State that served students under the National Early Intervention Scholarship and Partnership program (NEISP) and that receives a GEAR UP grant?

Any State that receives a grant under this part and that served students under the NEISP program on October 6, 1998 must continue to provide services under this part to those students until they complete secondary school.

(Authority: 20 U.S.C. 1070a–21)

§ 694.15 What priorities may the Secretary establish for a GEAR UP grant?

For any fiscal year, the Secretary may select one or more of the following priorities:

(a) Projects by Partnerships or States that serve a substantial number or percentage of students who reside, or attend a school, in an Empowerment Zone, including a Supplemental Empowerment Zone, or Enterprise Community designated by the U.S. Department of Housing and Urban Development or the U.S. Department of Agriculture.

(b) Partnerships that establish or maintain a financial assistance program that awards scholarships to students, either in accordance with section 404E of the HEA, or in accordance with § 694.11, to strengthen the early intervention component of its GEAR UP project.

(Authority: 20 U.S.C. 1070a–21 to 1070a–28)

[FR Doc. 00–10324 Filed 4–26–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA NO. 84.334]

Office of Postsecondary Education, Gaining Early Awareness and Readiness for Undergraduate Programs; Notice Inviting Applications for New Awards for Fiscal Year 2000

Purpose of Program

The purpose of this program is to give more elementary school, middle school, and secondary school low-income students the skills, motivation, and preparation needed to pursue postsecondary education. Through early college preparation and awareness activities, eligible students are provided comprehensive mentoring, counseling, outreach and supportive services, including information to students and their parents about the benefits of postsecondary education and the availability of Federal financial assistance to attend college. Through the scholarship component, which is mandatory for State grants and optional for Partnership grants, eligible students are provided scholarships for higher education.

Eligible Applicants

1. Partnerships with at least—

• One institution of higher education. This may be any degree-granting two-year or four-year college or university;

• One local educational agency (school district) on behalf of one or more schools with a 7th grade and the high school(s) that the students at these middle schools would normally attend. Generally, at least 50 percent of the students attending the participating school with a 7th grade must be eligible for free or reduced-price lunches. However, as an alternative, Partnerships may choose to work with one or more grade levels of students, beginning not later than the 7th grade, who reside in public housing; and

• Two additional organizations, such as businesses, professional associations, community-based organizations, State Agencies, elementary schools, philanthropic organizations, religious groups, and other public or private organizations.

2. State Agencies as designated by the State's Governor, one per State.

Applications Available: April 27, 2000.

Deadline for Transmittal of Applications: June 26, 2000.

Deadline for Intergovernmental Review: August 25, 2000.

Available Funds: $47,000,000.

Estimated Average Awards: No minimum, maximum or average award has been established for Partnership grants. The size of each Partnership grant will depend on the number of students served. However, there is a maximum annual Federal contribution of $800 per student for Partnership grants.

For State grants, the estimated average award is $1.5 million to $2 million with a $5 million maximum and no minimum award.

Estimated Number of Awards: 6 State grant awards and 74 partnership grant awards.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months, unless the Department announces that Congress has passed a technical amendment to the contrary.

Selection Criteria

The Secretary uses the selection criteria in accordance with 34 CFR 75.209 and 75.210 to evaluate applications for Gaining Early Awareness and Readiness for Undergraduate Programs. The application package includes selection criteria and the points assigned to the criteria.

Priorities

Competitive Priorities

Competitive Preference Priority

Providing Program Services in an Empowerment Zone or Enterprise Community (For Partnership or State grants)—Under 34 CFR 75.105(c)(2)(i) and 34 CFR 694.17(a), the Secretary gives competitive preference to an application for a partnership or State grant that serves a substantial number or percentage of students who reside in an Empowerment Zone, a supplemental Empowerment Zone, or an Enterprise Community.

The Secretary will select an application that meets this priority over an application of comparable merit that does not meet the priority.

Invitational Priority

Scholarships (For Partnerships grants only)—Under 34 CFR 75.105(c)(1) and 34 CFR 694.17(b) the Secretary is particularly interested in applications that meet the invitations priority for establishing or maintaining a financial assistance program that awards scholarships to students either in accordance with section 404E of the Higher Education Act of 1965, as amended, or in accordance with 34 CFR 694.12. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

For Applications or Information Contact

Rafael Ramirez, Office of Postsecondary Education, U.S. Department of Education, 1900 K Street, NW, Room 6252, Washington, DC 20006. Telephone 1–800–USA–LEARN, email gearup@ed.gov or fax your request to (202) 502–7675. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain the GEAR UP application in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) upon request to Rafael Ramirez, whose contact information is listed in the preceding paragraph. Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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Program Authority: 20 U.S.C. 1070a–21.

Dated: April 14, 2000.

A. Lee Fritschler,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 00–10325 Filed 4–26–00; 8:45 am]

BILLING CODE 4000–01–U

Federal Register

Thursday,
April 27, 2000

Part IV

Social Security Administration

20 CFR Part 435

Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, Other Non-Profit Organizations, and Commercial Organizations; Proposed Rule

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 435

RIN 0960–AE25

Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, Other Non-Profit Organizations, and Commercial Organizations

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Proposed Rule Making (NPRM).

SUMMARY: The proposed rule would create a new Part in the Code of Federal Regulations. The new part would provide standards in the administration of grants and agreements with institutions of higher education, hospitals, other non-profit organizations, and commercial organizations.

The Social Security Independence and Program Improvements Act of 1994, enacted August 15, 1994, established SSA as an independent agency separate from the Department of Health and Human Services (HHS), effective March 31, 1995. To implement its own set of grants regulations, SSA proposes to codify almost verbatim the text of the Office of Management and Budget (OMB) Circular Number A–110 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations." These regulations would establish SSA grants regulations, separate from the HHS regulations. We plan to publish additional regulations on the subject of grants at a future date.

DATES: To be sure your comments are considered, we must receive them no later than June 26, 2000.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, Maryland 21235–6401. Comments may be sent by telefax to (410) 966–2830, sent by E-mail to "regulations@ssa.gov," or delivered to the Social Security Administration, 2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below. The electronic file of this document is available on the Internet at www.access.gpo.gov/su— docs/aces/aces140.htm at 6:00 a.m. on the date of publication in the **Federal Register**. It is also available on the Internet site for SSA (i.e., SSA Online), http://www.ssa.gov/.

FOR FURTHER INFORMATION CONTACT: E. Joe Smith, Grants Management Officer, Office of Operations Contracts and Grants, Office of Acquisition and Grants, SSA, 1710 Gwynn Oak Ave., Baltimore, MD 21207–5279; telephone (410) 965–9503; fax (410) 966–9310.

SUPPLEMENTARY INFORMATION:

I. Background

OMB Circular A–110 (Circular) provides standards for obtaining consistency and uniformity among Federal agencies in the administration of grants and agreements with institutions of higher education, hospitals, and other non-profit organizations. The Circular was originally issued in 1976 and, except for a minor revision in 1987, it remained unchanged until it was revised by OMB in 1993 (58 FR 62992). It was subsequently amended in 1997 (62 FR 45934) and 1999 (64 FR 54926).

In 1987, OMB convened an interagency task force to update the Circular. The work of the task force resulted in the publication of a 1988 notice in the **Federal Register** (53 FR 44716) proposing that the Circular be merged with OMB Circular A–102, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" as a consolidated "common rule." The public response led to a decision by OMB to not finalize the proposal.

In November 1990, another interagency task force was established to revise the Circular and develop a set of common principles for the administration of grants and agreements with institutions of higher education, hospitals and other non-profit organizations. The task force solicited suggestions for changes to the Circular from university groups, non-profit organizations and other interested parties and compared, for consistency, the provisions of similar provisions applied to State and local governments. As a result, in August 1992, OMB published a notice in the **Federal Register** (57 FR 39018) requesting comments on proposed revisions to the Circular. OMB received over 200 comments from Federal agencies, non-profit organizations, professional organizations and others. OMB considered all comments in developing the final revision to the Circular. The Circular issued in 1993 reflects the results of these efforts. The revised Circular was developed in a model rule format to facilitate regulatory adoption by affected Federal agencies. OMB's notice directed each affected agency to promulgate its own rules adopting the language as it appears in the Circular unless different provisions are required by Federal statute or are approved by OMB (58 FR 62992–93). The notice states that OMB will review agency regulations and implementation of the Circular and will provide interpretations of policy requirements and assistance to insure effective and efficient implementation. Any exceptions will be subject to approval by OMB and will only be made in particular cases where adequate justification is presented.

Except as provided therein, the standards set forth in the Circular are applicable to all Federal agencies. If any statute specifically prescribes policies or specific requirements that differ from the standards provided in the Circular, the provisions of the statute shall govern. Federal agencies must apply the provisions of the Circular in making awards to the covered entities. Recipients must apply the provisions of the Circular to subrecipients performing substantive work under grants and agreements that are passed through or awarded by the primary recipient, if such subrecipients are organizations that are covered entities. The Circular does not apply to grants, contracts, or other agreements between the Federal Government and units of State or local governments covered by OMB Circular A–102, "Grants and Cooperative Agreements with State and Local Governments." And, it does not apply to the Federal agencies' grants management common rule that standardized and codified the administrative requirements Federal agencies impose on State and local grantees. In addition, the Circular does not cover subawards and contracts to State or local governments. However, the Circular applies to subawards made by State and local governments to organizations covered by the Circular. Federal agencies may apply the provisions of the Circular to commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations.

HHS applies the provisions of Circular A–110 in making awards to institutions of higher education, hospitals, other non-profit organizations, and commercial organizations through its regulations at 45 CFR part 74. Prior to March 31, 1995, SSA was an operating component of HHS. As a result of Public Law 103–296, SSA became an independent agency on

March 31, 1995. However, pursuant to section 106(b) of that law, the HHS regulations at 45 CFR part 74 have remained applicable to SSA. In order to implement our own set of grant regulations, we propose to adopt almost verbatim the text of Circular A–110. The result will be the SSA grants administration regulations at 20 CFR part 435. HHS regulations at 45 CFR part 74 will cease to be applicable to SSA on the effective date of these regulations, in accordance with section 106(b) of Public Law 103–296.

SSA's new part 435 at 20 CFR will be similar to OMB Circular A–110. Consistent with the guidance provided in Circular A–110, this rule will apply to SSA awards made to institutions of higher education, hospitals, other non-profit organizations, and commercial organizations. When appropriate, this rule will also apply to foreign governments, organizations under the jurisdiction of foreign governments, and international organizations. The proposed rule does not apply to grants under programs commonly referred to as "entitlement programs."

As noted above, OMB directed each affected agency to promulgate its own rules adopting the provisions of the Circular. Any exceptions or deviations, unless required by Federal statute, require OMB approval. Therefore, in support of OMB's desired uniformity, this proposed rule incorporates the provisions and language of revised Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," published by OMB on November 29, 1993 (58 FR 62992), as further amended August 29, 1997 (62 FR 45934) and November 8, 1999 (64 FR 54926).

II. Proposed Differences Between Part 435 and Circular A–110

The proposed rule contains a "SUBPART E—DISPUTES," which sets forth the SSA appeal process for disputes arising under SSA grants and agreements. OMB Circular A–110 does not contain an appeal process for disputes.

Also, the proposed rule contains the following clarifying language and updates to procedures:

A. To be less generic and more agency specific, where appropriate, the terms "federal awarding agency(ies)" have been replaced by "SSA".

B. In support of the plain language initiative, throughout the proposed rule, the word "shall" has been replaced by "must" or "will." Our reason for this change is, the term "shall" sounds especially legalistic and could be open to interpretation. Also, in the interest of making it easier for users to locate material, we have used identifying labels for many of our first level paragraphs (*i.e.*, a, b, c).

C. To be consistent with section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)), as amended by section 4001 of the Federal Acquisition Streamlining Act of 1994 (FASA), Pub. L. 103–355, the following updates have been made:

Sections 435.2 (definition for "Small awards"); 435.44(e)(2), (3), (4) and (5); 435.46; 435.48(a) (b) and (d); and Appendix A, "Debarment and Suspension" (paragraph 8) have been updated to replace the term "small purchase threshold" with the term "simplified acquisition threshold." And, where appropriate, the current threshold dollar amount of $100,000 is reflected (instead of $25,000).

D. According to FASA, the threshold for the requirement to include the provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333) has been raised to $100,000. This update has been made in Appendix A.

E. Under the statute commonly referred to as the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, the disclosure requirements apply to organizations that apply or bid for an award exceeding $100,000 (not $100,000 or more). This correction has been made in Appendix A.

III. Proposed Differences Between Part 435 and 45 CFR Part 74

In order to mirror the provisions and language of the Circular, SSA's proposed 20 CFR part 435 deviates from 45 CFR part 74. Also, Part 74's Subpart E (Special Provisions for Awards to Commercial Organizations) is not included in Part 435. We believe, however, the omission of this subpart will not have a negative effect on the quality and administration of the SSA grants program. The provisions of Subpart E are not needed in Part 435. Unless SSA provides otherwise in the terms and conditions of the award, and except where provided under the provisions of Circular A–110, SSA will make no distinction between awards to commercial organizations and awards to its other grantee organizations covered by the Circular.

Additionally, Part 74's "Subpart F-Disputes" is not included in the proposed rule. Instead, as noted in section II, above, the proposed rule contains a "SUBPART E—DISPUTES," which sets forth the SSA appeal process for disputes arising under SSA grants and agreements.

Clarity of This Regulation

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. We invite your comments on how to make this proposed rule easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

IV. Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and have determined that these proposed rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they are not subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities because they merely reflect the adoption of existing grant policies and procedures by SSA and do not promulgate any new policies or procedures which would impact the public. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed rules contain reporting requirements in 20 CFR part 435 in §§ 435.12, 435.22 and 435.52. However, the reporting forms specified in these sections have already been approved by the Office of Management and Budget and, therefore, we are not seeking approval of the reporting requirements in these sections. The forms are as follows: SF–269, SF–269A, SF–424, SF–270, SF–271 and SF–272.

The proposed regulation contains additional reporting and recordkeeping requirements in the sections listed below. As required by the Paperwork Reduction Act of 1995, we have

submitted the information requirements to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on these requirements should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 10235, Washington, D.C. 20503, ATTENTION: OMB Desk Officer for SSA.

Following is a table of the reporting (Rpt) and recordkeeping (Rec-kp) burdens imposed on the public:

Section No.	No. of respondents	Frequency of response	Average burden per response (hours)	Estimated annual burden (hours)
435.21 (Rec-kp)	1	N/A	40	40
435.23 (Rec-kp)	7	Monthly	1	84
435.25 (Rpt)	14	Biannually	4	112
435.33 (Rpt)	1	Annually	1	1
435.44 (Rpt)	1	Annually	2	2
435.51 (Rpt)	17	Quarterly	12	816
435.53 (Rec-kp)	17	Annually	8	136
435.81 (Rpt)	1	Annually	16	16
435.82 (Rpt)	1	Annually	8	8
Total estimated annual burden:				1215

The public burden includes the time it will take to understand what is needed, gather the necessary facts, and provide the information or maintain the specified records. If you have any comments or suggestions on the estimates, write to the Social Security Administration, ATTN: Reports Clearance Officer, 1–A–21 Operations Building, Baltimore, MD 21235.

SSA is soliciting comments from the public in order to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology (*e.g.*, permitting electronic submission of responses)."

(Catalog of Federal Domestic Assistance Program No. 96.007—Social Security—Research and Demonstration)

List of Subjects in 20 CFR Part 435

Accounting, Administrative practice and procedure, Colleges and universities, Grant programs—health, Grant programs—social programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

Dated: April 5, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to add a new Part 435 to Chapter III of Title 20 of the Code of Federal Regulations to read as follows:

PART 435—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NON-PROFIT ORGANIZATIONS, AND COMMERCIAL ORGANIZATIONS

Authority: 5 U.S.C. 301.

Subpart A—General

§ 435.1 Purpose.

This Part establishes SSA's administrative requirements for SSA grants and agreements awarded to institutions of higher education, hospitals, other non-profit organizations, and commercial organizations. The regulations in this part do not differ from the uniform regulations published in OMB Circular A–110 except as provided in §§ 435.4 and 435.14. Non-profit organizations that implement Federal programs for the States are also subject to State requirements. For availability of OMB circulars, see 5 CFR 1310.3.

§ 435.2 Definitions.

(a) *Accrued expenditures* means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and,

(3) Other amounts becoming owed under programs for which no current services or performance is required.

(b) *Accrued income* means the sum of:

(1) Earnings during a given period from—

(i) Services performed by the recipient, and

(ii) Goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) *Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, must be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(d) *Advance* means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

(e) *Award* means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(f) *Cash contributions* means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(g) *Closeout* means the process by which SSA determines that all applicable administrative actions and all required work of the award have been completed by the recipient and SSA.

(h) *Contract* means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(i) *Cost sharing or matching* means that portion of project or program costs not borne by the Federal government.

(j) *Date of completion* means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which SSA sponsorship ends.

(k) *Disallowed costs* means those charges to an award that the Federal awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(l) *Equipment* means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5000 or more per unit. However, consistent with recipient policy, lower limits may be established.

(m) *Excess property* means property under the control of SSA that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(n) *Exempt property* means tangible personal property acquired in whole or in part with Federal funds, where SSA has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

(o) *SSA* means the Federal agency that provides an award to the recipient.

(p) *Federal funds authorized* means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

(q) *Federal share* of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

(r) *Funding period* means the period of time when Federal funding is available for obligation by the recipient.

(s) *Intangible property and debt instruments* means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(t) *Obligations* means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(u) *Outlays or expenditures* means charges made to the project or program. They may be reported on a cash or accrual basis.

(1) *Cash basis.* For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients.

(2) *Accrual basis.* For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(v) *Personal property* means property of any kind except real property. It may

be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(w) *Prior approval* means written approval by an authorized SSA official evidencing prior consent.

(x) *Program income* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in §§ 435.24(e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in SSA regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(y) *Project costs* means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(z) *Project period* means the period established in the award document during which Federal sponsorship begins and ends.

(aa) *Property* means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

(bb) *Real property* means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(cc) *Recipient* means an organization receiving financial assistance directly from SSA to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of SSA. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

(dd) *Research and development* means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(ee) *Small awards* means a grant or cooperative agreement not exceeding the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently $100,000).

(ff) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" in paragraph (e) of this section.

(gg) *Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the Federal awarding agency.

(hh) *Supplies* means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

(ii) *Suspension* means an action by SSA that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by SSA. Suspension of an award is a separate action from suspension under Federal agency regulations implementing Executive Orders 12549 and 12689, "Debarment and Suspension."

(jj) *Termination* means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(kk) *Third party in-kind contributions* means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(ll) *Unliquidated obligations,* for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(mm) *Unobligated balance* means the portion of the funds authorized by SSA that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(nn) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(oo) *Working capital advance* means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 435.3 Effect on other issuances.

For awards subject to this Part, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this Part are superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 435.4.

§ 435.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the

requirements of this Part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this Part will be permitted only in unusual circumstances. SSA may apply more restrictive requirements to a class of recipients when approved by OMB. SSA may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by SSA.

§ 435.5 Subawards.

Unless sections of this Part specifically exclude subrecipients from coverage, the provisions of this Part will be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals, other non-profit, or commercial organizations.

Subpart B—Pre-award Requirements

§ 435.10 Purpose.

Sections 435.11 through 435.17 prescribe forms and instructions and other pre-award matters to be used in applying for Federal awards.

§ 435.11 Pre-award policies.

(a) *Use of grants and cooperative agreements, and contracts.* In each instance, SSA will decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements and contracts.

(1) *Grants and cooperative agreements.* A grant or cooperative agreement will be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement."

(2) *Contracts.* Contracts will be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) *Public Notice and priority setting.* SSA will notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

§ 435.12 Forms for applying for Federal assistance.

(a) SSA must comply with the applicable report clearance requirements of 5 CFR part 1320, "Controlling Paperwork Burdens on the Public," with regard to all forms used by SSA in place of or as a supplement to the Standard Form 424 (SF–424) series.

(b) Applicants must use the SF–424 series or those forms and instructions prescribed by SSA.

(c) For Federal programs covered by Executive Order 12372, "Intergovernmental Review of Federal Programs" (3 CFR, 1982 Comp., p. 197), the applicant must complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from SSA or the Catalog of Federal Domestic Assistance. The SPOC will advise the applicant whether the program for which application is made has been selected by that State for review.

§ 435.13 Debarment and suspension. [Reserved]

§ 435.14 Special award conditions.

(a) *When special conditions may apply.* SSA may impose additional requirements, as needed, if an applicant or recipient:

(1) Has a history of poor performance,

(2) Is not financially stable,

(3) Has a management system that does not meet the standards prescribed in this Part,

(4) Has not conformed to the terms and conditions of a previous award, or

(5) Is not otherwise responsible.

(b) *Notice of special conditions.* When imposing additional requirements, SSA will notify the recipient in writing as to:

(1) The nature of the additional requirements,

(2) The reason why the additional requirements are being imposed,

(3) The nature of the corrective action needed,

(4) The time allowed for completing the corrective actions, and

(5) The method for requesting reconsideration of the additional requirements imposed.

(c) Any special conditions will be promptly removed once the conditions that prompted them have been corrected.

§ 435.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates, in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. SSA follows the provisions of Executive Order 12770, "Metric Usage in Federal Government Programs" (3 CFR, 1991 Comp., p. 343).

§ 435.16 Resource Conservation and Recovery Act.

Any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with section 6002 of the Resource Conservation and Recovery Act (RCRA) (Public Law 94–580; 42 U.S.C. 6962). Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247–254). Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds must give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

§ 435.17 Certifications and representations.

Unless prohibited by statute or codified regulation, SSA will allow recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations must be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

Subpart C—Post-award Requirements

Financial and Program Management

§ 435.20 Purpose of financial and program management.

Sections 435.21 through 435.28 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program

income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

§ 435.21 Standards for financial management systems.

(a) *Introduction.* SSA requires recipients to relate financial data to performance data and develop unit cost information whenever practical.

(b) *Basic requirements.* Recipients' financial management systems must provide for the following:

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in § 435.52. If SSA requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient will not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients must adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101–453; 31 U.S.C. 6501) govern, payment methods of State agencies, instrumentalities, and fiscal agents must be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) *Bonding and insurance requirements.* Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, SSA, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) *Fidelity bond coverage requirements.* SSA may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) *Obtaining bonds.* Where bonds are required in the situations described above, the bonds must be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

§ 435.22 Payment.

(a) *Introduction.* Payment methods must minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities must be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b) *Advance payment method and requirements.* (1) Recipients will be paid in advance, provided they maintain or demonstrate the willingness to maintain:

(i) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and

(ii) Financial management systems that meet the standards for fund control and accountability as established in § 435.21.

(2) Cash advances to a recipient organization will be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances must be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) *Advance payment consolidation and mechanisms.* Whenever possible, advances must be consolidated to cover anticipated cash needs for all awards made by SSA to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients are authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) *How to request advance payment.* Requests for Treasury check advance payment must be submitted on SF–270, "Request for Advance or Reimbursement," or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special SSA instructions for electronic funds transfer.

(e) *Reimbursement method.* Reimbursement is the preferred method when the advance payment requirements in paragraph (b) of this section cannot be met. SSA may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, SSA will make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients will be authorized to submit request for reimbursement at least monthly when electronic funds transfers are not used.

(f) *Working capital advance method.* If a recipient cannot meet the criteria for advance payments and SSA has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, SSA may provide cash on a working capital advance basis. Under this procedure, SSA will advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, SSA will reimburse the recipient for its actual cash disbursements. The working capital advance method of payment will not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) *Requesting additional cash payments.* To the extent available, recipients must disburse funds available

from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) *Withholding of payments.* Unless otherwise required by statute, SSA will not withhold payments for proper charges made by recipients at any time during the project period unless paragraph (h) (1) or (2) of this section apply.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements.

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A–129, "Managing Federal Credit Programs." Under such conditions, SSA may, upon reasonable notice, inform the recipient that payments will not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) *Standards governing the use of banks and other institutions as depositories of funds advanced under awards.* (1) Except for situations described in paragraph (i)(2) of this section, SSA will not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds must be deposited and maintained in insured accounts whenever possible.

(j) *Use of women-owned and minority-owned banks.* Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients will be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) *Use of interest bearing accounts.* Recipients must maintain advances of Federal funds in interest bearing accounts, unless paragraph (k) (1), (2) or (3) of this section apply.

(1) The recipient receives less than $120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) *Remittance of interest earned.* For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts must be remitted annually to Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. State universities and hospitals must comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from SSA, it waives its right to recover the interest under CMIA.

(m) *Forms for requesting advances and reimbursements.* Except as noted elsewhere in this Part, only the following forms are authorized for the recipients in requesting advances and reimbursements. SSA will not require more than an original and two copies of these forms.

(1) *SF–270, Request for Advance or Reimbursement.* SSA has adopted the SF–270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. SSA, however, has the option of using this form for construction programs in lieu of the SF–271, "Outlay Report and Request for Reimbursement for Construction Programs."

(2) *SF–271, Outlay Report and Request for Reimbursement for Construction Programs.* SSA has adopted the SF–271 as the standard form to be used for requesting reimbursement for construction programs. However, SSA may substitute the SF–270 when SSA determines that it provides adequate information to meet Federal needs.

§ 435.23 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, will be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria:

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by SSA.

(7) Conform to other provisions of this Part, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of SSA.

(c) Values for recipient contributions of services and property will be established in accordance with the applicable cost principles. If SSA authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching will be the lesser of paragraph (c)(1) or (2) of this section.

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, SSA may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services must be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates must be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services must be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching

share must be reasonable and may not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if paragraph (g)(1) or (2) of this section apply.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that SSA has approved the charges.

(h) The value of donated property must be determined in accordance with the usual accounting policies of the recipient, with the following qualifications:

(1) The value of donated land and buildings may not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment may not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space may not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment may not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties:

(i) Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land must be documented.

§ 435.24 Program income.

(a) *Introduction.* SSA will apply the standards set forth in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) *Use of program income.* Except as provided in paragraph (h) of this section, program income earned during the project period must be retained by the recipient and, in accordance with SSA regulations or the terms and conditions of the award, must be used in one or more of the following ways. Program income must be:

(1) Added to funds committed to the project by the Federal awarding agency and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) *Use of excess program income.* When an agency authorizes the disposition of program income as described in paragraph (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated must be used in accordance with paragraph (b)(3) of this section.

(d) *When the use of program income is not specified.* In the event that SSA does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) of this section will apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) of this section will apply automatically unless SSA indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in § 435.14.

(e) *Program income earned after end of project period.* Unless SSA regulations or the terms and conditions of the award provide otherwise, recipients will have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) *Costs incident to generation of program income.* If authorized by SSA regulations or the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) *Proceeds from sale of property.* Proceeds from the sale of property must be handled in accordance with the requirements of the Property Standards (See §§ 435.30 through 435.37).

(h) *Program income from license fees and royalties.* Unless SSA regulations or the terms and condition of the award provide otherwise, recipients have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

§ 435.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon SSA requirements. It must be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients must request prior approvals from SSA for one or more of the following program or budget related reasons:

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by SSA.

(6) The inclusion, unless waived by SSA, of costs that require prior approval in accordance with OMB Circular A–21, "Cost Principles for Educational Institutions," OMB Circular A–122, "Cost Principles for Non-Profit Organizations," or 45 CFR part 74 Appendix E, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals," or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or

contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, SSA may waive cost-related and administrative prior written approvals required by this Part and OMB Circulars A–21 and A–122. Such waivers may include authorizing recipients to do any one or more of the following:

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of SSA. All pre-award costs are incurred at the recipient's risk (i.e., SSA is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify SSA in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless SSA provides otherwise in the award or in the SSA regulations, the prior approval requirements described in paragraph (e) of this section are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) of this section applies.

(f) SSA may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by SSA. No transfers are permitted that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j) of this section, do not require prior approval.

(h) For construction awards, recipients must request prior written approval promptly from SSA for budget revisions whenever paragraph (h)(1), (2) or (3) of this section apply.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in § 435.27.

(i) No other prior approval requirements for specific items will be imposed unless a deviation has been approved by OMB.

(j) When SSA makes an award that provides support for both construction and nonconstruction work, SSA may require the recipient to request prior approval before making any fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, recipients must notify SSA in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5000 or five percent of the Federal award, whichever is greater. This notification is not required if an application for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients must use the budget forms that were used in the application unless SSA indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, SSA will review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, SSA will inform the recipient in writing of the date when the recipient may expect the decision.

§ 435.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) are subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations."

(b) State and local governments are subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations."

(c) For-profit hospitals not covered by the audit provisions of revised OMB Circular A–133 are subject to the audit requirements of SSA.

(d) Commercial organizations are subject to the audit requirements of SSA or the prime recipient as incorporated into the award document.

§ 435.27 Allowable costs.

For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs will be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus:

(a) Allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, "Cost Principles for State, Local, and Indian Tribal Governments."

(b) Allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, "Cost Principles for Non-Profit Organizations."

(c) Allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, "Cost Principles for Educational Institutions."

(d) Allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals."

(e) Allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

§ 435.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by SSA.

Property Standards

§ 435.30 Purpose of property standards.

Sections 435.31 through 435.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. Recipients must observe these standards under awards and SSA may not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §§ 435.31 through 435.37.

§ 435.31 Insurance coverage.

Recipients must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

§ 435.32 Real property.

SSA will prescribe requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, such requirements, at a minimum, will contain the following.

(a) *Title.* Title to real property will vest in the recipient subject to the condition that the recipient will use the real property for the authorized purpose of the project as long as it is needed and will not encumber the property without approval of SSA.

(b) *Use in other projects.* The recipient must obtain written approval by SSA for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects is limited to those under federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by SSA.

(c) *Disposition.* When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient must request disposition instructions from SSA or its successor Federal awarding agency. SSA will observe one or more of the following disposition instructions:

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by SSA and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures will be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient will be entitled to compensation for its attributable percentage of the current fair market value of the property.

§ 435.33 Federally-owned and exempt property.

(a) *Federally-owned property.* (1) Title to federally-owned property remains vested in the Federal Government. Recipients must submit annually an inventory listing of federally-owned property in their custody to SSA. Upon completion of the award or when the property is no longer needed, the recipient must report the property to SSA for further Federal agency utilization.

(2) If SSA has no further need for the property, it will be declared excess and reported to the General Services Administration, unless SSA has statutory authority to dispose of the property by alternative methods (*e.g.*, the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (I)) to donate research equipment to educational and non-profit organizations in accordance with Executive Order 12821, "Improving Mathematics and Science Education in Support of the National Education Goals" (3 CFR, 1992 Comp., p. 323). Appropriate instructions will be issued to the recipient by SSA.

(b) *Exempt property.* When statutory authority exists, SSA has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions SSA considers appropriate. Such property is "exempt property." Should SSA not establish conditions, title to exempt property upon acquisition will vest in the recipient without further obligation to the Federal Government.

§ 435.34 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds will vest in the recipient, subject to conditions of this section.

(b) The recipient may not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient may use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and may not encumber the property without approval of SSA. When no longer needed for the original project or program, the recipient must use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by SSA, then

(2) activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient must make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use must be given to other projects or programs sponsored by SSA; second preference must be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government will be permissible if authorized by SSA. User charges will be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of SSA.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment must include all of the following:

(1) Equipment records must be maintained accurately and must include the following information:

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal awarding agency for its share.

(2) Equipment owned by the Federal Government must be identified to indicate Federal ownership.

(3) A physical inventory of equipment must be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records must be investigated to determine the causes of the difference. The recipient must, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system must be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment must be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient must promptly notify SSA.

(5) Adequate maintenance procedures must be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures must be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of $5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to SSA or its successor. The amount of compensation will be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient must request disposition instructions from SSA. SSA will determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment will be reported to the General Services Administration by SSA to determine whether a requirement for the equipment exists in other Federal agencies. SSA will issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures will govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient must sell the equipment and reimburse SSA an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient is permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient will be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient will be reimbursed by SSA for such costs incurred in its disposition.

(4) SSA may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such a transfer will be subject to the following standards:

(i) The equipment must be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) SSA must issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory must list all equipment acquired with grant funds and federally-owned equipment. If SSA fails to issue disposition instructions within the 120 calendar day period, the recipient must apply the standards of this section, as appropriate.

(iii) When SSA exercises its right to take title, the equipment will be subject to the provisions for federally-owned equipment.

§ 435.35 Supplies and other expendable property.

(a) Title to supplies and other expendable property will vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient may retain the supplies for use on non-Federal sponsored activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation will be computed in the same manner as for equipment.

(b) The recipient may not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

§ 435.36 Intangible property.

(a) *Copyright.* The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. SSA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) *Patents and inventions.* Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(c) *Rights of Federal Government.* The Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) *FOIA requests for research data.* (1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, SSA shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures

established under the FOIA. If SSA obtains the research data solely in response to a FOIA request, SSA may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by SSA, the recipient, and applicable subrecipients. This fee is in addition to any fees SSA may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of this paragraph (d):

(i) *Research data* is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (*e.g.*, laboratory samples). Research data also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) *Published* is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) *Used by the Federal Government in developing an agency action that has the force and effect of law* is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(e) *Title to intangible property and debt instruments.* Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient must use that property for the originally-authorized purpose, and the recipient may not encumber the property without approval of SSA. When no longer needed for the originally authorized purpose, disposition of the intangible property will occur in accordance with the provisions of § 435.34(g).

§ 435.37 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds must be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Agencies may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

Procurement Standards

§ 435.40 Purpose of procurement standards.

Sections 435.41 through 435.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements may be imposed by SSA upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

§ 435.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to SSA, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 435.42 Codes of conduct.

The recipient must maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 435.43 Competition.

All procurement transactions must be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient must be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals must be excluded from competing for such procurements. Awards must be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations must clearly set forth all requirements that the bidder or offeror must fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 435.44 Procurement procedures.

(a) All recipients must establish written procurement procedures. These procedures must provide for, at a minimum, that paragraphs (a) (1), (2), and (3) of this section apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following:

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description may not contain

features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts must be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards must take all of the following steps to further this goal:

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) may be determined by the recipient but must be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting may not be used.

(d) Contracts may be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration must be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of Executive Orders 12549 and 12689, "Debarment and Suspension" (3 CFR, 1986 Comp., p. 189 and 3 CFR, 1989 Comp., p. 235).

(e) Recipients must, on request, make available for SSA, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply:

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in this Part.

(2) The procurement is expected to exceed the simplified acquisition threshold fixed at 41 U.S.C. 403 (11) (currently $100,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product.

(4) The proposed award over the simplified acquisition threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the simplified acquisition threshold.

§ 435.45 Cost and price analysis.

Some form of cost or price analysis must be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 435.46 Procurement records.

Procurement records and files for purchases in excess of the simplified acquisition threshold must include the following at a minimum:

(a) Basis for contractor selection,

(b) Justification for lack of competition when competitive bids or offers are not obtained, and

(c) Basis for award cost or price.

§ 435.47 . Contract administration.

A system for contract administration must be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients must evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 435.48 Contract provisions.

The recipient must include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions must also be applied to subcontracts:

(a) Contracts in excess of the simplified acquisition threshold must contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the simplified acquisition threshold must contain suitable provisions for termination by the recipient, including the manner by which termination will be effected and the basis for settlement. In addition, such contracts must describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements must provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, SSA may accept the bonding policy and requirements of the recipient, provided SSA has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements are as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid

price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds must be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

(d) All negotiated contracts (except those for less than the simplified acquisition threshold) awarded by recipients must include a provision to the effect that the recipient, SSA, the Comptroller General of the United States, or any of their duly authorized representatives, will have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors must contain the procurement provisions of Appendix A to this Part, as applicable.

Reports and Records

§ 435.50 Purpose of reports and records.

Sections 435.51 through 435.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 435.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients must monitor subawards to ensure subrecipients have met the audit requirements as delineated in § 435.26.

(b) SSA will prescribe the frequency with which the performance reports must be submitted. Except as provided in paragraph (f) of this section, performance reports will not be required more frequently than quarterly or, less frequently than annually. Annual reports are due 90 calendar days after the grant year; quarterly or semi-annual reports are due 30 days after the reporting period. SSA may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report will not be required after completion of the project.

(d) When required, performance reports must generally contain, for each award, brief information on each of the following:

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients will not be required to submit more than the original and two copies of performance reports.

(f) Recipients must immediately notify SSA of developments that have a significant impact on the award-supported activities. Also, notification must be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification must include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) SSA may make site visits, as needed.

(h) SSA will comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

§ 435.52 Financial reporting.

(a) *Authorized forms.* The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients:

(1) *SF–269 or SF–269A, Financial Status Report.* (i) SSA requires recipients to use the SF–269 or SF–269A to report the status of funds for all nonconstruction projects or programs. However, SSA has the option of not requiring the SF–269 or SF–269A when the SF–270, Request for Advance or Reimbursement, or SF–272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF–269 or SF–269A will be required at the completion of the project when the SF–270 is used only for advances.

(ii) SSA may prescribe whether the report will be on a cash or accrual basis. If SSA requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient will not be required to convert its accounting system, but must develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) SSA will determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report will not be required more frequently than quarterly or less frequently than annually. A final report is required at the completion of the agreement.

(iv) SSA will require recipients to submit the SF–269 or SF–269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by SSA upon request of the recipient.

(2) *SF–272, Report of Federal Cash Transactions.* (i) When funds are advanced to recipients, SSA will require each recipient to submit the SF–272 and, when necessary, its continuation sheet, SF–272a. SSA will use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) SSA may require forecasts of Federal cash requirements in the "Remarks" section of the report.

(iii) When practical and deemed necessary, SSA may require recipients to report in the "Remarks" section the amount of cash advances received in excess of three days. Recipients must provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients are required to submit not more than the original and two copies of the SF–272 15 calendar days following the end of each quarter. SSA may require a monthly report from those

recipients receiving advances totaling $1 million or more per year.

(v) SSA may waive the requirement for submission of the SF–272 for any one of the following reasons:

(A) When monthly advances do not exceed $25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in SSA's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or

(C) When the electronic payment mechanisms provide adequate data.

(b) When SSA needs additional information or more frequent reports, the following will be observed:

(1) When additional information is needed to comply with legislative requirements, SSA will issue instructions to require recipients to submit such information under the "Remarks" section of the reports.

(2) When SSA determines that a recipient's accounting system does not meet the standards in § 435.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. SSA, in obtaining this information, will comply with report clearance requirements of 5 CFR part 1320.

(3) SSA may shade out any line item on any report if not necessary.

(4) SSA may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) SSA may provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

§ 435.53 Retention and access requirements for records.

(a) *Purpose.* This section sets forth the requirements for record retention and access to records for awards to recipients. SSA may not impose any other record retention or access requirements upon recipients.

(b) *Retention periods.* Financial records, supporting documents, statistical records, and all other records pertinent to an award must be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by SSA. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by SSA, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in paragraph (g) of this section.

(c) *Use of copies.* Copies of original records may be substituted for the original records if authorized by SSA.

(d) *Records with long term retention value.* SSA will request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, SSA may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) *Federal access to records.* SSA, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but will last as long as records are retained.

(f) *Public access to records.* Unless required by statute, SSA may not place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when SSA can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to SSA.

(g) *Retention of indirect cost rate proposals, cost allocations plans, etc.* Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the recipient submits to SSA or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) *If not submitted for negotiation.* If the recipient is not required to submit to SSA or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Termination and Enforcement

§ 435.60 Purpose of termination and enforcement.

Sections 435.61 and 435.62 set forth uniform suspension, termination and enforcement procedures.

§ 435.61 Termination.

(a) Awards may be terminated in whole or in part only under the following circumstances—

(1) By SSA, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By SSA with the consent of the recipient, in which case the two parties will agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to SSA written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if SSA determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraph (a)(1) or (a)(2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 435.71(a), including those for property management as applicable, will be considered in the termination of the award, and provision will be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 435.62 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, SSA may, in addition to imposing any of the special conditions outlined in § 435.14, take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by SSA.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, SSA must provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless SSA expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if—

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under Executive Orders 12549 and 12689.

Subpart D—After-the-Award Requirements

§ 435.70 Purpose.

Sections 435.71 through 435.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 435.71 Closeout procedures.

(a) Recipients must submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. SSA may approve extensions when requested by the recipient.

(b) Unless SSA authorizes an extension, a recipient must liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) SSA will make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient must promptly refund any balances of unobligated cash that SSA has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, SSA will make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 435.31 through 435.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, SSA will retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 435.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following:

(1) The right of SSA to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 435.26.

(4) Property management requirements in §§ 435.31 through 435.37.

(5) Records retention as required in § 435.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of SSA and the recipient, provided the responsibilities of the recipient referred to in § 435.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 435.73 Collection of amounts due.

(a) *Methods of collection.* Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, SSA may reduce the debt by:

(1) making an administrative offset against other requests for reimbursements;

(2) withholding advance payments otherwise due to the recipient; or

(3) taking other action permitted by statute.

(b) *Charging of interest.* Except as otherwise provided by law, SSA will charge interest on an overdue debt in accordance with 4 CFR Chapter II, "Federal Claims Collection Standards."

Subpart E—Disputes

§ 435.80 Appeal process.

(a) *Levels of appeal.* Grantee institutions (grantees) may appeal certain post-award adverse grant administration decisions made by SSA officials in the administration of discretionary grant programs. SSA has two levels of appeal:

(1) initial appeal to the Associate Commissioner for the Office of Acquisition and Grants (ACOAG) from an adverse decision rendered by the Grants Management Officer (GMO); and

(2) final appeal to the Commissioner of Social Security from an adverse decision rendered by the ACOAG.

(b) *Decisions that may be appealed.* The following types of adverse post-award written decisions by the GMO may be appealed:

(1) A disallowance or other determination denying payment of an amount claimed under an award. This does not apply to determinations of award amount or disposition of unobligated balances, or selection in the award document of an option for disposition of program-related income.

(2) A termination of an award for failure of the grantee to comply with any law, regulation, assurance, term, or condition applicable to the award.

(3) A denial of a noncompeting continuation award under the project period system of funding where the denial is for failure to comply with the

terms and conditions of a previous award.

(4) A voiding of an award on the basis that it was fraudulently obtained or because the award was not authorized by statute or regulation.

(c) *Notice of adverse decision and requirements of grantee response.* The Grants Management Officer's (GMO) adverse post-award written decision should include the following statement:

This is the final decision of the Grants Management Officer. It will become the final decision of the Social Security Administration unless you submit a request for review of this decision to the Associate Commissioner for the Office of Acquisition and Grants, 1710 Gwynn Oak Avenue, Baltimore, Maryland 21207–5279. Your request for review must be in writing, include a copy of this decision, and fully state why you disagree with it. The request for review must be received by the ACOAG no later than 30 calendar days after the date of this decision.

§ 435.81 Initial appeal.

(a) *Timeliness of appeal to ACOAG.* A grantee may appeal an adverse decision rendered by the GMO by submitting to the ACOAG a written request for review of the adverse decision. The written request for review must be received by the ACOAG no later than 30 calendar days after the date of the GMO's adverse decision. Any request for review that is received after the thirtieth day will be dismissed as untimely.

(b) *Content of appeal to ACOAG.* The written request for review should fully explain why the grantee disagrees with the GMO's decision, state the pertinent facts and law relied upon, and provide any relevant documentation in support of the grantee's position.

(c) *Decision of ACOAG.* The ACOAG, or the ACOAG's delegate, will issue a written decision within 30 calendar days of the date of receipt of the written request for review. If the written decision is adverse to the grantee, the decision will include the following statement:

This is the final decision of the Office of Acquisition and Grants. It will become the final decision of the Social Security Administration unless you submit a request for review of this decision to the Commissioner of Social Security, Social Security Administration, Baltimore, Maryland 21235–0001. Your request for review must be in writing, include a copy of this decision, and fully state why you disagree with it. The request for review must be received by the Commissioner no later than 15 calendar days after the date of this decision. You should also send a copy of the request for review to the ACOAG.

§ 435.82 Appeal of decision of ACOAG.

(a) *Timeliness of appeal to Commissioner.* A grantee may appeal an adverse decision rendered by the ACOAG by submitting to the Commissioner of Social Security a written request for review of the ACOAG's decision. The written request for review must be received by the Commissioner no later than 15 calendar days after the date of the ACOAG's adverse decision. Any request for review that is filed after the fifteenth day will be dismissed as untimely. The grantee should also send a copy of the request for review to the ACOAG.

(b) *Content of appeal to Commissioner.* The written request for review should fully explain why the grantee disagrees with the ACOAG's decision, state the pertinent facts and law relied upon, and provide any relevant documentation in support of the grantee's position. A copy of the ACOAG's decision should also be appended to the request for review.

(c) *Decision of Commissioner.* The Commissioner, or the Commissioner's delegate, will issue a written decision on the request for review. Generally, the decision will be issued within 90 calendar days of the date of receipt of the request for review. If a decision is not issued within 90 days, the Commissioner, or the Commissioner's delegate, will inform the grantee in writing when a decision can be expected.

(d) *Final decision of SSA.* The decision of the Commissioner, or of the Commissioner's delegate, shall be the final decision of the Social Security Administration on the matter(s) in dispute.

Appendix A to Part 435—Contract Provisions

All contracts, awarded by a recipient including small purchases, must contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts must contain a provision requiring compliance with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. *Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subgrants in excess of $2000 for construction or repair awarded by recipients and subrecipients must include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient will be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient must report all suspected or reported violations to the Federal awarding agency.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a–7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $2000 must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors are required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors are required to pay wages not less than once a week. The recipient must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract will be conditioned upon the acceptance of the wage determination. The recipient must report all suspected or reported violations to the Federal awarding agency.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $100,000 for construction contracts and for other contracts that involve the employment of mechanics or laborers must include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic will be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business

Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subgrants of amounts in excess of $100,000 must contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of more than $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (Executive Orders 12549 and 12689)*—No contract will be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractors with awards that exceed the simplified acquisition threshold must provide the required certification regarding its exclusion status and that of its principal employees.

[FR Doc. 00–9399 Filed 4–26–00; 8:45 am]

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Federal Register

Thursday,
April 27, 2000

Part V

Securities and Exchange Commission

17 CFR Part 228, et al.
Rulemaking for EDGAR Systems; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 230, 232, 239, 240, 249, 250, 259, 260, 269, 270, and 274

[Release Nos. 33-7855; 34-42712; 35-27172; 39-2384; IC-24400 File No. S7-05-00]

RIN 3235-AH79

Rulemaking for EDGAR System

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are modernizing our Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. We are implementing the next stage of modernization (EDGAR Release 7.0) for filers to begin using on May 30 of this year. In this release, we are adopting amendments to our rules to reflect changes to filing requirements that result from our implementation of EDGAR Release 7.0 as well as certain other changes to clarify or update the rules. We address in today's release the following new features and changes we are implementing with EDGAR Release 7.0, along with a modernized version of EDGARLink: inclusion of graphic and image files in HTML filings; expanded use of hyperlinks in HTML filings; and the addition of the Internet, and removal of diskettes, as a means of transmitting filings to the EDGAR system. We also are eliminating the requirement for filers to submit Financial Data Schedules, with a deferred effective date of January 1, 2001. We will continue to support the old EDGARLink filing method until at least November 1, 2000. Until that date, filers may continue to use the old EDGARLink. Filers using the old EDGARLink will not be able to take advantage of the system's new features.

DATES: These rules are effective on May 30, 2000 and apply to filings submitted on or after that date, except for the following:

1. The amendments to §§ 230.110(b), 232.12(b), 240.0-2(b), 250.21(b)(1), 260.0-5(b), and Form ET (referenced in §§ 239.62, 249.445, 259.601, 269.6 and 274.401) which are not effective until July 10, 2000.

These provisions relate to the removal of diskettes as an available means of transmitting filings to the EDGAR system. Transmissions submitted on diskette on or after July 10, 2000 will not be accepted.

2. The amendments to §§ 228.601, 229.601, 230.483(e), 232.105(a), 232.303(a)(4), the undesignated center heading preceding §§ 232.401 and 232.402, §§ 232.401, 232.402, Forms S-2, S-3, and S-8 (referenced in §§ 239.12, 239.13, and 239.16b respectively), and Forms U5S, U-1, U-13-60, and U-3A-2 (referenced in §§ 259.5s, 259.101, 259.313, and 259.402 respectively), §§ 270.8b-2, 270.8b-23, 270.8b-32, and Form N-SAR (referenced in § 274.101) which are not effective until January 1, 2001.

These provisions relate to the requirement to submit Financial Data Schedules. Filings due before January 1, 2001, regardless of when they are submitted, are subject to these provisions. Filings due and submitted after January 1, 2001 are not subject to these provisions.

FOR FURTHER INFORMATION CONTACT: If you have questions about the rules, please contact one of the following members of our staff: in the Division of Investment Management, Ruth Armfield Sanders, Senior Special Counsel, or Shaswat K. Das, Attorney, (202) 942-0978; and in the Division of Corporation Finance, Carol P. Newman Weiss, Accountant, (202) 942-2940. If you have questions about the development of the modernized EDGAR system, please contact Richard D. Heroux, EDGAR Program Manager, (202) 942-8885, in the Office of Information Technology.

SUPPLEMENTARY INFORMATION: Today we are amending the following rules relating to electronic filing on the EDGAR system: Item 601 of Regulation S-B [1] under the Securities Act of 1933 (Securities Act); [2] Item 601 of Regulation S-K [3] under the Securities Act; Rules 110 and 483 [4] under the Securities Act; Forms S-2, S-3, and S-8 [5] under the Securities Act; Rules 11, 12, 103, 104, 105, 302, 303, 304, 311 and 501 of Regulation S-T; [6] Rule 0-2 [7] under the Exchange Act of 1934 (Exchange Act); [8] Rule 21 [9] and Forms U5S, U-1, U-13-60 and U-3A-2 [10] under the Public Utility Holding Company Act of 1935 (Public Utility Act); [11] Rule 0-5 [12] under the Trust Indenture Act of 1939 (Trust Indenture Act); [13] Rules 8b-2, 8b-23, and 8b-32 [14] and Form N-SAR [15] under the Investment Company Act of 1940 (Investment Company Act); [16] and Form ET [17] under the Securities Act, the Exchange Act, the Public Utility Act, the Trust Indenture Act, and the Investment Company Act. We are also removing the following rules from Regulation S-T: Rules 401 and 402.[18]

EDGAR Release 7.0 includes the following new features and changes that we address in the amendments today:

- The ability to include graphic and image files in HTML filings;
- The expanded ability to use hyperlinks in HTML filings, including links between documents within a submission and to previously filed documents on our public web site EDGAR database at www.sec.gov;
- The addition of the Internet, and removal of diskettes, as an available means of transmitting filings to the EDGAR system; and
- The removal of the requirement to submit Financial Data Schedules.

I. Modernization of EDGAR

A. Background

In 1984, we initiated the EDGAR system to automate the receipt, processing, and dissemination of documents required to be filed with us under the Securities Act, the Exchange Act, the Public Utility Act, the Trust Indenture Act, and the Investment Company Act. Since 1996, we have required all domestic public companies to make their filings electronically through the EDGAR system, absent an exemption. EDGAR filings are disseminated electronically and displayed on our web site at http://www.sec.gov. The EDGAR system's broad and rapid dissemination benefits the public by allowing investors and others to obtain information rapidly in electronic format. Electronic format is easy to search and lends itself readily to financial analysis, using spreadsheets and other methods.

Recent technological advances, most notably the rapidly expanding use of the Internet, have led to unprecedented changes in the means available to corporations, government agencies, and the investing public to obtain and disseminate information. Today many companies, regardless of size, make information available to the public through Internet web sites. On those sites and through links from one web

[1] 17 CFR 228.601.
[2] 15 U.S.C. 77a *et seq.*
[3] 17 CFR 229.601.
[4] 17 CFR 230.110 and 230.483.
[5] 17 CFR 239.12, 239.13, and 239.16b.
[6] 17 CFR 232.11, 232.12, 232.103, 232.104, 232.105, 232.302, 232.303, 232.304, 232.311 and 232.501.
[7] 17 CFR 240.0-2.
[8] 15 U.S.C. 78a, *et seq.*
[9] 17 CFR 250.21.
[10] 17 CFR 259.5s, 259.101, 259.313 and 259.402.
[11] 15 U.S.C. 79a, *et seq.*
[12] 17 CFR 260.0-5.
[13] 15 U.S.C. 77sss, *et seq.*
[14] 17 CFR 270.8b-2, 270.8b-23 and 270.8b-32.
[15] 17 CFR 274.101.
[16] 15 U.S.C. 80a-1 *et seq.*
[17] 17 CFR 239.62, 249.445, 259.601, 269.6 and 274.401.
[18] 17 CFR 232.401 and 232.402.

site to others, individuals may obtain a vast amount of information in a matter of seconds. Advanced data presentation methods using audio, video, and graphic and image material are now available through even the most inexpensive personal computers or laptops.

Last year, we adopted rules to begin the modernization of the EDGAR system to accommodate some of the changes in technology occurring since the system was developed.[19] On June 28, 1999, we began allowing filers to submit documents to EDGAR in HyperText Markup Language (HTML) format [20] and to accompany their required filings with unofficial copies in Portable Document Format (PDF). On March 3 of this year, we issued a release proposing rule changes to implement the next stage of EDGAR modernization.[21] Today we are adopting those rule changes substantially as proposed. The only changes from the proposal are:

- Deferred effective dates for the elimination of diskettes and Financial Data Schedules; and
- Increased flexibility in the form of unofficial PDF copies of correspondence that filers may submit by removing the proposed limitation that these correspondence documents be restricted to redlined copies of filings, as discussed below.

In response to our request for comments in both proposing releases, we received a number of comment letters with suggestions concerning the evolving EDGAR system. We appreciate the need to balance the competing interests of these parties in order to have a system that adequately addresses the fundamental needs of each. We appreciate these comments and will continue to consider them in connection with future planning for the system and rulemaking related to all stages of EDGAR modernization, taking into consideration the varying interests of filers, filing agents, disseminators, and public users of the EDGAR database.[22] We discuss commenters' views on some of the proposals below.

We also solicited commenters' views on future proposals to broaden types of filings we accept on the EDGAR system [23] and whether we should require other filings to be mandated EDGAR filings.[24] We received a number of divergent comments in response, and we will consider these commenters' views in connection with our future rulemaking in these areas.

B. HTML/PDF Environment

The purpose of our current EDGAR contract is to modernize EDGAR over the next two years to make the system easier for filers to use and the documents more attractive and readable for the users of public information. Since June 28, 1999, filers have been able to submit most filings to us in either HTML or ASCII format. We expect that HTML will eventually replace ASCII for most filings. Also, since June 28, 1999, filers have been able to submit unofficial copies of filings in PDF. In this release, we refer to the required filings that filers must submit only in either ASCII or HTML formats as "official filings." We refer to the PDF documents as "unofficial PDF copies" because filers may *not* use them instead of HTML or ASCII documents to meet filing requirements.

Our plan for the evolution of the EDGAR system is to continue the HTML/PDF environment. Unlike ASCII documents, HTML and PDF documents have the potential to include graphics, varied fonts, and other visual displays that filers use when they create Internet presentations or material for distribution to shareholders.

In this release, we adopt rule changes to correspond to the changes to the EDGAR system with EDGAR Release 7.0.[25] With Release 7.0, the EDGAR system will accept and display filings that use graphic and other visual presentations and provide links to previously filed documents appearing on our public web site EDGAR database.

C. Use of HTML

We have not yet proposed to require the use of HTML for filings. But, as we noted in the 1999 proposing and adopting releases, and in the 2000 proposing release, we expect to require HTML for most filings in the future.[26]

A number of commenters addressed the use of HTML. Some supported mandating its use, citing benefits of this format and stating that the goal of migrating filers to HTML is unlikely to be accomplished without mandating it. Others opposed mandating HTML, addressing some disadvantages to filers and users, as well as the need of filers and agents to gain experience with this format. Several commenters suggested phase-in periods ranging from one to two years. Other commenters suggested that there are evolving alternative formats that we should consider, including XML.

We have not yet set the timing for mandating the use of HTML, but we understand the need to provide filers adequate notice and will take this into account in any proposal to mandate the use of HTML. In the meantime, we urge filers to use HTML for their EDGAR filings and gain experience with it if they do not have it already. We are providing technical support for filers to assist them in submitting and correcting HTML documents through our filer technical support function.

If HTML is used, each EDGAR document must still consist of no more than one HTML file (with associated

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[19] On March 10, 1999, we issued a release proposing amendments to our rules to reflect initial changes to filing requirements resulting from EDGAR modernization, as well as certain other changes to clarify or update the rules. *See* Rulemaking for EDGAR System, Release Nos. 33–7653; 34–41150; IC–23735 (Mar. 10, 1999) [64 FR 12908] (the 1999 proposing release). On May 17, 1999, we adopted these amendments substantially as proposed. *See* Rulemaking for EDGAR System, Release Nos. 33–7684; 34–41410; IC–23843 (May 17, 1999) [64 FR 27888] (the 1999 adopting release).

[20] We continue to allow filers to submit documents in the text-based American Standard Code for Information Interchange (ASCII) format.

[21] Rulemaking for EDGAR System, Release Nos. 33–7803; 34–42462; 35–27142; 39–2382; IC–24319 (Mar. 3, 2000) [65 FR 11507] (the 2000 proposing release).

[22] You may read and copy comment letters submitted in response to our 2000 and 1999 proposing releases in our Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549 in File Nos. S7–05–00 and S7–9–99, respectively. You also may read the comment letters that were submitted electronically on our web site (http://www.sec.gov).

[23] We requested comment on whether we should mandate, or at least permit, the EDGAR submission of offerings exempt from registration under the Securities Act (including filings made pursuant to Regulation A [17 CFR 230.251–230.263], Regulation D [17 CFR 230.501–230.506], and Regulation E [17 CFR 230.601–230.610a]); applications for exemptive relief made by investment companies; and submissions by securities exchanges of their certifications for listing and trading on the exchanges and Form 25 under the Exchange Act [17 CFR 249.25].

[24] We anticipate that we will propose to make Forms 3, 4 and 5 [17 CFR 249.103, 249.104, and 249.105] under Section 16 [15 U.S.C. 78p] of the Exchange Act and Form 144 [17 CFR 239.144] (notices of securities sales filed pursuant to Rule 144 [17 CFR 230.144]] mandated EDGAR filings. Also, we are considering proposing to require that foreign private issuers make their filings with us on the EDGAR system. Currently, filers may submit Forms 3, 4, 5 and 144 and most of the foreign private issuer forms on EDGAR on a voluntary basis.

[25] We also will revise the EDGAR Filer Manual before the implementation of EDGAR Release 7.0. The EDGAR Filer Manual sets forth the technical formatting requirements governing the preparation and submission of electronic filings through the EDGAR system. Filers must comply with the provisions of the EDGAR Filer Manual to assure timely acceptance and processing of electronic filings. *See* Rule 301 of Regulation S–T [17 CFR 232.301].

[26] We plan to keep Form N–SAR and Form 13F as ASCII format submissions. Rule 105(a) [17 CFR 232.105(a)]. These documents have standard formats and tagging designed for presentation in ASCII, and their current format facilitates their downloading and use in other computer applications. However, filers have the option of submitting exhibits to Form N–SAR as HTML documents.

graphics files). We are adopting a new set of permissible HTML 3.2 tags for EDGAR Release 7.0, adding tags to allow graphics and more hypertext links. We will include the tag list in the EDGAR Filer Manual. Filers will be able to take advantage of the expanded tagging for graphics and hypertext links only through the use of a modernized version of EDGARLink.[27] These permissible tags allow for most formatting capability while eliminating active content [28] and certain classes of hypertext links.[29] The EDGAR system will continue to suspend filings if they contain tags that are not permitted.[30] Several commenters criticized the use of HTML 3.2 as outdated. One commenter supported the use of HTML 3.2. We anticipate that the permitted tag set will continue to evolve over time to accommodate the industry standard and needs of filers. We plan to move to a set of permissible HTML 4.0 tags in a future EDGAR system release.

D. Use of PDF

In addition to allowing the use of HTML for filings, we permit filers to submit a single unofficial PDF copy of each document.[31] These copies are disseminated publicly. Unofficial PDF documents retain all the fonts, formatting, colors, images, and graphics contained in an original document. The unofficial PDF copy is optional, but the rules currently require that, if an unofficial PDF copy of a document is submitted, it be substantively equivalent [32] to the document contained in the official filing of which it is a copy.[33]

Some filers have offered to submit redlined unofficial PDF copies of their filings along with their correspondence submissions for the convenience of the staff in its review.[34] Currently, Rule 104 [35] of Regulation S–T would prevent such submissions. We agree that allowing such submissions may facilitate staff review. We are amending Rule 104 to provide that unofficial PDF copies in correspondence documents may differ from the contents of the associated ASCII or HTML correspondence document.[36] This will allow filers to submit redlined copies of official filings in unofficial PDF copies of EDGAR correspondence documents without having to submit the entire official filing in the associated ASCII or HTML document.[37] If a filer submits an unofficial PDF copy of a correspondence document that differs from the text of the ASCII or HTML document, the text of the ASCII or HTML correspondence document should identify and briefly describe the contents of the unofficial PDF copy. For example, the ASCII or HTML correspondence document may consist of a cover letter stating that an unofficial PDF copy of the described filing is included in the submission.

E. Graphic and Image Material

Up until now, the EDGAR system has not accepted graphic or image material in HTML documents.[38] Currently, the EDGAR system is programmed to suspend HTML submissions if they contain tags for graphic or image files. However, filers may include graphic and/or image material in an optional, unofficial PDF copy of their EDGAR document.

EDGAR Release 7.0 permits graphic and image material in HTML documents that filers submit using a modernized version of EDGARLink that we are making available with EDGAR Release 7.0.[39] However, the rule prohibits filers from using graphic or image material to submit information such as text or tables, so that users will be able to search and/or download this information into spreadsheet form.[40] Instead, filers must submit such information as text in an ASCII document, or as text or an HTML table [41] in an HTML document.[42] In addition, filers should be aware that EDGAR Release 7.0 does not support the inclusion of graphics in modules and segmented filings.

We currently prohibit any EDGAR submission containing animated graphics (*e.g.*, files with moving corporate logos or other animation), either in any official submission or any unofficial PDF copy. We imposed this requirement due to concerns with how to capture and represent the animated graphics, which we cannot print or search, in the official filing. Commenters did not express strong concerns about the exclusion of animated graphics. We are continuing to prohibit them in EDGAR documents.

We have some concerns about the potential size of data files that filers may submit in connection with graphic and image material, not only because of our own database storage needs, but also because some Internet users may encounter difficulties in downloading or viewing documents that are very large. Several commenters opposed a size limit. We are not now imposing a size limit on graphic and image files. As noted above, the EDGAR Filer Manual will give guidance on voluntary methods to reduce the size of graphics.

We considered three approaches to graphics: making their use strictly optional, requiring graphics in HTML documents whenever our rules or forms require information to be in graphic form,[43] or requiring graphics in HTML documents wherever the documents distributed to security holders or potential investors contain graphics.

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[27] We discuss the modernized EDGARLink in Section I.I below.

[28] Tags that would allow executable code are not permitted. Rule 106 [17 CFR 232.106] of Regulation S–T prohibits any EDGAR submission containing executable code (as defined in Rule 11 of Regulation S–T [17 CFR 232.11]), either in any HTML or ASCII document or any unofficial PDF copy, at any time. For a detailed discussion of the prohibition against electronic submissions containing executable code, *see* Section I.G of the 2000 proposing release.

[29] The modified 3.2 tag set does not include proprietary extensions that are not supported by all browsers.

[30] For example, we will continue to suspend submissions containing executable code.

[31] For example, if a filing consists of a registration statement plus five exhibits, there are six documents for EDGAR purposes. Generally, the filer may submit all of these as HTML documents, all as ASCII documents, or some as HTML and some as ASCII documents. The filer also has the option to accompany any or all of the six documents with an unofficial PDF copy. But the rules do not permit a filer to submit a single unofficial PDF copy including the registration statement and exhibits; each PDF document must reflect only one ASCII or HTML document.

[32] "Substantively equivalent" documents are the same in all respects except for the formatting and inclusion of graphics. This is because PDF documents may include more graphics than in the corresponding HTML document. For documents to be substantively equivalent, the text of the two documents must be identical aside from any text describing the graphics that have been omitted.

[33] Filers may not make a submission consisting solely of PDF documents; filers must include unofficial PDF copies only in submissions that contain official filings in HTML or ASCII format.

[34] Several commenters suggested this approach in response to the 1999 proposing release.

[35] 17 CFR 232.104.

[36] As proposed, the amendment excepting correspondence documents from the "substantively equivalent" requirement would have been limited to redlined copies of filings. However, we are adopting the amendment without this limitation. Commenters supported this approach.

[37] Filers would not include a redlined unofficial PDF copy of the officially filed document, since EDGAR would disseminate the PDF document with the redline codes. However, unofficial PDF copies of EDGAR correspondence (CORRESP documents) are not disseminated.

[38] Filers must continue to provide a fair and accurate description of the differences between a version including graphic or image material and the filed version, as required by Rule 304 of Regulation S–T [17 CFR 232.304].

[39] We discuss the modernized EDGARLink in Section I.I below.

[40] For example, filers may not present financial statements as graphics, since this would impair the usefulness of the statements.

[41] The EDGAR Filer Manual continues to prohibit filers from including "nested tables" in their HTML documents.

[42] The EDGAR Filer Manual prohibits the use of graphics as background because their use may interfere with the legibility of documents.

[43] *See, e.g.*, the performance line graph required by Item 402(*l*) of Regulation S–K [17 CFR 229.402(*l*)] and the performance graph required for investment companies by Item 5 of Form N–1A [17 CFR 239.15A and 274.11A].

While we asked for comment on all three approaches, we proposed the second approach.

In both the 1999 and 2000 proposing releases, we requested comment on whether we should require graphic and image material to be included in HTML documents.[44] In response to the 2000 proposing release, most of those commenting supported the middle ground—requiring graphics in HTML documents only in the limited instances where our rules require graphics. Therefore, we are adopting this requirement as proposed.[45]

As noted in the 2000 proposing release, filers should not include non-public information in graphics files, even if the associated HTML or unofficial PDF document is non-public and will not be disseminated. This is because, due to cost and technical constraints, the EDGAR system is not programmed to differentiate whether a graphic file is related to a non-public document so that it may block the dissemination those graphic files associated with non-public documents.[46] Of course, EDGAR will not disseminate the non-public document itself. Therefore, filers should not include graphics intended to remain non-public in their EDGAR submissions.

F. Expanded Use of Hypertext Links

Currently, the EDGAR system does not permit hypertext links from HTML documents to external web sites. Similarly, the system does not permit hypertext links from one HTML document to any other documents (including exhibits), regardless of whether the document is part of the same filing. Hypertext links to different sections within a single HTML document are allowed.[47]

With Release 7.0, we are allowing hypertext links to other documents within the same filing (*i.e.*, exhibits). We also are permitting hypertext links to documents contained in other official filings[48] in the EDGAR database on our public web site at www.sec.gov.[49] Filers will be able to include the expanded hyperlinking in documents submitted to EDGAR using a modernized version of EDGARLink that we are making available with EDGAR Release 7.0.[50] Filers may, for example, link from within a document to previously filed documents that are incorporated by reference.[51] The system will permit links to specific filings only, not to specific information within these documents. We are continuing to prohibit all links outside the EDGAR database, including links to web sites.

Commenters generally supported this approach. Two commenters representing filer groups suggested that we give additional consideration to permitting broader use of external hyperlinks, noting that links can assist investors by providing educational material. We may revisit this issue in the future after we have gained some experience with more limited hyperlinks.

Currently, the rules provide that, if a filer includes impermissible hyperlinks in a filing, the linked material will not become part of the official filing for purposes of determining whether the disclosure requirements are satisfied.[52] The linked material will, however, be subject to the civil liability and antifraud provisions of the federal securities laws. We are amending Rule 105 of Regulation S–T as proposed so that this position applies whether or not the hyperlink is permitted by our rules.[53]

We believe that filers should not be able to use hyperlinks to satisfy the disclosure requirements of the applicable rule or schedule because then the readers of the filing might be unable to understand the content of the filing without accessing numerous hyperlinks. In addition, they will not be able to print the filing as an integrated whole. Many of our forms and schedules permit incorporation by reference, but we do not believe it would be appropriate for a filer to use hyperlinks to effectively use incorporation by reference when that is not permitted. For example, in a Form S–1 registration statement, a filer might wish to use hyperlinks from the prospectus to the company's previous Exchange Act reports. This will be optional information for the convenience of the reader. The filer could not, however, delete the business and financial information from the body of the prospectus because it was also provided in a hyperlinked Exchange Act report.

In addition, we believe it is appropriate for filers to assume liability for hyperlinked material as if it is part of the filing. In the context of an official filing made to the EDGAR system, we believe members of the public coming to the SEC's web site will reasonably understand the inclusion of a hyperlink to mean that the filer has adopted the linked material as its own. Rule 105 as amended reflects this position.

Most commenters did not address liability issues. One commenter, however, stated that filers should not have to assume additional liability for linked material if the material is not permitted to satisfy substantive disclosure requirements. Another commenter suggested that we treat linked material as a separate document if the user is clearly alerted that the material is not part of the prospectus and is on a different web site. Notwithstanding these comments, we do not believe this liability treatment should present any problems for filers. The use of hyperlinks in filed documents would remain voluntary, and a filer need not hyperlink to other documents if it does not wish to be understood as adopting the linked material as its own. In addition, the only hyperlinks that the rule permits are to

[44] In response to the 1999 proposing release, one commenter believed that it would not be burdensome to require graphic information when required by our forms. Another commenter believed that if graphics are created for the printed copy, they should be consistent in the HTML document.

[45] Rule 304 of Regulation S–T [17 CFR 232.304] continues to require the description of the differences between the filed version and other versions of the material. The filer would need to include the description only if the filer did not reproduce the graphics in the HTML document.

[46] For example, EDGAR "CORRESP" and "COVER" documents are non-public and are not disseminated. However, EDGAR will disseminate graphics files associated with these document types.

[47] For example, companies may include a prospectus table of contents containing links to the various sections of the prospectus.

[48] The amended rule does not permit filers to link to an unofficial PDF copy of a filing, since the PDF copy is not an official filing.

[49] As we noted in the 2000 proposing release, we currently maintain filing information on the EDGAR database on our public web site dating from 1994. While we have no current plans to remove data from this database, we anticipate that, in the future, we will periodically need to archive portions of the data. Therefore, filers should be aware that we cannot assure the maintenance of the linked material, since we do not know how long we will be able to maintain all of the EDGAR data on our web site. We expect to provide notice to the public before archiving EDGAR data.

[50] We discuss the modernized EDGARLink in Section I.I below.

[51] *See* Rule 105 of Regulation S–T [17 CFR 232.105]. Of course, filers should use hyperlinks consistently with the requirements for plain English. They should not use linked material as a substitute for information that needs to be in the document to make it readable. In addition, filers should keep in mind that a person who prints out or downloads the filed document will not also receive the linked material. Similarly, a database search on the filed document will not necessarily yield any results covering the linked material.

[52] The rule provides that information contained in the linked material is not part of the official filing for reporting purposes in order to prevent a filing from being considered complete when the entire content of the filing is not available without reference to another document. This provision should not, however, be viewed as a statement that linked material is not considered to be part of the filed document for other purposes.

[53] This rule applies only to EDGAR filings, not to hyperlinks on filers' own web sites or elsewhere. We are considering giving separate interpretive guidance that may address these matters.

exhibits to the same filing, or to previous filings in the EDGAR database on our web site. We caution filers, however, not to include these hyperlinks unless they are prepared to accept this responsibility.

Although the liability treatment of hyperlinks we adopt is similar to the legal effect of incorporation by reference, we emphasize that hyperlinks are not a substitute for incorporation by reference. As noted above, filers may not use hyperlinks to furnish information required in the filed document when incorporation by reference is not available. Conversely, when the form or rule makes incorporation by reference available, the filer must follow the form or rule requirements. A hyperlink alone will not satisfy those requirements.[54] One commenter suggested that we revisit our incorporation by reference rules in light of the capability provided by hyperlinks. If we did this, it would be a separate rulemaking project after we have gained experience with how filers use hyperlinks.

The rule does not prevent a filer from including a hyperlink to a document filed by another issuer, which might include an affiliate or guarantor. The hyperlink will be subject to the same liability treatment. We requested comment on whether filers would wish to include hyperlinks to filings of other companies, and under what circumstances and whether the rule should permit hyperlinks to filings by the same company only, or by the same company and affiliated companies only. Several commenters suggested limiting hyperlinks to the same company and affiliated companies. We have not limited the rule in this manner, however, since hyperlinks are within the filer's control. If a filer believes a link to a filing of another company will be useful, and is willing to incur liability for that document, we believe the rule should permit this.

We also asked for comment on two other aspects of the proposed treatment of hyperlinks. First, we asked how we should treat hyperlinks within hyperlinks. For example, Company A's registration statement has a hyperlink to its Form 10–K, which in turn has a hyperlink to its proxy statement. We stated that we believed that Company A should be viewed as making all the hyperlinked material its own, including the proxy statement. One commenter supported links within links, provided that the filer is subjected to liability, as proposed. We continue to believe that the approach in the proposing release is appropriate.

We also asked for comment on the treatment of amended or superseded material in hyperlinks.[55] If a hyperlinked document is corrected or updated by means of a new filing, the document containing the hyperlink also may have to be amended. For example, suppose a registration statement contains a hyperlink to a Form 10–K that is later amended to reflect a material change. The registration statement would have to be amended to include a hyperlink to the amended Form 10–K.[56] This would be necessary whether the hyperlinked document is filed by the same issuer or another issuer. No commenter addressed this issue in detail, but one expressed concerns about having to track amended or superseded material. We believe, however, that this would be necessary in some instances in order for the hyperlink to be to the correct document. If the original hyperlink was in a prospectus, the revised prospectus containing the updated hyperlink could be filed under Securities Act Rule 424[57] or 497.[58]

Finally, we believe we should provide some guidance on liability issues arising from the fact that hyperlinks may be created without the effort of the person making the filing. Some word processing programs automatically transform inactive textual references to electronic addresses (URLs) to hyperlinks. In addition, some browsers transform URLs to hyperlinks. We do not wish to discourage filers from including URLs to their own web sites or to our web site at www.sec.gov in their filings.[59] Filers who include these URLs in HTML filings, accordingly, should take reasonable steps when they create the document in order to prevent URLs from being converted into hyperlinks. If this is done, Rule 105 should not be read as imposing liability on any such hyperlinks that may be created after the filing is made. This position does not apply to URLs to any other web sites. Filers may wish to avoid including URLs to other web sites unless they would be prepared to take responsibility for material that is accessible through any resulting hyperlinks.[60]

G. Method of Electronic Transmission

Currently, electronic filers may make electronic submissions either as direct transmissions or on magnetic tape or diskette.[61] As discussed below, for submission made using the modernized EDGARLink, we are adding transmission via the Internet as a mode of electronic submission and changing the mode of acceptable transmission from "magnetic tape" to "magnetic cartridge." We also are removing diskettes as an allowed means of transmission under the modernized EDGARLink.

Direct Transmission via Dial-Up Modem and Internet

Most filers currently make EDGAR submissions by using a dial-up modem process, with or without the use of EDGARLink,[62] directly to EDGAR or through the EDGAR electronic mail service to EDGAR. Modem technology continues to advance. The current transmission speeds that are predominantly in use for EDGAR are 14.4 kbps and 56 kbps. In 1998, the EDGAR system discontinued support for 1200 bps modems. We anticipate discontinuing support for the 9600 bps modems after November 1 of this year and would do so in connection with future changes to the EDGAR Filer Manual.

With EDGAR Release 7.0, filers using the modernized EDGARLink also may make EDGAR filings through Internet-based technology via an Internet Service Provider (ISP) of their choice. We are providing security by Secure Socket Layer (SSL, *i.e.*, encrypted

[54] For example, the filing must contain a statement that the document is incorporated by reference, whether or not there is a hyperlink. As another example, Form 10–K may incorporate financial and other information from a company's annual report to security holders, so long as the information is filed as an exhibit to the Form 10–K. This exhibit is needed even if the information also is provided by hyperlink.

[55] *Cf.* Rule 412 [17 CFR 230.412], which addresses amended or superseded material incorporated by reference into a Securities Act registration statement or prospectus.

[56] Of course, this would be necessary only during the pendency of the offering.

[57] 17 CFR 230.424.

[58] 17 CFR 230.497.

[59] In many instances, filers are required or encouraged to include our or their web site URL in their filings. *See, e.g.*, Item 502(a)(2) of Regulation S–K [17 CFR 229.502(a)(2)], Item 1003 of Regulation M–A [17 CFR 229.1003], and Item 12(c)(2)(ii) of Form S–3 [17 CFR 239.13]. In addition, it is the staff's position that an inactive textual URL to the filer's own web site will not be deemed to include or incorporate the material by reference into the filing. *See* ITT Corp. (Dec. 6, 1996) and Baltimore Gas & Electric Co. (Jan. 6, 1997).

[60] The positions we state today are meant to clarify and update our previous positions with reference to inactive textual URLs. *See* the 1999 adopting release, footnote 23 and accompanying text, and the 2000 proposing release, footnote 45.

[61] *See* Rules 12(b) and 12(c) of Regulation S–T [17 CFR 232.12(b) and 232.12(c)].

[62] EDGARLink is the filer assistance software we provide to filers filing on the EDGAR system. *See* Section I.I below for a discussion of modernized EDGARLink.

transmissions) and certificates.[63] We are not requiring but are permitting optional client side certificates. Filers may wish to use client side certificates for the additional security benefits they bring to filers and their transmissions (such as security of transmission to us and from us to disseminators and authentication of the document source).

Magnetic Tape

Currently, filers may submit their EDGAR filings by magnetic tape.[64] In keeping with changing technological standards, we are changing this method of transmission for use with the new EDGARLink software from the current 9 track magnetic tape format to the following formats: 4mm, 8mm, and .5 inch IBM-compatible 3480 magnetic tape cartridges.[65] However, we will continue to accept the 9 track magnetic tape format for use with the old EDGARLink software until at least November 1, 2000.

Diskettes

Diskette filings often present formatting difficulties,[66] and the percentage of filers using diskettes is minimal, approximately one percent. In the 1999 and 2000 proposing releases, we requested comment on whether diskettes remain useful for certain types of filings and whether we should continue to permit them. We received one comment in response in 1999 and three comments this year; all commenters believed there was no reason to continue accepting diskettes. We believe there is no category of filers who would be unduly burdened if we eliminate filers' ability to file on diskette, and we are eliminating diskettes as a transmission medium with the modernized EDGARLink. However, to ease the transition for filers currently using diskettes as a transmission medium, we will continue to accept diskettes through July 7, 2000.

I. Modernized EDGARLink

We are providing filers a new, easier to use EDGARLink product for gathering and transmitting documents to the EDGAR system. We will continue to have the existing DOS-based EDGARLink available concurrently until at least November 1, 2000. We believe that the new EDGARLink works more easily under Windows operating system environments. Filers must use the new EDGARLink if they wish to include graphics and hyperlinks in their HTML documents (except for hyperlinks within the same document).

We requested comment on the burden to filers, if any, of our discontinuing support for the existing DOS-based EDGARLink six months after we make available the new EDGARLink. Commenters supported the limited concurrent availability of the modernized and "legacy" systems.

The new EDGARLink allows filers to use predefined templates to fill in required submission "header" data. We have integrated the electronic templates with the two most popular Internet browsers in the market today, Internet Explorer and Netscape Navigator (versions 3 and higher). Filers may use these integrated browsers to transmit their filings to EDGAR using the Internet. The interface to the user is the browser, so many of the functions in the browser interface that filers use currently to traverse the Internet are familiar under the new EDGARLink.

We are not distributing the new EDGARLink by diskette. We are making it downloadable from the EDGAR web site. We are also making available for download from the site the predefined templates for filling in the required submission "header" information.

As with the current EDGARLink, the new EDGARLink assists filers with building the header, attaching documents to the header, checking for errors, and transmitting the documents to us. The new EDGARLink does not use the current tagging structure for submission headers. Instead, it has clear, plain English labels on fields. The filer can bring up the correct submission header template and begin filling in the fields similar to the way data input is performed on many web sites on the Internet. The new submission header templates can validate some fields as soon as the information is entered, so filers need not wait until they validate their filing to see errors in the submission header. The submission header template also allows filers to attach their documents directly to the template. Once the submission header template is complete and the documents are attached, filers may use the browser-like buttons at the top of the screen to validate the submission header template and the attached documents. Filers may then use another button at the top of the screen to transmit the submission header template and attached documents to us.

The filer may correct any errors detected in the submission header template during the validation phase through the new EDGARLink software. During the validation phase, filers must correct any errors they detect in the documents using their own word processing software package, which they may invoke easily from the submission header template. Filers should review their submissions carefully before transmission, since, once the submissions are accepted, EDGAR disseminates filings almost instantaneously.

J. Financial Data Schedules

Filers currently submit Financial Data Schedules (FDSs) as exhibits to many of our required forms. However, these exhibits are not an official part of the filings to which they relate[67] and are not subject to auditing standards. Filers prepare the FDS by extracting the FDS information from the financial statements and other sources already contained in their filings in accordance with a detailed tagging scheme outlined in the EDGAR Filer Manual. The FDS contains a unique tag list and is often prepared by the filer's staff and not the accounting professionals who prepare the financial statements. The primary purpose of this requirement was to provide tagged financial information that the staff can use for screening filings, ratio computation and other analysis. As part of the EDGAR modernization effort, we have explored alternative means of acquiring this financial information, such as through outside data sources. We proposed to relieve filers of the requirement to prepare and submit FDSs and to remove the requirement for Financial Data Schedules from all rules and forms.

In the 2000 proposing release, we requested comment on whether FDS data is useful to the public and whether we should continue to require filers to submit FDSs with any filing. Industry associations representing corporate filers and investment companies strongly supported the elimination of FDSs. So did several filing agents. They applauded the cost and time savings to the filers from the elimination of FDSs.

[63] The EDGAR Filer Manual sets forth the detailed specifications for and guidance on obtaining certificates.

[64] *See* Rule 12(b) of Regulation S–T [17 CFR 232.12(b)].

[65] *See* related amendments to Securities Act Rule 110 [17 CFR 230.110], Rules 12 and 103 of Regulation S–T [17 CFR 232.12 and 232.103], Exchange Act Rule 0–2 [17b CFR 240.0–2], Public Utility Act Rule 21 [17 CFR 250.21], and Trust Indenture Act Rule 0–5 [17 CFR 260.0–5].

[66] The EDGAR system will not accept diskette filings with formatting errors. The process of notifying the filer of the errors and having the filer correct and resubmit the diskette may result in long delays before EDGAR accepts the filing.

[67] An FDS is not deemed filed for purposes of Section 11 of the Securities Act, Section 18 of the Exchange Act, Section 16 of the Public Utility Act, Section 323 of the Trust Indenture Act, or Section 34(b) of the Investment Company Act or otherwise subject to the liabilities of such sections; it is not deemed a part of a registration statement to which it relates. *See* Rule 402 of Regulation S–T [17 CFR 232.402].

They emphasized that the need to create this unique document is a burden on filers. They noted that creating the FDS also can jeopardize the timely filing of documents, because improper use of FDS tags and syntax can result in last-minute corrections.

However, we also received many comments objecting to the elimination of FDSs from persons who provide or use after-market products based on selected FDS information, and investors and individuals who use the information for research purposes. These commenters generally expressed the view that FDSs, as exhibits to Form 10–Ks and 10–Qs, are useful because they provide a consistent and uniform source of financial information about public companies.[68]

Two commenters, however, stressed that the information found in FDSs is frequently inaccurate. One such commenter, a disseminator of EDGAR information, stated that individuals and institutional investors who may rely on FDSs are unknowingly making decisions based on incorrect information. The commenter noted that the financial data found in FDSs often do not comport with the financial data found in official financial statements.

We believe that the difficulties in constructing the FDSs and the likelihood of inaccuracies in the FDSs may stem from the fact that filers must pull information from financial and other documents and place specific financial information in the FDS as a value for an appropriate EDGAR tag. Often filers are uncertain as to which information is associated with which tag and use the wrong tags or put the information in the wrong places. Filers may construct the FDSs at the last minute, after all filing documents have been completed. Since FDSs are neither deemed part of the filing nor subject to auditing standards, filers may often rely on financial printers or their own EDGAR support staff to construct the schedules, leading to the further possibility of information being entered inaccurately into the FDS.

We have considered carefully the comments we received from both sides on this issue. We recognize that the submission of FDSs is a burden on the filer community. We also recognize that investors and individuals rely to some extent on the FDS information. However, based on commenters' feedback and our experience with FDSs as filed, we are aware that the FDSs are often missing, inaccurate and incomplete. While some commenters describe FDSs as a uniform data source of financial information, we believe this may not be the case. We are concerned that, in reality, data users are relying on what may be inaccurate information, possibly as a yardstick by which to measure the accuracy of other financial information. We believe that the benefit to filers from the elimination of FDSs and to investors and other individuals who unwittingly base their investment decisions on inaccurate information outweigh the concerns of those persons who have used FDSs for after-market products. While they may experience some costs, such producers will be able to obtain similar information from the electronic filings themselves, the source of the FDS information.

We are removing the requirement for Financial Data Schedules from all rules and forms. The FDS requirement was instituted primarily for our staff's use. Our staff is increasingly relying on outside data sources for this information. In recognition of the burden that the elimination of FDSs may cause some users and developers of after-market products, we are adopting a deferred effective date of January 1, 2001. We believe that this deferred effective date will allow ample time for all affected persons to adjust to these changes, including time to reprogram, possibly using analytical tools to extract more accurate financial data from the filings themselves.

Filers should be aware that, beginning in 2001, when they make filings that previously required an FDS, EDGAR still may generate an error message. Filers should ignore this message, since the filing will be accepted without the FDS. We will eliminate the error messages in later programming of the EDGAR system.

II. Rule Amendments in Connection With EDGAR Release 7.0

We are amending certain rules and regulations, which we discuss below, in connection with EDGAR Release 7.0. We are amending all of the rules as proposed except for a minor change to Rule 104, as discussed below. Most of our amendments are to the provisions of Regulation S–T, which governs the preparation and submission of electronic filings to us, as described below in connection with the expanded features for HTML documents.

Rule 11—*Definition of Terms used in Part 232.* Rule 11 contains definitions used in Regulation S–T. We are amending the definition of "official filing." Currently, the definition of the term "official filing" is any filing that is received and accepted by the Commission, regardless of filing medium.[69] The current definition resulted from amendments we made to reflect revised records retention practices.[70] Before those amendments, Rule 11 made it clear that an "official filing" was a document filed with us exclusive of header information, tags and any other technical information required in an electronic filing.[71] We are revising the definition to restore this language.

We also are removing from Rule 11 the definition of "phase-in date," since we have completed phase-in to mandated electronic filing and the term is no longer used in the rules.

Rules 12 and 103—*Business hours of the Commission; Liability for transmission errors or omissions in documents filed via EDGAR.* Paragraph (b) of Rule 12 and Rule 103 refer to the submission of electronic filings on magnetic tape or diskette. We are revising paragraph (b) of Rule 12 to refer to transmission by magnetic cartridge rather than magnetic tape and to remove the references to diskettes, since we will no longer accept filings on them[72] and revising the language of paragraph (c) of Rule 12 to allow for direct transmissions via Internet. We also are removing the reference to method of transmission from Rule 103, since the rule covers transmission by any acceptable method.

Rule 104—*Unofficial PDF Copies Included in an Electronic Submission.* Rule 104 provides that an electronic submission may include one unofficial PDF copy of each electronic document contained within an electronic submission.[73] Under the current rule,

[68] With respect to investment companies, in response to the 1999 proposing release, one commenter suggested that we incorporate certain information currently contained in the financial data schedule submitted with Form N–SAR into the Form N–SAR itself. However, in response to the 2000 proposing release, the commenter stated that, if the information were available from outside sources, the FDS items should not be incorporated into Form N–SAR. We will consider these comments in connection with future rulemaking in deciding whether any FDS information should be incorporated into the Form N–SAR itself.

[69] Rule 11 of Regulation S–T [17 CFR 232.11].

[70] *See* Release No. 33–7427; 34–38798; 39–2355; IC–22730 (July 1, 1997) [62 FR 36450] (removing the reference to microfiche to reflect new practice of allowing for storage of documents in a variety of media).

[71] *See* Release No. 33–6977 (Feb. 23, 1993) [58 FR 14628].

[72] We also are revising the following rules to change the reference from magnetic tape to magnetic cartridge and to remove the reference to diskettes: Securities Act Rule 110, Exchange Act Rule 0–2, Public Utility Act Rule 21, and Trust Indenture Act Rule 0–5. As a courtesy to filers, we will continue to accept 9 track magnetic tape during the overlapping period in which we continue to support the old version of EDGARLink.

[73] Rule 104(a) [17 CFR 232.104(a)]. This rule also permits the filer to submit an unofficial PDF copy of correspondence or a cover letter document.

each unofficial PDF copy must be substantively equivalent to its associated ASCII or HTML document contained in the submission. As discussed above in Part I.D, we are amending the rule to relax the substantively equivalent requirement in connection with non-public correspondence submissions. In a change from the proposal, we are removing this requirement for all unofficial PDF correspondence documents instead of only those consisting of a redlined copy of a filing.

Rule 104 currently makes it clear that an unofficial PDF copy may contain graphic and image material even though its ASCII or HTML counterpart may not contain such material.[74] We are revising the rule to reflect the fact that, with EDGAR Release 7.0, the HTML counterpart also may contain graphic material.

Rule 105—*Limitation on Use of HTML Documents and Unofficial PDF Copies; Use of Hypertext Links.* Rule 105 currently provides that filers may not submit Financial Data Schedules as HTML documents. We are removing this language, since we will no longer require filers to submit FDSs. As discussed above, this provision and other rule amendments relating to the removal of the FDS requirement will not be effective until January 1, 2001.

Rule 105 currently prohibits electronic filers from including in HTML documents hypertext links to sites or documents outside the HTML document.[75] However, the rule allows electronic filers to include hypertext links to different sections within a single HTML document. We are amending the rule so that, with EDGAR Release 7.0, filers may link to other documents within the same submission as well as to other documents previously filed electronically that are on our public web site EDGAR database at www.sec.gov. The EDGAR system is programmed to suspend filings if they contain external links other than as discussed above.

Currently, Rule 105 provides that, if an accepted filing includes external links in contravention of our rules, we will not consider information contained in the linked material to be part of the official filing for determining compliance with reporting obligations, but such information will be subject to the civil liability and anti-fraud provisions of the federal securities laws.[76] As discussed above in Part I.F, we are revising the rule so that it applies to all linked material, whether included in accordance with (or in contravention of) our rules.

Rule 302—*Signatures.* Rule 302 currently provides that required signatures to or within electronic documents must be in typed form. We are amending the rule to allow signatures that are not "required" signatures to appear as script in HTML documents, since we are permitting, and in some case requiring, graphic and image material.[77] In response to the 1999 proposing release, some commenters believed that we also should accept required signatures as script in HTML documents. However, we are retaining the rule that required signatures be typed to ensure legibility of these signatures.[78]

Rule 303—*Incorporation by reference.* Paragraph (a)(4) of Rule 303 currently prohibits the incorporation by reference of Financial Data Schedules submitted under Rule 483. We are removing this provision, since we are no longer requiring FDSs.

Rule 304—*Graphic, Image, Audio and Video Material.* Currently, Rule 304 prohibits the inclusion of graphic, image, audio or video material in an EDGAR document. We are revising Rule 304 to lift the prohibition on graphic and image material (but not on audio or video material) in HTML documents with EDGAR Release 7.0.[79] As discussed above in Part I.E, we are requiring the presentation of graphic material in an HTML graphic file in HTML documents if graphic information is required by Commission rule or form and to allow its inclusion where the graphics in the document are not required by our rules or forms. We also are amending the rule to prohibit animated graphics in any EDGAR document.

Rule 311—*Documents submitted in paper under cover of Form SE.* Rule 311 currently contains provisions concerning documents submitted in paper under Form SE. We are amending the rule to remove the reference to exhibits to Form N–SAR, since filers must now submit N–SAR exhibits electronically.[80]

Rules 401 and 402—*Financial Data Schedule; Liability for Financial Data Schedule.* Rules 401 and 402 are the provisions governing the electronic submission of Financial Data Schedules. As discussed above in Part I.K, we are removing the requirement for FDSs, and accordingly we are removing and reserving Rules 401 and 402 of Regulation S–T.[81]

Rule 501—*Modular Submissions and Segmented Filings.* Rule 501 currently states that an electronic filer that subscribes to the optional EDGAR electronic mail service may use the module and segment features. We are revising the rule to remove the reference to the optional electronic mail service, since filers who do not subscribe also may use these features.

III. Paperwork Reduction Act

As explained in the 2000 proposing release, our amendments eliminating Financial Data Schedules (FDSs) affect several regulations and forms that contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995[82] (the Act). Accordingly, the collection of information requirements in this release were submitted to the Office of Management and Budget (OMB) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. OMB approved revisions of the following collection of information requirements: Form S–1 (Control Number 3235–0065); Form S–4 (Control Number 3235–0324); Form S–11 (Control Number 3235–0067); Form SB–1 (Control Number 3235–0423); Form SB–2, (Control Number 3235–0418); Form 10–SB (Control Number 3235–0419); Form 10–QSB (Control Number 3235–0416); Form 10–KSB (Control Number 3235–0420); and Form 10–Q (Control Number 3235–0070); Investment Company Act Form N–SAR (Control Number 3235–0330); and Public Utility Holding Company Act Forms U–1 (Control Number 3235–0125); U5S (Control Number 3235–0164); U–13–60 (Control Number 3235–0153); and U–3A–2 (Control Number 3235–0161). OMB has not yet approved revisions of the collection of information requirements for Forms 10 (Control Number 3235–0064) and 10–K (Control Number 3235–

[74] Rule 104(b) [17 CFR 323.104(b)].

[75] Rule 105(b) [17 CFR 232.105(b)].

[76] Rule 105(c) [17 CFR 105(c)].

[77] Rule 302. We do not require signatures in unofficial PDF copies.

[78] We would not object, however, if filers include script signatures in addition to the required typed signatures in HTML documents.

[79] We also are adding a Note to paragraph (a) of Rule 304 to make it clear that when omitted material contains data, filers must include that data in the filing. For example, if the omitted material consists of a pie chart showing the use of proceeds, the EDGAR filing should set forth the percentage of proceeds allocated to each use rather than merely stating "chart showing use of proceeds omitted."

[80] *See* the 1999 adopting release, at footnote 58.

[81] We also are amending the following rule and form provisions in connection with the discontinuance of FDSs: Items 601 of Regulation S–B and S–K; Securities Act Rule 483; Securities Act Forms S–2, S–3, and S–8; Public Utility Act Forms U5S, U–1, U–13–60 and U–3A–2; Investment Company Act Rules 8b–2, 8b–23 and Rule 8b–32; and Investment Company Act Form N–SAR.

[82] 44 U.S.C. 3501 *et seq.*

0063).[83] The collections of information are in accordance with 44 U.S.C. 3507. 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.

Form S–1 under the Securities Act (OMB Control Number 3235–0065) is used by issuers that are not eligible to use other forms to register offerings of securities. The form sets forth the transactional and company information required by the Commission in securities offerings. Form S–4 under the Securities Act (OMB Control Number 3235–0324) is used by issuers to register securities offerings in connection with business combinations and exchange offers. This form sets forth the transactional and company information required by the Commission in securities offerings. Form S–11 under the Securities Act (OMB Control Number 3235–0067) is used to register real estate investment trusts and securities issued by issuers whose business is primarily that of acquiring and holding investment interests in real estate. Form SB–1 under the Securities Act (OMB Control Number 3235–0423) is used by small business issuers, as defined in Rule 405 of the Securities Act, to register offerings of up to $10 million of securities in a 12-month period. The form sets forth the transactional and company information required by the Commission in securities offerings. It requires less detailed information about the issuer's business than Form S–1. Form SB–2 under the Securities Act (OMB Control Number 3235–0418) is used by small business issuers, as defined in Rule 405 of the Securities Act, to register securities offerings. The form sets forth the transactional and company information required by the Commission in securities offerings. It requires less detailed information about the issuer's business than Form S–1.

Form 10 under the Exchange Act (OMB Control Number 3235–0064) is used by registrants to register classes of securities for trading on a national exchange. It requires certain business and financial information about the issuer. Form 10–SB under the Exchange Act (OMB Control Number 3235–0419) is used by small business issuers, as defined in Rule 12b–2 of the Exchange Act, to register classes of securities. This form requires slightly less detailed information about the issuer's business than Form 10 requires. Form 10–K under the Exchange Act (OMB Control Number 3235–0063) is used by registrants to file annual reports. It provides a comprehensive overview of the registrant's business. Form 10–KSB under the Exchange Act (OMB Control Number 3235–0420) is used by small business registrants, as defined in Rule 12b–2 of the Exchange Act, to file annual reports. It provides a comprehensive overview of the registrant's business, although its requirements call for slightly less detailed information than required by Form 10–K. Form 10–Q under the Exchange Act (OMB Control Number 3235–0070) is used by registrants to file quarterly reports. It includes unaudited financial statements and provides a continuing view of the registrant's financial position during the year. The report must be filed for each of the first three fiscal year quarters of the registrant's fiscal year. Form 10–QSB under the Exchange Act (OMB Control Number 3235–0416) is used by small business registrants, as defined in Rule 12b–2 of the Exchange Act, to file quarterly reports. It includes unaudited financial statements and provides a periodic view of the registrant's financial position during the year. The report must be filed for each of the first three fiscal quarters of the registrant's fiscal year. It provides a comprehensive overview of the registrant's business, although its requirements call for slightly less detailed information than required by Form 10–Q.

Form N–SAR (OMB Control No. 3235–0330) is used by registered investment companies for annual and semi-annual reports required to be filed with the Commission.

Form U–1 (OMB Control No. 3235–0125) must be used by any person filing or amending an application or declaration under sections 6(b), 7, 9(c)(3), 10, 12(b), (c), (d) or (f) of the Public Utility Act. This form must also be used for filings under other sections of the Public Utility Act for which a form is not prescribed. Form U5S (OMB Control No. 3235–0164) requires registered holding companies to file annual and other periodic and special reports as the Commission may prescribe to keep current information relevant to compliance with substantive provisions of the Public Utility Act. Form U–13–60 (OMB Control No. 3235–0153) implements section 13 of the Public Utility Act by requiring standardized accounting and recordkeeping for mutual and subsidiary service companies of registered holding companies and the filing of annual reports on Form U–13–60. Form U–3A–2 (OMB Control Number 3235–0161) permits a public utility holding company to claim exemption from the Public Utility Act by filing an annual statement.

The Commission notes that it is making no material changes from the Proposing Release. Thus, the collection of information burdens are not changing from those proposed. We anticipate that the elimination of the requirement that filers submit FDSs as exhibits for certain forms referenced under Item 601(b) of Regulations S–K and S–B will reduce the existing information collection requirements that are currently imposed on registrants (respondents).[84] We estimate that approximately 3,617 Form S–1s are filed each year. We estimate that the elimination of FDSs will decrease the filing burden for each respondent by 1 hour for an average burden of 432 hours per filing. We anticipate that the total estimated aggregate annual burden for 3,617 respondents will be 1,562,544 hours (432 × 3,617).

We estimate that approximately 8,709 Form S–4s are filed each year. We estimate that the elimination of FDSs will decrease the filing burden for each respondent by 1 hour for an average burden of 990 hours per filing. We anticipate that the total estimated aggregate annual burden for 8,709 respondents will be 8,621,910 hours (990 × 8,709).

We estimate that approximately 107 Form S–11s are filed each year. We estimate that the elimination of FDSs will decrease the filing burden for each respondent by 1 hour for an average burden of 473 hours per filing. We estimate that the total estimated aggregate annual burden for 107 respondents will be 50,611 hours (473 × 107).

We estimate that approximately 8 Form SB–1s are filed each year. We estimate that the elimination of FDSs will decrease the filing burden for each respondent by 1 hour for an average burden of 177 hours per filing. We anticipate that the total estimated aggregate annual burden for 8 respondents will be 1,416 hours (177 × 8).

We estimate that approximately 559 Form SB–2s are filed each year. We estimate that the elimination of FDSs will decrease the filing burden for each respondent by 1 hour for an average burden of 137 hours per filing. We anticipate that the total estimated aggregate annual burden for 559

[83] OMB has assured us that they will respond to our request to approve the revised requirements for Forms 10 and 10–K by April 28, 2000. We anticipate that they will approve these routine decreases in burden estimates.

[84] Regulations S–K and S–B do not impose reporting burdens directly on public companies.

respondents will be 76,583 hours (137 × 559).

We estimate that approximately 162 Form 10–SBs are filed each year. We estimate that the elimination of FDSs will decrease the filing burden for each respondent by 1 hour for an average burden of 22 hours per filing. We anticipate that the total estimated aggregate annual burden for 162 respondents will be 3,564 hours (22 × 162).

We estimate that approximately 10,671 Form 10–QSBs are filed each year. This number reflects the fact that a Form 10–QSB is required to be filed three times a year. We estimate that the elimination of FDSs will decrease the filing burden for each respondent by 1 hour for an average burden of 32 hours per filing. We anticipate that the total estimated aggregate annual burden for 3,557 respondents will be 341,472 hours (3 × 32 × 3,557).

We estimate that approximately 3,641 Form 10–KSBs are filed each year. We estimate that the elimination of FDSs will decrease the filing burden for each respondent by 1 hour for an average burden of 294 hours per filing. We anticipate that the total estimated aggregate annual burden for 3,641 respondents will be 1,070,454 hours (294 × 3,641).

We estimate that approximately 124 Form 10s are filed each year. We estimate that the elimination of FDSs will decrease the filing burden for each respondent by 1 hour for an average burden of 23 hours per filing. We anticipate that the total estimated aggregate annual burden for 124 respondents will be 2,852 hours (23 × 124).

We estimate that approximately 29,551 Form 10–Qs are filed each year. This number reflects the fact that Form 10–Q is required to be filed three times a year. We estimate that the elimination of FDSs will decrease the filing burden for each respondent by 1 hour for an average burden of 34 hours per filing. We anticipate that the total estimated aggregate annual burden for 9,850 respondents will be 1,004,700 hours (3 × 34 × 9,850).

We estimate that approximately 10,381 Form 10–Ks are filed each year. We estimate that the elimination of FDSs will decrease the filing burden for each respondent by 1 hour for an average burden of 430 hours per filing. We anticipate that the total estimated aggregate annual burden for 10,381 respondents will be 4,463,830 hours (10,381 × 430).

The elimination of FDSs within Investment Company Act Form N–SAR will reduce the total information collection burden imposed upon affected respondents. We estimate that approximately 7,333 Form N–SARs are filed each year. This number reflects the fact that each of approximately 3,300 management investment companies file the form twice a year. This number also includes the 733 unit investment trusts who file the form once a year, with a burden of 6 hours per filing, but who do not file FDSs with the form. We estimate that the elimination of FDSs will decrease the filing burden for each management investment company respondent by 1 hour for an average burden of 14.75 hours per filing. We anticipate that the total estimated aggregate annual burden for 4,033 respondents will be 101,748 hours ((2 × 3,300 × 14.75) + (733 × 6)).

The elimination of FDSs within Public Utility Act forms will reduce the total information burden imposed upon affected respondents. We estimate that approximately 121 Form U–1s are filed each year. We estimate that the elimination of FDSs will decrease the filing burden for each respondent by 1 hour for an average burden of 224 hours per filing. We anticipate that the total estimated aggregate annual burden for 15 respondents making a total of 121 submissions per year will be 27,104 hours (121 × 224).

We estimate that approximately 19 Form U5Ss are filed each year. We estimate that the elimination of FDSs will decrease the filing burden for each respondent by 1 hour for an average burden of 13.5 hours per filing. We anticipate that the total estimated aggregate annual burden for 19 respondents will be 256.5 hours (19 × 13.5).

We estimate that approximately 91 Form U–3A–2s are filed each year. We estimate that the elimination of FDSs will decrease the filing burden for each respondent by 1 hour for an average burden of 2.5 hours per filing. We anticipate that the total estimated aggregate annual burden for 91 respondents will be 227.5 hours (91 × 2.5).

We estimate that approximately 40 Form U–13–60s are filed each year. We estimate that the elimination of FDSs will decrease the filing burden for each respondent by 1 hour for an average burden of 13.5 hours per filing. We anticipate that the total estimated aggregate annual burden for 40 respondents will be 540 hours (40 × 13.5).

The above forms do not impose a retention period for any recordkeeping requirements. Compliance with the above forms is mandatory. Responses to the disclosure requirements of the above forms are not kept confidential unless granted confidential treatment.

In the 2000 proposing release, we solicited public comment to (i) evaluate whether the proposed change in the collections of information was necessary for the proper performance of the functions of the Commission, including whether the information had practical utility; (ii) evaluate the accuracy of our estimate of the burden of the proposed changes to the collections of information; (iii) enhance the quality, utility and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

We received one comment specifically addressing the Paperwork Reduction Act section of the 2000 proposing release. This commenter referenced without disputing the one-hour burden that we assigned to the filing of the FDS.

IV. Cost-Benefit Analysis

The rules we are adopting today reflect the next stage in our modernization of EDGAR. We expect that this continuing EDGAR modernization ultimately will result in considerable benefits to the securities markets, investors, and other members of the public, by expanding the types and accessibility of information that can be filed and made available for public review through the EDGAR system. We also expect that the changes will result in economic benefits to filers by easing their burden in filing required materials through the EDGAR system.

One of the goals of EDGAR modernization has been to benefit all EDGAR users by achieving consistency as much as possible with familiar and widely accepted industry standards. The rules we adopt today are an important step in moving the EDGAR system toward these industry standards.

The transition to a broader HTML tag set and the use of more current technologies should provide significant benefits. Investors will benefit from EDGAR modernization because they will receive documents that communicate more effectively. Graphics can make documents easier to read and so will likely increase investors' understanding of disclosure documents. Hyperlinks should make documents easier to navigate and information easier to locate.

The ability to transmit filings over the Internet also should provide increased flexibility to filers. Moreover, since filers would be able to use their own

Internet Service Providers and send filings to the EDGAR system at no charge, filers located outside of the immediate Washington, DC area may reduce their costs for long-distance telephone service. EDGARLink filers also should benefit from being able to prepare and transmit their filings to the EDGAR system using more convenient and familiar browser-based software. The modernized EDGARLink, a significant update from the older technology of the current EDGARLink product, should benefit filers by eliminating their dependence upon maintaining old equipment that is no longer supported in the computer industry.

Companies that make public filings also should benefit from having expanded features available for their HTML documents because their documents will communicate more effectively with shareholders and be more attractive for marketing and other purposes. As investors find that they can more effectively obtain the information they seek from the EDGAR system, filers may get fewer requests for paper copies of filings. Some filers that prepare documents in HTML for purposes of offerings or of company web site postings may find it less burdensome to convert documents into the version of HTML provided for in Release 7.0 and the rules as amended than to convert them into ASCII.

At the same time, we recognize that the full transition to the modernized EDGAR system will impose some hardware, software, and staffing costs associated with the evolution of computer systems to industry standards. At this stage, issuers and other filers need not incur any immediate costs related to the HTML enhancements, because filing in HTML remains voluntary. Filing agents who do not use our free EDGARLink software may incur some programming costs to make the transition to Release 7.0.

The changes in permissible methods of transmission of EDGAR submissions will likely lead to some immediate costs for filers. We believe that the elimination of diskettes and the move from magnetic tape to magnetic cartridge would affect approximately one percent of filers. On the other hand, all filers using EDGARLink may need to make some adjustments to effect the transition to the modernized EDGARLink, which is browser-based. These costs should be minimal for most filers because the new software is not dependent upon any one operating system environment and most companies have already adopted an environment that will support it. The new EDGARLink also may be able to operate on some older DOS-based operating environments. The current DOS-based EDGARLink will remain available to filers until at least November 1, 2000 to facilitate filers' transition to the modernized EDGARLink.

Disseminators of EDGAR data may incur some transitional costs as they revise their software to accommodate the HTML enhancements.[85] Disseminators that are not HTML-based may face some difficulties in integrating the new graphics data. In addition, graphics data may increase the size of documents received by the EDGAR system and transmitted to disseminators. As a result, disseminators may need to adjust their storage techniques or may incur additional costs for storage and processing.

The rules we adopt today impose no costs related to substantive disclosure. The one substantive change is the elimination of financial data schedules, which will reduce filers' preparation time. Investors and other individuals who use this information may experience some costs in obtaining similar information from the electronic filings themselves, the source of the financial data schedule information. In recognition of the burden that the elimination of this information may impose on some users and developers of after-market products, we are adopting a deferred effective date of January 1, 2001 to allow ample time for all affected persons to adjust to these changes, including time to reprogram, possibly using analytical tools to extract the financial data from the filings themselves.

The remaining amendments do not substantively change the information and disclosure we currently require. Rather, the amendments merely modify and supplement current rules to reflect the expanded HTML options that filers may use to submit information to us electronically.

In the 1999 and 2000 proposing releases, we encouraged commenters to identify any costs or benefits associated with the rule proposals and with EDGAR modernization in general. In particular, we requested that commenters identify any costs or benefits associated with the rule proposals relating to the increased use of graphics, the contents of an "official filing," impermissible types of code and content, hypertext links to documents or web sites, variations in the appearance of an "official filing" that is accessed through different browsers, and any impact that the rule proposals may have on the ease of locating and using EDGAR data. Commenters did not address these issues directly, but several did support the movement toward HTML, one stating that the transition to HTML was worth the additional time it may take to construct an HTML filing. Some filing agents and disseminators requested additional time to prepare and program the necessary changes to their systems. We requested but received no data to support the commenters' positions.

V. Analysis of Burdens on Competition, Capital Formation and Efficiency

Section 23(a)(2) of the Exchange Act requires us, in adopting rules under the Exchange Act, to consider the anti-competitive effects of any rules that we adopt thereunder. Furthermore, Section 2(b) of the Securities Act,[86] Section 3(f) of the Exchange Act,[87] and Section 2(c)[88] of the Investment Company Act require us, when engaging in rulemaking, and considering or determining whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. We requested comment on whether the proposals, if adopted, would promote efficiency, competition, and capital formation, but commenters did not address these issues.

We considered whether the amendments would promote efficiency, competition and capital formation. Some commenters suggested that the FDSs enhanced investors' ability to compare public companies, and therefore efficiently allocate capital. Because of our concerns about the accuracy of the data and the fact that more accurate data is available from alternative sources, elimination of FDSs will not impair the efficient allocation of capital. Filing agents and disseminators requested additional time to prepare and program the necessary changes to their systems. Although filing agents and information disseminators may be disparately

[85] We continually attempt to reduce the costs of the EDGAR system and to pass those cost savings along when possible. For example, in November 1998, under the new EDGAR contract, we were able to effect a cost savings with the implementation of a new privatized dissemination system. This resulted in our passing along a cost savings of nearly $200,000 per year to disseminators when their yearly subscription cost was reduced from $278,000 to $79,686. And in December 1999, the subscription price dropped again from $79,686 to $44,571.

[86] 15 U.S.C. 77b(b).

[87] 15 U.S.C. 78c(f).

[88] 15 U.S.C. 80a-2(c).

affected depending on their technical readiness and programming formats, we believe that the new rules and amendments would not impose any burden on competition not necessary or appropriate in the furtherance of the purposes of the securities laws.

We believe that the new rules and amendments will not have any adverse effect on capital formation. We believe the amendments will promote efficiency by giving investors information in a more readable format and by more closely aligning our technical standards to the industry's. The new rules and amendments apply equally to all entities currently required to file on EDGAR. Because the rules and amendments are designed in part to permit filers to provide information in a format that will be more useful to investors, the amendments are appropriate in the public interest and for the protection of investors.

VI. Summary of Regulatory Flexibility Act Certification

At the proposing state, our Chairman certified, under Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the new rules and rule amendments in this release would not have a significant economic impact on a substantial number of small entities. The certification was attached to the 2000 proposing release as Appendix B. We received no comments on the certification.

VII. Statutory Basis

We are adopting the new rules and rule amendments outlined above under Sections 6, 7, 8, 10 and 19(a) of the Securities Act, Sections 3, 12, 13, 14, 15(d), 23(a) and 35A of the Exchange Act, Sections 3, 5, 6, 7, 10, 12, 13, 14, 17 and 20 of the Public Utility Act, Section 319 of the Trust Indenture Act, and Sections 8, 30, 31 and 38 of the Investment Company Act.

List of Subjects

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

17 CFR Parts 229 and 239

Reporting and recordkeeping requirements, Securities.

17 CFR Part 230

Advertising, Confidential business information, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 232

Administrative practice and procedure, Confidential business information, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

17 CFR Part 249

Brokers, Fraud, Reporting and recordkeeping requirements, Securities.

17 CFR Part 250

Confidential business information, Electric utilities, Holding companies, Natural Gas, Reporting and recordkeeping requirements, Securities.

17 CFR Part 259

Electric utilities, Holding companies, Natural Gas, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 260 and 269

Reporting and recordkeeping requirements, Securities, Trusts and trustees.

17 CFR Part 270

Confidential business information, Fraud, Investment companies, Life insurance, Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Electronic funds transfers, Investment companies, Reporting and recordkeeping requirements, Securities.

Text of the Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for Part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

2. By amending § 228.601 by removing exhibits (27) and (28) and reserving exhibits (27) through (98), and removing footnote ***** in the exhibit table in paragraph (a), by removing paragraph (b)(27) and reserving paragraphs (b)(27) through (b)(98), and by removing paragraph (c) and Appendices A through F.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for Part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

4. By amending § 229.601 by removing exhibits (27) and (28) and reserving exhibits (27) through (98), and removing footnote 5 in the exhibit table in paragraph (a), by removing paragraph (b)(27) and reserving paragraphs (b)(27) through (b)(98), and by removing paragraph (c) and Appendices A through F.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

5. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z–3, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

6. By amending § 230.110 by revising paragraph (b) to read as follows:

§ 230.110 Business hours of the Commission.

* * * * *

(b) *Submissions made in paper or on magnetic cartridge.* Paper documents filed with or otherwise furnished to the Commission, as well as electronic filings and submissions on magnetic cartridge under cover of Form ET (§§ 239.62, 249.445, 259.601, 269.6 and 274.401 of this chapter), may be submitted to the Commission each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

* * * * *

7. By amending § 230.483 by removing paragraph (e) including the contents of the table entitled Article 6 of Regulation S–X and by revising the section heading to read as follows:

§ 230.483 Exhibits for certain registration statements.

* * * * *

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

8. The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

9. By amending § 232.11 by removing the definition of "Phase-in date" and by revising the definition of "Official filing" to read as follows:

§ 232.11 Definition of terms used in part 232.

* * * * *

Official filing. The term *official filing* means any filing that is received and accepted by the Commission, regardless of filing medium and exclusive of header information, tags and any other technical information required in an electronic filing.

* * * * *

10. By amending § 232.12 by revising paragraphs (b) and (c) to read as follows:

§ 232.12 Business hours of the Commission.

* * * * *

(b) *Submissions made in paper or on magnetic cartridge.* Filers may submit paper documents filed with or otherwise furnished to the Commission, as well as electronic filings and submissions on magnetic cartridge under cover of Form ET (§§ 239.62, 249.445, 259.601, 269.6 and 274.401 of this chapter), to the Commission each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect. Filers may file submissions on magnetic cartridge either at the address indicated in paragraph (a) of this section or at the Commission's Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413.

(c) *Submissions by direct transmission.* Electronic filings and other documents may be submitted by direct transmission, via dial-up modem or Internet, to the Commission each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 10 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

11. By revising § 232.103 to read as follows:

§ 232.103 Liability for transmission errors or omissions in documents filed via EDGAR.

An electronic filer shall not be subject to the liability and anti-fraud provisions of the federal securities laws with respect to an error or omission in an electronic filing resulting solely from electronic transmission errors beyond the control of the filer, where the filer corrects the error or omission by the filing of an amendment in electronic format as soon as reasonably practicable after the electronic filer becomes aware of the error or omission.

12. By amending § 232.104 by revising paragraph (b) and adding paragraph (f) to read as follows:

§ 232.104 Unofficial PDF copies included in an electronic submission.

* * * * *

(b) Except as provided in paragraphs (c) and (f) of this section, each unofficial PDF copy must be substantively equivalent to its associated electronic document contained in the electronic submission. An unofficial PDF copy may contain graphic and image material (but not animated graphics, or audio or video material), notwithstanding the fact that its HTML or ASCII document counterpart may not contain such material but instead may contain a fair and accurate narrative description or tabular representation of any omitted graphic or image material.

* * * * *

(f) An unofficial PDF copy of a correspondence document contained in an electronic submission need not be substantively equivalent to that correspondence document.

13. In § 232.105, by revising paragraph (a) effective January 1, 2001, and paragraphs (b) and (c) effective May 30, 2000, to read as follows:

§ 232.105 Limitation on use of HTML documents and hypertext links.

(a) Electronic filers must submit the following documents in ASCII: Form N–SAR (§ 274.101 of this chapter) and Form 13F (§ 249.325 of this chapter). Notwithstanding the provisions of this section, electronic filers may submit exhibits to Form N–SAR in HTML.

(b) Electronic filers may not include in any HTML document hypertext links to sites, locations, or documents outside the HTML document, except to links to officially filed documents within the current submission and to documents previously filed electronically and located in the EDGAR database on the Commission's public web site (www.sec.gov). Electronic filers also may include within an HTML document hypertext links to different sections within that single HTML document.

(c) If a filer includes an external hypertext link within a filed document, the information contained in the linked material will not be considered part of the document for determining compliance with reporting obligations, but the inclusion of the link will cause the filer to be subject to the civil liability and antifraud provisions of the federal securities laws with reference to the information contained in the linked material.

14. By amending § 232.302 by revising paragraph (a) to read as follows:

§ 232.302 Signatures.

(a) Required signatures to or within any electronic submission must be in typed form rather than manual format. Signatures in an HTML document that are not required may, but are not required to, be presented in an HTML graphic or image file within the electronic filing, in compliance with the formatting requirements of the EDGAR Filer Manual. When used in connection with an electronic filing, the term "signature" means an electronic entry in the form of a magnetic impulse or other form of computer data compilation of any letter or series of letters or characters comprising a name, executed, adopted or authorized as a signature. Signatures are not required in unofficial PDF copies submitted in accordance with § 232.104.

* * * * *

15. By amending § 232.303 by removing paragraph (a)(4).

16. By amending § 232.304 by revising the first sentence of paragraph (a) and adding a note following paragraph (a), revising paragraph (d), and adding paragraphs (e) and (f) to read as follows:

§ 232.304 Graphic, image, audio and video material.

(a) If a filer includes graphic, image, audio or video material in a document delivered to investors and others that is not reproduced in an electronic filing, the electronically filed version of that document must include a fair and accurate narrative description, tabular representation or transcript of the omitted material. * * *

Note to paragraph (a): If the omitted graphic, image, audio or video material includes data, filers must include a tabular representation or other appropriate representation of that data in the electronically filed version of the document.

* * * * *

(d) For electronically filed ASCII documents, the performance graph that is to appear in registrant proxy and

information statements relating to annual meetings of security holders (or special meetings or written consents in lieu of such meetings) at which directors will be elected, as required by Item 402(*l*) of Regulation S–K (§ 229.402(*l*) of this chapter), and the line graph that is to appear in registrant annual reports to security holders or prospectuses, as required by paragraph (b) of Item 5 of Form N–1A (§ 274.11A of this chapter), must be furnished to the Commission by presenting the data in tabular or chart form within the electronic ASCII document, in compliance with paragraph (a) of this section and the formatting requirements of the EDGAR Filer Manual.

(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section, electronically filed HTML documents must present the following information in an HTML graphic or image file within the electronic submission in compliance with the formatting requirements of the EDGAR Filer Manual: the performance graph that is to appear in registrant proxy and information statements relating to annual meetings of security holders (or special meetings or written consents in lieu of such meetings) at which directors will be elected, as required by Item 402(*l*) of Regulation S–K (§ 229.402(*l*) of this chapter); the line graph that is to appear in registrant annual reports to security holders or prospectuses, as required by paragraph (b) of Item 5 of Form N–1A (§ 274.11A of this chapter); and any other graphic material required by rule or form to be filed with the Commission. Filers may, but are not required to, submit any other graphic material in an HTML document by presenting the data in an HTML graphic or image file within the electronic filing, in compliance with the formatting requirements of the EDGAR Filer Manual. However, filers may not present in a graphic or image file information such as text or tables that users must be able to search and/or download into spreadsheet form (*e.g.*, financial statements); filers must present such material as text in an ASCII document or as text or an HTML table in an HTML document.

(f) Electronic filers may not include animated graphics in any EDGAR document.

§ 232.311 [Amended]

17. By amending § 232.311 by removing paragraph (c) and redesignating paragraphs (d), (e), (f), (g), (h) and (i) as paragraphs (c), (d), (e), (f), (g), and (h), respectively.

§§ 232.401 and 232.402 [Removed and Reserved]

18. By removing and reserving §§ 232.401 and 232.402 and removing the undesignated center heading preceding reserved § 232.401.

19. By amending § 232.501 by revising the introductory text to read as follows:

§ 232.501 Modular submissions and segmented filings.

An electronic filer may use the following procedures to submit information to the EDGAR system for subsequent inclusion in an electronic filing:

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

20. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

Note: The text of the following forms do not and the amendments will not appear in the Code of Federal Regulations.

21. By amending Form S–2 (referenced in § 239.12), General Instruction I, as follows:

a. In the introductory text of paragraph H, remove the colon;

b. In paragraph H(1), remove "(1)" and "; and," and add a period at the end of the sentence; and

c. Remove paragraph H.(2).

22. By amending Form S–3 (referenced in § 239.13), General Instruction I, as follows:

a. In the introductory text of paragraph A.8.(1), remove the colon;

b. In paragraph A.8.(1), remove "(1)" and "; and," and add a period at the end of the sentence; and

c. Remove paragraph A.8.(2).

23. By amending Form S–8 (referenced in § 239.16b), General Instruction A, as follows:

a. In the introductory text of paragraph 3, remove the colon;

b. In paragraph 3.(1), remove "(1)" and "; and," and add a period at the end of the sentence; and

c. Remove paragraph 3.(2).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

24. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z 2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i. 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

25. By amending § 240.0–2 by revising paragraph (b) to read as follows:

§ 240.0–2 Business hours of the Commission.

* * * * *

(b) *Submissions made in paper or on magnetic cartridge.* Paper documents filed with or otherwise furnished to the Commission, as well as electronic filings and submissions on magnetic cartridge under cover of Form ET (§§ 239.62, 249.445, 259.601, 269.6 and 274.401 of this chapter), may be submitted to the Commission each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

* * * * *

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

26. The authority citation for Part 250 continues to read as follows:

Authority: 15 U.S.C. 79c, 79f(b), 79i(c)(3), 79t, unless otherwise noted.

27. By amending § 250.21 by revising paragraph (b)(1) to read as follows:

§ 250.21 Filing of documents.

* * * * *

(b) *Electronic filings.* (1) All documents required to be filed with the Commission under the Act or the rules and regulations thereunder must be filed at the principal office in Washington, DC via EDGAR by delivery to the Commission of a magnetic cartridge or by direct transmission.

* * * * *

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

28. The authority citation for Part 259 continues to read as follows:

Authority: 15 U.S.C. 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t.

Note: The text of the following forms do not and the amendments will not appear in the Code of Federal Regulations.

29. By amending Form U5S (referenced in § 259.5s) by removing General Instruction 8, removing Exhibit G to Item 10, and redesignating Exhibits H and I to Item 10 as Exhibits G and H.

30. By amending Form U–1 (referenced in § 259.101) by removing

Instruction G to Instructions as to Exhibits.

31. By amending Form U–13–60 (referenced in § 259.313) by removing Schedule XIX.

32. By amending Form U–3A–2 (referenced in § 259.402) by removing Exhibit B and by redesignating Exhibit C as Exhibit B.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

33. The authority citation for Part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78*ll*(d), 80b–3, 80b–4, and 80b–11.

34. By amending § 260.0–5 by revising paragraph (b) to read as follows:

§ 260.0–5 Business hours of the Commission.

* * * * *

(b) *Submissions made in paper or on magnetic cartridge.* Paper documents filed with or otherwise furnished to the Commission, as well as electronic filings and submissions on magnetic cartridge under cover of Form ET (§§ 239.62, 249.445, 259.601, 269.6 and 274.401 of this chapter), may be submitted to the Commission each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

35. The authority citation for Part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39 unless otherwise noted:

* * * * *

§ 270.8b–2 [Amended]

36. By amending § 270.8b–2 by removing the last sentence of the introductory text.

§ 270.8b–23 [Amended]

37. By amending § 270.8b–23 by removing the last sentence of paragraph (a).

§ 270.86–32 [Amended]

38. By amending § 270.8b–32 by removing paragraph (c)(2) and by removing the paragraph designation (c)(1).

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

39. The authority citation for Part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

40. By amending Form N–SAR (referenced in § 274.101) by removing paragraph (1) of General Instruction F and redesignating paragraph (2) as General Instruction F and revising the last sentence to read as follows:

Note: The text of Form N–SAR does not and the amendments will not appear in the Code of Federal Regulations.

OMB APPROVAL

OMB Number: 3235–0330
Expires: July 31, 2000
Estimated average burden hours per response: 14.85

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Washington, D.C.

Instructions and Form

FORM N–SAR

SEMI-ANNUAL REPORT FOR REGISTERED INVESTMENT COMPANIES

* * * * *

GENERAL INSTRUCTIONS

* * * * *

F. Filings on EDGAR.

* * * Filers may not submit the form on magnetic cartridge.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933
PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934
PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939
PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

41. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

42. The authority citation for Part 269 continues to read as follows:

Authority: 15 U.S.C. 77ddd(c), 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77sss, 78*ll*(d), unless otherwise noted.

43. By revising Form ET (referenced in §§ 239.62, 249.445, 259.601, 269.6 and 274.401 of this chapter) to read as follows:

Note: The text of Form ET does not and the amendments will not appear in the Code of Federal Regulations.

OMB APPROVAL

OMB Number: 3235–0329
Expires: May 31, 2001
Estimated average burden hours per response: 0.25

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Washington, D.C.

FORM ET—TRANSMITTAL FORM FOR ELECTRONIC FORMAT DOCUMENTS UNDER THE EDGAR SYSTEM

PART I—SUBMISSION INFORMATION (Read the instructions before completing the following items.)

1. CIK of Sender of cartridges(s)
2. Name of Sender of cartridge(s)
3. Number of cartridge(s) in package
4. Person to contact if there are problems with the cartridge(s).
   a. Name: _____
   b. Telephone number (including area code): _____

PART II—MAGNETIC CARTRIDGE INFORMATION

1. Volume ID on internal label:
2. Language: _____ASCII _____EBCDIC
3. Density: _____1600 bpi_____6250 bpi

Form ET—General Instructions

1. Rule as to Use of Form ET.

One copy of this form must accompany all magnetic cartridge submissions. Address magnetic cartridges, regardless of the manner of delivery, to

ATTN: DOCUMENT CONTROL—EDGAR
U.S. SECURITIES AND EXCHANGE COMMISSION
450 5TH STREET, N.W.
WASHINGTON, D.C. 20549–0104

2. Preparation of Magnetic Cartridge Submissions.

Please refer to the EDGAR Filer Manual which contains information and procedures for electronic filing.

A. You may include more than one submission on a magnetic cartridge. However, you must place each submission in a single, separate file. We will assume that each file and a magnetic cartridge contains a separate submission and will transfer all such files to the EDGAR system. Therefore,

you should recheck all files before sending a magnetic cartridge to us to ensure that the cartridge contains only those files you intend to send.

B. If you use more than one magnetic cartridge, indicate their order of processing on the external label of each magnetic cartridge, *e.g.*, 1 of 3; 2 of 3, *etc.*

C. Please write the CIK of the Sender on the external label of each magnetic cartridge.

D. To expedite the processing of magnetic cartridges, please write the following in large, bold letters on the envelope or carton: EDGAR MAGNETIC CARTRIDGE.

3. Preparation of Form.

A. Complete this form carefully, since we will use the data on this form to transfer submissions from the magnetic cartridge(s) to the EDGAR system.

B. Make sure that the CIK and the Name of Sender requested in Part I is that of the filer or filing agent, whichever prepared and sent the magnetic cartridge(s) to us.

C. Make sure that the contact person you identify in Part I is a person who can respond to technical questions concerning the electronic preparation of the magnetic cartridge(s).

D. If you include more than one filer and/or more than one submission on the magnetic cartridge(s), you do not need to complete a separate form for each filer or submission if the information contained in Parts I, II, and III is identical for all filers and all submissions.

4. Signatures.

There are no separate signature requirements for Form ET. However, each of the various electronic forms you wish to file on magnetic cartridge that accompany the Form ET contains certain signature requirements. These electronic forms should include typed signatures. See Rule 302 of Regulation S–T (§ 232.302 of this chapter).

5. Application of General Rules and Regulations.

Electronic filers are subject to Regulation S–T (Part 232 of this chapter) and the EDGAR Filer Manual. We direct your attention to the General Rules and Regulations under the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, and the electronic filing rules and regulations under these Acts.

By the Commission.

Dated: April 24, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–10501 Filed 4–26–00; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Thursday,
April 27, 2000

Part VI

Environmental Protection Agency

40 CFR Part 763
Asbestos Worker Protection; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPPTS–62125A; FRL–6493–5]

RIN 2070–AC66

Asbestos Worker Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to modify a previously published proposed rule to amend the Asbestos Worker Protection Rule (WPR). This modified proposal would protect State and local government employees from the health risks of exposure to asbestos to the same extent as private sector workers by adopting for such employees the Asbestos Standards of the Occupational Safety and Health Administration (OSHA). The modified proposal would expand the WPR's coverage to State and local government employees who are performing construction work, custodial work, and automotive brake and clutch repair work (the WPR now applies solely to asbestos abatement projects, a subset of construction work). The proposed rule would cross-reference the OSHA Asbestos Standards for Construction and for General Industry, so that amendments to these OSHA standards are directly and equally effective for employees covered by the WPR. It would also amend the Asbestos-in-Schools Rule to provide coverage under the WPR for employees of public local education agencies who perform operations, maintenance and repair activities. EPA is proposing this rule under section 6 of the Toxic Substances Control Act (TSCA).

DATES: Comments, identified by docket control number OPPTS–62125A, must be received on or before June 26, 2000. Requests that EPA hold an informal public hearing must be received on or before June 26, 2000. If a hearing is requested, EPA will publish a notice announcing the informal public hearing in the **Federal Register**.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–62125A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Cindy Fraleigh, Attorney-Advisor, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (202) 260–1537; fax number: (202) 260–1724; e-mail address: fraleigh.cindy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a State or local government entity whose employees work with or near asbestos-containing material. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Educational services	61	Public educational institutions, including school districts, not subject to an OSHA-approved State asbestos plan or a State asbestos worker protection plan that EPA has determined is exempt from the requirements of the WPR.
Public administration	92	State or local government employers not subject to an OSHA-approved State asbestos plan or a State asbestos worker protection plan that EPA has determined is exempt from the requirements of the WPR.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about asbestos, go directly to the Asbestos Home Page for the Office of Pollution Prevention and Toxics at http://www.epa.gov/asbestos/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–62125A. 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 (NCIC), North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC 20460, from noon to 4 p.m., Monday through Friday, excluding legal holidays. The NCIC telephone number is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–62125A in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW, Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: "oppt-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–62125A. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. How and to Whom Do I Submit an Informal Public Hearing Request?

You may request that EPA hold an informal public hearing, at which interested persons or organizations may present oral comments, by contacting the technical person listed under **FOR FURTHER INFORMATION CONTACT.** Requests for an informal hearing must be received on or before June 26, 2000. If EPA decides to hold an informal hearing, it will publish a notice in the **Federal Register** announcing the time, place, and date of the hearing, explaining how interested persons or organizations can request to participate in the hearing, and describing the hearing procedures. EPA conducts informal hearings in accordance with the procedures in 40 CFR part 750, subpart A.

II. Background

OSHA has published comprehensive requirements for protecting against the health effects of exposure to asbestos in the workplace. However, these requirements apply to employers in the private sector. OSHA has never had the authority to impose worker protection measures directly on State and local government employers. While a State has the authority to protect State and local government employees under a State plan approved by OSHA under section 18 of the Occupational Safety and Health Act (OSH Act), 27 States do not do so. (Information regarding OSHA-approved State plans can be found at http://www.osha-slc.gov/fso/osp.) EPA's WPR, 40 CFR part 763, subpart G, protects State and local government workers in States that do not have OSHA-approved State plans.

EPA determined when it first proposed the Worker Protection Rule in 1985 that asbestos exposures pose an unreasonable risk of harm to unprotected State and local government employees who conduct asbestos abatement projects, and that EPA has the authority under TSCA section 6 to establish asbestos worker protection standards for these employees (Ref.1). In finalizing that proposal, EPA considered several options for protecting these workers from the risks of asbestos, including providing public information and technical assistance; deferring to the States; promulgating a regulation that provided greater protection than the then-current OSHA Asbestos Standard; and promulgating a regulation that followed the OSHA Standard to maintain consistency among Federal programs. EPA selected the last option, and implemented this selection in the WPR by setting out the OSHA requirements in full at 40 CFR part 763, subpart G (Ref. 2). In keeping with its policy of maintaining a consistent level of protection between the WPR and the OSHA Asbestos Standard, EPA amended the WPR in 1987 to incorporate recent changes to the Asbestos Standard that lowered the permissible exposure limit (PEL) to 0.2 fibers per cubic centimeter (f/cc) and that instituted new requirements for engineering and work practice controls and worker training (Ref. 3).

In response to further revisions to the OSHA Asbestos Standard for Construction (OSHA Construction Standard) (Refs. 4 through 6), EPA published proposed amendments to the WPR in the **Federal Register** of November 1, 1994 (Ref. 7). EPA's 1994 proposal would have made the WPR consistent with the 1990 version of the OSHA Construction Standards, and would have broadened the scope of the WPR to cover State and local government employees engaged in any form of construction work and in automotive brake and clutch repair. Shortly before EPA published its 1994 proposal, OSHA published major revisions to the OSHA Construction Standard and the OSHA Asbestos Standard for General Industry (OSHA

General Industry Standard) (Ref. 8). EPA responded to OSHA's new revisions by stating in its proposed amendments to the WPR that it intended to publish a separate rule to make the WPR consistent with OSHA's 1994 changes. Commenters on the 1994 EPA proposal generally disfavored this approach, suggesting that EPA propose all the changes necessary for consistency between the WPR and the OSHA Construction Standard in one rulemaking.

EPA agrees with the commenters and is therefore modifying its 1994 proposal to make the WPR consistent with the current OSHA Construction Standard, 29 CFR 1926.1101, including all revisions to that standard from 1994 through the present (Refs. 9 through 16). This proposal would also apply the current requirements of the OSHA General Industry Standard, 29 CFR 1910.1001, to State and local government employers of employees engaged in brake and clutch repair work, as did EPA's 1994 proposed rule. In addition, this proposal would extend the requirements of the General Industry Standard to general custodial activities that are not associated with construction projects.

In developing this proposal, EPA considered the comments submitted on its 1994 proposal and incorporated them where appropriate. A Response to Comments Document addresses these comments more fully (Ref. 17). It is included in the public version of the official record in the NCIC Docket described in Unit I.B.2.

A. What Action is the Agency Taking?

EPA is proposing to implement its long-standing policy of consistency between EPA's WPR and the OSHA Asbestos Standards by incorporating the 1994 revisions to the OSHA General Industry and Construction Standards into the WPR. Currently, employees working for some State and local governments are exposed to greater asbestos-related hazards in the work place than are employees working for private employers or other State and local governments. These additional hazards are not trivial, but instead expose these State and local government employees to meaningful additional risks that their colleagues working elsewhere are not asked to face. Fairness and equity dictate the same level of protection for all persons who work with asbestos-containing material (ACM), whether those persons are employed by the private sector or by a State or local government. Currently, all private sector workers, as well as State and local government employees in the 23 States that have OSHA-approved State plans, are protected by the more stringent OSHA regulations. The amendments in this proposed rule would create equity for the remaining State and local government workers by making the new, more stringent, OSHA requirements applicable to those workers.

This proposal would create that equity for the present and for the future by amending the WPR to cross-reference the OSHA General Industry and Construction Standards set out at 29 CFR 1910.1001 and 29 CFR 1926.1101 respectively, rather than by setting out the OSHA requirements in full at 40 CFR part 763, subpart G. Cross-referencing the OSHA Asbestos Standards in the WPR would mean that amendments to the OSHA General Industry or Construction Standard would have the effect of changing the requirements under the WPR as well. As such, State and local government employees would benefit from new OSHA provisions protecting workers against the risks of asbestos at the same time as private sector employees. Maintaining the same requirements for all workers dealing with asbestos would also avoid potential confusion and mistakes by allowing all workers and their supervisors to learn a single standard and know the requirements that apply to their work without additional training if such workers or supervisors move from the public sector to the private sector or vice-versa.

EPA invites comment on its policy that all State and local government employees be protected from the health risks of exposure to asbestos to the same extent as private sector workers. EPA also invites comment on whether it should use cross-referencing to achieve equitable protection for State and local government employees. Cross-referencing has the advantage of ensuring that changes in workplace standards take effect at the same time for both groups of workers. Without it, revisions to the OSHA Asbestos Standards could not take effect for State and local government employees until EPA had proposed and finalized amendments incorporating those revisions into the WPR. This would have the undesirable effect of creating a period in which the requirements of the WPR and of the OSHA Asbestos Standards would be inconsistent. Cross-referencing also has the advantage of deferring to OSHA's singular expertise in establishing standards in the field of worker protection.

It is within EPA's statutory authority and substantive expertise to find, under TSCA section 6, that the current amount of exposure to asbestos in State and local government workplaces during use or disposal in construction, custodial, and brake and clutch repair work presents an unreasonable risk of injury to human health (see Unit II.B.1. for a detailed discussion of the basis for this finding), and to establish a policy of equitable protection from asbestos risks for State and local government employees. Moreover, TSCA section 9(d) requires EPA to consult and coordinate with other appropriate Federal agencies so as to achieve the maximum enforcement of TSCA while imposing the least burdens of duplicative requirements on regulated entities. EPA has therefore chosen to defer to OSHA's expertise and experience in setting workplace standards to protect workers from the risks of asbestos.

OSHA may, in the future, revise the Asbestos Standards. Cross-referencing would eliminate the need for a separate EPA rulemaking to amend the WPR, but State and local governments would still have the opportunity to participate in the rulemaking process. State and local governments with comments on specific worker protection measures could submit those comments directly to OSHA. State and local governments could also address comments to EPA asking that the Agency not adopt any new OSHA standard by filing a petition under TSCA section 21 requesting that EPA amend 40 CFR part 763, subpart G, to revise the cross-referencing structure. The petition should explain why EPA should depart from its longstanding policy of consistency and equity between the OSHA Asbestos Standards and the WPR, and should address EPA's rulemaking obligations under TSCA sections 6 and 9(d). In this context, adoption of the OSHA standard with the safeguard of the TSCA section 21 petition process allows the Agency to comply with the congressional intent evidenced in TSCA section 9 that EPA coordinate its activities under TSCA with the activities of other Federal agencies. When a TSCA section 21 petition is filed, EPA must respond within 90 days, either granting the petition and promptly initiating a rulemaking, or denying the petition and explaining its reasons for the denial.

Under the cross-referencing structure of this proposal, if you are a State or local government employer whose employees perform the construction and building maintenance activities identified in 29 CFR 1926.1101(a), and associated custodial work, you must comply with the OSHA Construction Standard, 29 CFR 1926.1101; if you are a State or local government employer

whose employees perform general custodial work or repair, cleaning, or replacement of asbestos-containing clutch plates and brake pads, shoes, and linings, or removal of asbestos-containing residue from brake drums or clutch housings, you must comply with the OSHA General Industry Standard, 29 CFR 1910.1001. This proposal would effectively alter State and local government employer obligations as follows:

1. *Expanded scope of coverage.* The current (1987) WPR applies solely to friable asbestos abatement projects. EPA has determined that there are substantial numbers of State and local government employees performing other construction, building maintenance, custodial, and brake and clutch repair activities. EPA has also determined that these employees will be exposed to unacceptably high levels of airborne asbestos fibers if they are not protected by an OSHA-approved State plan. See the Proposed WPR Economic Analysis (Economic Analysis) (Ref. 18). Therefore, as in 1994, EPA is proposing to expand the scope of the WPR to include all construction activities and custodial work involving ACM. This means that State and local government employees who remove non-friable ACM from buildings or perform building operations and maintenance tasks would be covered by the WPR. In addition, EPA is proposing to expand the scope of the WPR to include all brake and clutch repair work.

2. *Specific differences between the 1994 OSHA Standards and the current WPR*—a. *Classification scheme for asbestos construction projects.* In general, all of the requirements of the 1986 OSHA Construction Standard applied to all of the construction activities covered by the Standard. Projects of small-scale, short-duration were exempted from several of the provisions of the 1986 OSHA Standard, including those for negative pressure enclosures, competent person supervision, and decontamination areas. The current WPR likewise exempts small-scale, short-duration friable asbestos abatement projects from these requirements.

This proposed rule would amend the current WPR by cross-referencing the OSHA Construction Standard, which creates a classification scheme for all asbestos construction projects and related custodial activities except for the installation of new asbestos-containing materials (29 CFR 1926.1101(b)). This classification scheme reflects the fact that many different kinds of asbestos projects are regulated by the OSHA Construction Standard, and worker protection needs may vary according to the type of project. The revised OSHA Construction Standard establishes the following four classes of asbestos projects, in descending order of risk:

- *Class I projects, involving removal of asbestos-containing, or presumed asbestos-containing, thermal system insulation (TSI) and surfacing materials.* Surfacing materials are materials that are sprayed or troweled or otherwise applied to surfaces. These materials include, for example, decorative plaster, acoustical material on decking, and fireproofing on structural members. TSI includes material applied to pipes, boilers, tanks and ducts. According to OSHA, these projects require the most stringent of controls, due to the prevalence of these materials and the likelihood of significant fiber release when disturbing them. Class I projects are regulated by the current WPR because they involve friable ACM.
- *Class II projects, involving removal of all other ACM or presumed ACM.* These projects involve materials such as floor or ceiling tiles and wallboard, which are referred to as "miscellaneous ACM" in EPA's Asbestos-in-Schools Rule (40 CFR 763.83), and other ACM on the exterior of buildings such as siding and roofing. Most Class II projects are not covered by the current WPR, since they involve non-friable ACM. This proposal would extend coverage of the WPR to all Class II projects.
- *Class III projects, repair and maintenance activities involving the intentional disturbance of ACM or presumed ACM.* Removal of ACM or presumed ACM under Class III is limited to the incidental removal of a small amount of material, for example, in order to repair a pipe or to access an electrical box. Class III projects involving friable ACM are generally regulated under the current WPR as small-scale, short-duration asbestos abatement projects.
- *Class IV activities, maintenance and custodial activities where employees contact ACM and presumed ACM.* These projects involve activities such as the repair or replacement of ceiling tiles, repair or adjustment of ventilation or lighting, dusting of surfaces, mopping of floors, or vacuuming of carpets. Class IV activities may also include sweeping, mopping, dusting, or vacuuming incidental to a Class I–III regulated project. Most Class IV projects are not covered by the current WPR because they are not considered to be asbestos abatement projects.

Some of the requirements (for example, the PELs, specified work practices and engineering controls, supervision by a competent person, and, in certain circumstances, regulated areas and training) apply to all construction projects and related custodial activities covered by the standard, including installation of new asbestos-containing materials. Work practices and engineering controls applicable to all projects include the use of wet methods (where feasible), HEPA vacuums, and, if necessary, ventilation systems to achieve compliance with the required PELs. All projects must be supervised by competent persons, but the training requirements for Class III and Class IV supervisors are much less stringent than for those persons supervising Class I and Class II projects.

Beyond these basic requirements, the current OSHA work practice and engineering control requirements are specific to each class of project and, for Class II projects, specific to the type of material being removed. These requirements are discussed in more detail under the heading "Methods of compliance for construction projects and associated custodial activities" in Unit II.A.2.h.

b. *Hazard communication.* This proposal would adopt the provisions from the OSHA General Industry and Construction Standards for the identification of asbestos hazards by building owners and employers and the communication of hazard information among building owners, employers, employees, and tenants (29 CFR 1910.1001(j), 29 CFR 1926.1101(k)). Under these Standards, building owners and employers must identify the presence, location, and quantity of ACM in the worksite before work begins. Any TSI and surfacing materials in buildings constructed earlier than 1981 must be presumed to contain asbestos, unless a person with the appropriate qualifications determines, in accordance with recognized sampling and analytical methods, that the material does not contain asbestos.

If the material to be analyzed is in a school or a public or commercial building, then EPA's Model Accreditation Plan (MAP) requires the sampling to be done by a person accredited as an inspector under the MAP (40 CFR part 763, subpart E, Appendix C). If the material is not in a building regulated by the MAP, e.g., it is on an outdoor installation, either a MAP-accredited inspector or a Certified Industrial Hygienist may perform the sampling. Resilient floor covering installed prior to 1981 must also be presumed to contain asbestos unless an industrial hygienist or a MAP-accredited inspector determines through

recognized analytical techniques that it does not contain asbestos. Again, if the material to be sampled is in a building regulated by the MAP, then the sampling must be done by a MAP-accredited inspector.

Results obtained during an inspection that complies with the Asbestos-in-Schools Rule requirements at 40 CFR 763.85(a) are sufficient to rebut the presumption that TSI, surfacing material, or resilient floor covering contains asbestos. Although not required by the OSHA Standards or the EPA MAP, bulk samples taken from school buildings regulated by the Asbestos Hazard Emergency Response Act (AHERA) must be analyzed by laboratories accredited by the National Institute of Standards and Technology (NIST). For a fuller discussion on the hazard communication provisions, see the OSHA preamble in the **Federal Register** of August 10, 1994 (Ref. 8, p. 41013).

Under these proposed amendments to the WPR, State and local government entities whose employees perform asbestos-related construction, custodial, or brake and clutch repair work would be required to determine the presence, location and quantity of ACM or presumed ACM in the worksite. Although EPA recommends that State and local governments make this determination based upon a full building inspection done by a MAP-accredited inspector, the minimum requirement is to identify three types of building materials (TSI, surfacing material, and resilient floor covering) that must be presumed to contain asbestos. EPA believes that the identification of types of building materials does not require the expertise of a MAP-accredited inspector, since no judgment as to asbestos content is being made. However, if there is some reason to suspect that other materials in the worksite may contain asbestos, or the employer wishes to rebut the presumption of asbestos content, and the project will be taking place within a public or commercial building, then the services of a MAP-accredited inspector will be required.

This proposal would then require State and local government employers to provide their own employees, and other on-site public and private employers, with information on the presence, location and quantity of ACM and presumed ACM in the worksite, along with specific details on the nature of the activity to be performed, requirements pertaining to regulated areas, and the measures that will be taken to prevent exposure to adjacent workers.

Although the hazard communication provisions of the OSHA Standards apply to building owners as well as employers, EPA is not proposing to extend these requirements to State and local government building owners who are not also employers. EPA believes that, in most cases, the employer and the building owner will be the same, i.e., both will be State agencies, or City agencies. If the building owner and the employer are the same, then a separate provision imposing identification and communication obligations on the building owner is unnecessary. EPA requests comment on the extent to which this assumption may be incorrect.

c. *Project notifications.* EPA is proposing to remove the current requirement that employers who plan an asbestos abatement project notify EPA at least 10 days in advance (40 CFR 763.124). In 1994, OSHA considered and rejected a requirement for employers to report all asbestos projects, except those of small-scale, short-duration, in advance. OSHA's decision was based on the fact that, since there are other existing Federal and State reporting requirements, additional reporting requirements in the OSHA Construction Standard would be burdensome for the employer without enhancing compliance. For a comprehensive discussion of OSHA's reasoning, see the **Federal Register** of August 10, 1994 (Ref. 8, pp. 40970–40971). EPA agrees with this logic, since it is easily able to use reports received under the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP) regulations, 40 CFR part 61, subpart M, to target worker protection inspections. Two commenters on the 1994 proposed amendments to the WPR argued that EPA should be consistent with OSHA on this subject. In addition, several other commenters noted that the notification requirement would become extremely burdensome with the increased number of projects covered by the expansion of the scope of the rule to non-friable removal projects and maintenance (Ref. 17). EPA would, however, adopt the OSHA reporting requirements for Class I alternative control methods as discussed under the heading "Methods of compliance for construction projects and associated custodial activities" in Unit II.A.2.h.

d. *Permissible exposure limits.* This proposed amendment to the WPR would lower the PEL of 0.2 f/cc to 0.1 f/cc as an 8-hour, time-weighted average, OSHA's current PEL for all covered activities. 29 CFR 1910.1001(c), 29 CFR 1926.1101(c). In 1994, OSHA lowered its PEL from 0.2 f/cc to 0.1 f/cc. For a comprehensive discussion of OSHA's findings see the **Federal Register** of August 10, 1994 (Ref. 8, pp. 40978–40982). This proposal also retains a provision included in the 1994 proposed WPR amendments under which employees would be protected by a short-term excursion limit of 1.0 f/cc for a 30 minute sampling period. EPA did not receive any comments on this proposed excursion limit. Finally, EPA proposed in 1994 to allow employers to use an alternative PEL based upon results of Transmission Electron Microscopy (TEM). Several commenters stated that the proposed alternative PEL was not adequately supported by science (Ref. 17), so EPA is withdrawing that portion of its 1994 proposal.

e. *Multi-employer worksites.* The current WPR requires State and local government employers to communicate information about the nature of asbestos work and regulated area requirements to other employers, whether public or private, on multi-employer worksites (40 CFR 763.121(d)). This proposal would adopt by cross-reference the requirements of 29 CFR 1926.1101(d) of the OSHA Construction Standard for multi-employer worksites where construction and related custodial work is being performed. The OSHA Construction Standard requires employers whose employees are performing construction and associated custodial activities within regulated areas to provide other on-site employers with information concerning the nature of the asbestos-related work, information on regulated areas, and information on the specific measures that will be taken to prevent exposure to other employees. In addition, this provision of the OSHA Construction Standard clarifies that while the employer who creates an asbestos hazard must abate it, other on-site employers are responsible for protecting their employees from the hazard by removing them from the area or conducting an exposure assessment and providing personal protective equipment if warranted.

f. *Regulated areas.* Under the current WPR, employers must establish a regulated area where employee exposures on asbestos abatement projects exceed, or are expected to exceed, the PEL, and all persons entering regulated areas must wear respirators (40 CFR 763.121(e)). This proposal, by cross-referencing the OSHA General Industry Standard, would make these requirements applicable to State and local governments who employ brake and clutch repair workers (29 CFR 1910.1001(e)).

This proposal, by cross-referencing 29 CFR 1926.1101(e) of the OSHA Construction Standard, would also require all Class I–III asbestos construction work to be conducted within a regulated area. This requirement is based upon OSHA's assessment of the construction activities most likely to produce exposures in excess of the PEL, as well as OSHA's concern with the significant risk that still remains for workers exposed to the PEL. OSHA's reasoning is discussed in the **Federal Register** of August 10, 1994 (Ref. 8, p. 40982). Although this proposal would require State and local government employers to establish, demarcate, and control access to regulated areas for most asbestos construction work, construction employees working within regulated areas would not automatically need to wear respirators unless otherwise required by the regulation.

g. *Exposure monitoring.* The current WPR requires employers to perform initial employee exposure monitoring for each covered activity, unless the employer has historical data from similar operations showing exposures below the PEL, or the employer can produce objective data showing that the material involved cannot release asbestos fibers in excess of the action level of 0.1 f/cc (40 CFR 763.121(f)). With respect to employees performing construction activities and associated custodial work, this proposal, by cross-referencing the OSHA Construction Standard, would modify the requirements for initial and periodic monitoring to reflect increased awareness that numerous factors influence employee exposure on construction jobs and that initial monitoring alone may not be the best predictor of future exposures. For more information on these considerations, see the **Federal Register** of August 10, 1994 (Ref. 8, pp. 40983–40984).

The OSHA Construction Standard requires a competent person to make an initial exposure assessment (29 CFR 1926.1101(f)). This assessment involves a review of initial monitoring data, previous monitoring data from the same workplace or employer, and other factors such as the training and experience of the employees who will perform the work, the work practices they will use, and the degree and quality of supervision that will be provided. In many cases, the competent person will be able to make a negative exposure assessment, a determination that employee exposures will be consistently below the PELs, based upon one of three things:

- Objective data which demonstrate that the product or activity involved is incapable of producing airborne asbestos concentrations in excess of the PELs.
- Recent monitoring data from previous asbestos jobs which closely resemble the current activity with respect to processes, material types, control methods, work practices, environmental conditions, and employee training and experience.
- Initial monitoring data from the current asbestos job.

Unless a negative exposure assessment can be made, the employer must conduct daily exposure monitoring to ensure compliance with the exposure limits.

For general custodial work and brake and clutch repair activities, this proposal would, by cross-referencing the OSHA General Industry Standard, require air monitoring only for activities where exposures exceed, or can reasonably be expected to exceed a PEL, and the employer does not have historical data from similar operations or objective data concerning the material which indicates that exposures will be below the PEL (29 CFR 1910.1001(d)).

h. *Methods of compliance for construction projects and associated custodial activities.* This proposal cross-references the OSHA Construction Standard requirements for engineering controls and work practices (29 CFR 1926.1101(g)). Where necessary to achieve the PEL, the current WPR requires one or more of the following: HEPA vacuums, wet methods where feasible, and prompt cleanup and disposal of asbestos-containing waste and debris. These three general control processes would become mandatory under this proposal for all asbestos construction work. The remaining control processes mentioned in the existing 40 CFR 763.121(g), local exhaust ventilation, general ventilation systems, and enclosure/isolation of dust-producing processes, are only required by the OSHA Construction Standard where necessary to achieve the PELs.

Under the current WPR, employers are required, if feasible, to use negative pressure enclosures for all projects that are not of small-scale, short-duration (40 CFR 763.121(e)(6)). For Class I projects, this proposal would cross-reference the OSHA Construction Standard, which gives employers the flexibility to choose, depending upon the type of project, from several different engineering control systems, including negative pressure enclosures, glove bags, negative pressure glove bag systems, negative pressure glove box systems, water spray process systems, or mini-enclosures (29 CFR 1926.1101(g)). Alternative control methods may be used, so long as a competent person is able to certify that the methods would be adequate to reduce employee exposures below the PEL and that asbestos contamination beyond the regulated area will not occur. If the Class I project involves more than 25 linear or 10 square feet of ACM, this determination must be made by a certified industrial hygienist or a licensed professional engineer who is also qualified as a project designer, and the Director, National Program Chemicals Division, Office of Pollution Prevention and Toxics, EPA, must be notified in advance. Additional requirements for Class I projects include critical barriers, or other methods to prevent the migration of fibers off-site, impermeable drop cloths for surfaces, and sealing of the HVAC system.

Class II projects are generally not covered by the current WPR unless they involve friable ACM or previously non-friable ACM which has become damaged to the point that it can be considered friable. This proposal, like the 1994 proposal, would extend coverage of the WPR to all construction work involving ACM, whether friable or non-friable. This proposal would cross-reference the OSHA Construction Standard which, in addition to the basic control requirements for all construction work, requires employers to follow specific work practices and use specific engineering controls for different types of ACM, including resilient floor coverings, roofing material, cementitious siding and transite panels, and gaskets. For example, with respect to the removal of resilient floor coverings, 29 CFR 1926.1101(g)(8)(i) prohibits sanding of flooring or backing, rip-up of resilient sheet material, and dry sweeping/scraping. In addition, mechanical chipping of resilient floor covering is prohibited unless it is performed in accordance with the requirements for Class I projects. For all specified Class II projects, critical barriers or other isolation methods must be used, and the surfaces must be covered with impermeable drop cloths. As with Class I projects, Class II projects may be conducted with alternative control methods, as long as a competent person evaluates the project area and certifies that the alternative controls are sufficient to reduce employee exposure below the PELs. For Class II projects, however, the employer is not required to notify the Agency.

Many Class III activities are currently covered by the WPR as small-scale,

short-duration asbestos abatement projects. Several of the control methods required by 29 CFR 1926.1101(g)(9) of the OSHA Construction Standard for Class III projects (wet methods, local exhaust ventilation as feasible, and, under specified circumstances, impermeable drop cloths and isolation methods) are essentially the same as the current WPR requirements in 40 CFR 763.121(g). If, for a particular Class III project, the employer is unable to produce a negative exposure assessment or monitoring results show the PEL has been exceeded, the OSHA Construction Standard requires the employer to use impermeable drop cloths and plastic barriers or their equivalent or one of the listed Class I control methods, such as a negative pressure enclosure or a glove bag.

Class IV activities are not currently covered by the WPR. This proposal would extend the scope of the WPR to cover Class IV activities. In addition, this proposal would cross-reference the OSHA Construction Standard, which requires employers conducting Class IV activities to use general control measures, such as wet methods, HEPA vacuums, and prompt cleanup (29 CFR 1926.1101(g)(10)). However, employees performing Class IV activities must be provided with respirators if they are performing housekeeping activities in a regulated area where other employees are wearing respirators.

i. *Methods of compliance for brake and clutch repair activities.* This proposal would require State and local government employers whose employees perform brake and clutch repair activities to comply with the OSHA General Industry Standard. In addition to general worker protection provisions, such as PELs, exposure monitoring, and respiratory protection, the OSHA General Industry Standard requires employers to use one of two primary methods for controlling employee exposure to asbestos during brake and clutch repair (Appendix F to 29 CFR 1910.1001).

The Negative Pressure Enclosure/HEPA Vacuum System method requires the work to be performed within a sealed enclosure similar to a glove bag, with impermeable sleeves through which the worker may handle brake and clutch components. Negative pressure must be maintained within the enclosure while the work is being performed. This method is virtually identical to the Enclosed Cylinder/HEPA Vacuum method in EPA's 1994 proposal, but OSHA changed the name of this method to reflect the fact that the enclosure does not necessarily have to be in the shape of a cylinder. The Low Pressure/Wet Cleaning method requires the brake and clutch components to be kept adequately wet, using a low pressure water flow and a catch basin, while repair activities are taking place. Employers whose employees perform 5 or fewer brake and clutch repair jobs per week may use less complex wet methods to control employee exposures during the projects. An employer could use an alternative control method if the method was demonstrated to control employee exposures at least as well as the Negative Pressure Enclosure/HEPA Vacuum method.

j. *Methods of compliance for general custodial activities.* This proposal would require State and local government employers whose employees perform custodial activities not associated with construction projects to comply with the OSHA General Industry Standard. In addition to general worker protection provisions, such as PELs, exposure monitoring, and respiratory protection, the OSHA General Industry Standard and Construction Standard contain identical specifications for resilient floor covering maintenance. The Standards ban sanding, allow stripping only using wet methods with a low abrasion pad at slow speeds, and prohibit dry buffing unless the finish on the floor is sufficient to prevent the pad from coming into contact with the floor material (29 CFR 1910.1001(k)(7), 29 CFR 1926.1101(l)(3)). This is generally consistent with EPA's existing guidance on floor maintenance (Ref. 19).

k. *Respirators.* The current WPR requires employers to supply respirators to employees entering regulated areas (40 CFR 763.121(e)(4)). This proposal would cross-reference the OSHA General Industry and Construction Standards (29 CFR 1910.1001(e), 29 CFR 1926.1101(h)), which require respiratory protection for employees performing the following activities:

- Class I projects.
- Class II projects where ACM is not removed intact.
- Class II–III projects that do not use wet methods.
- Class II–III projects for which a negative exposure assessment has not been made.
- Class III projects involving the disturbance of TSI or surfacing material.
- Class IV work in regulated areas where other employees are wearing respirators.
- Any other activities where asbestos exposure exceeds either of the PELs.
- Emergencies.

OSHA determined that respiratory protection was necessary for employees performing these activities due to the variability in exposures experienced during asbestos work, the need to protect workers who are disturbing ACM with the greatest potential for significant fiber release, and the fact that exposure monitoring results are not always available in a timely fashion. OSHA's findings are discussed in the **Federal Register** of August 10, 1994 (Ref. 8, p. 41010).

In addition, EPA's 1994 proposed amendments to the WPR cross-referenced the relevant portions of 29 CFR 1910.134, the OSHA Respiratory Protection Standard. In 1998, OSHA substantially revised this Standard (Ref. 14). This proposal would adopt by cross-reference the appropriate provisions of the revised OSHA Respiratory Protection Standard. The following is a discussion of requirements of the OSHA Respiratory Protection Standard that are not a part of the current WPR respirator requirements.

Employers who are required to supply their employees with respirators must develop and implement a respiratory protection program. Under 29 CFR 1910.134.(c), the program must be in writing, updated as necessary, with workplace-specific procedures addressing the following major elements:

- Procedure for selecting respirators.
- Medical evaluations of employees required to use respirators.
- Fit testing procedures for tight-fitting respirators.
- Procedures for proper use of respirators in routine and (reasonably foreseeable) emergency situations.
- Procedures and schedules for cleaning, disinfecting, storing, inspecting, repairing, discarding, and otherwise maintaining respirators.
- Procedures to ensure adequate air quality, quantity, and flow of breathing air for atmosphere-supplying respirators.
- Training of employees in the respiratory hazards they are potentially exposed to.
- Training of employees in proper use of respirators, including putting on and removing them, any limitations on their use, and their maintenance.
- Procedures for regularly evaluating program effectiveness.

Employers must designate a person to administer and evaluate the respiratory protection program (29 CFR 1910.134(c)(3)). This administrator must have training and/or experience commensurate with the complexity of the particular program.

Under 29 CFR 1910.134(d), the employer must provide respirators that are appropriate to the workplace and to

user factors that affect respirator performance and reliability, such as humidity, communication needs, and exertion levels. (See discussion at Ref. 14, p. 1196.) The employer must choose from a sufficient number of respirator models and sizes in order to properly fit the wearer (29 CFR 1910.134(f)).

Currently, the WPR requires an initial fit test, then, for negative-pressure respirators only, fit tests every 6 months (40 CFR 763.121(h)(4)). By adopting the OSHA Respiratory Protection Standard by cross-reference, this proposal would lengthen the interval to a year, but periodic fit test would be required for all tight-fitting respirators, whether positive or negative pressure. As in the current WPR, fit testing would have to be accomplished using one or more OSHA-approved protocols. In addition to the rigorous fit testing requirements, the OSHA Respiratory Protection Standard requires brief, easy-to-perform fit checks each time the respirator is worn (29 CFR 1910.134(g)(1)(iii)). (See discussion at Ref. 14, p. 1239.)

The OSHA Respiratory Protection Standard at 29 CFR 1910.134(h) requires specific respirator cleaning and maintenance practices, although an employer may choose to follow the instructions of the respirator manufacturer if they are sufficient to accomplish the same objectives such as sanitation and proper operation. The specific practices to be incorporated were compiled by OSHA from various sources, including recommendations by the American National Standards Institute (ANSI), the National Institute for Occupational Safety and Health (NIOSH), and the American Industrial Hygiene Association (AIHA).

Employees must be trained in specific elements of proper respirator use and care, including the need for respirators, their limitations, emergency procedures, maintenance, inspection, storage, and medical signs and symptoms that may limit respirator effectiveness (29 CFR 1910.134(k)).

Finally, 29 CFR 1910.134(m) requires employers to keep records of employee fit tests, including the employee's name, the type of test, the specific make/model of respirator tested, the date of the test, and the results of the test. The employer must only retain the most recent fit test records for each employee.

l. *Protective clothing.* The current WPR requires properly maintained and laundered protective clothing for employees exposed above the PEL (40 CFR 763.121(i)). This proposal would adopt the OSHA General Industry and Construction Standards, which require protective clothing to be provided where employees are exposed above the PELs, where the possibility of eye irritation exists, where a negative exposure assessment cannot be made for a particular project, or where employees are performing Class I operations involving the removal of over 25 linear or 10 square feet of TSI or surfacing ACM or PACM (29 CFR 1910.1001(h), 29 CFR 1926.1101(i)). In addition, rather than the periodic inspections required by the current WPR, the Construction Standard requires the competent person to inspect employee worksuits at least once each shift for rips or tears.

m. *Hygiene facilities and practices.* This proposal would adopt the hygiene requirements of the OSHA General Industry and Construction Standards (29 CFR 2910.1001(i), 29 CFR 1926.1101(j)). For Class I construction projects involving more than 25 linear or 10 square feet of ACM, the OSHA requirements are identical to the current WPR provisions for projects that are not of small-scale, short-duration (40 CFR 763.121(j)). OSHA determined in 1994 that such stringent measures were not necessary for smaller Class I projects or other classes of construction work. For smaller Class I projects, and Class II and III projects where exposures exceed a PEL or where a negative exposure assessment is not produced, the employer must provide an equipment room or area where contaminated worksuits are HEPA-vacuumed and then removed. Again, if Class IV workers are performing housekeeping activities within a regulated area, they must follow the same hygiene practices as the other employees working in that area. For general custodial workers and brake and clutch repair workers, the OSHA General Industry Standard, which would be adopted by cross-reference, requires employers to provide clean change rooms, showers, and clean lunch rooms (29 CFR 1910.1001(i)). For all workers, this proposal would also adopt, by cross-reference, OSHA's ban on smoking in work areas that was proposed by EPA in 1994 (29 CFR 1910.1001(i)(4), 29 CFR 1926.1101(j)(4)).

n. *Communication of hazards.* This proposal would adopt by cross-reference the requirement in the OSHA General Industry and Construction Standards that employers determine the presence, location, and quantity of ACM and presumed ACM (TSI, surfacing material, and resilient floor covering) in the worksite before work begins (29 CFR 1910.1001(j), 29 CFR 1926.1101(k)). If ACM or presumed ACM is discovered in the worksite after the project has been started, the employer must inform other on-site employers of the discovery.

Under the OSHA Standards, employers must also post signs at the entrance to mechanical rooms that contain ACM or presumed ACM. These signs must identify the material, its location, and appropriate procedures for preventing a disturbance. As currently required by the WPR at 40 CFR 763.121(k)(1)(i), signs must be posted for regulated areas, but the OSHA Standards language regarding respirators and protective clothing may be omitted if the employees are not required to wear them within that particular regulated area. The OSHA Standards include the requirement proposed by EPA in 1994 that employers ensure their employees comprehend the warning signs and labels, using, if necessary, such techniques as foreign languages, pictographs, graphics, and awareness training (29 CFR 1910.1001(j)(3), 29 CFR 1926.1101(k)(3)).

Also, by cross-referencing the OSHA Construction Standard, this proposal would adopt the different OSHA training requirements for different classes of construction work and associated custodial activities (29 CFR 1926.1101(k)(9)). Under the OSHA Construction Standard, employees performing Class I projects must have MAP worker accreditation or the equivalent. If the project will be undertaken in a school or a public or commercial building, MAP worker accreditation is required. If the project is in an area unregulated by the MAP, such as in an outdoor installation, equivalent training is permitted. Class II work generally involves non-friable ACM, so MAP accreditation is not required unless the project involves friable ACM and is located within a school or a public or commercial building. The OSHA Construction Standard requires Class II workers to receive training in the material-specific work practice and engineering control requirements pertaining to the type of material(s) that they will be disturbing. Class II training must take at least 8 hours and include a hands-on component. Class III workers must have 16 hours of training in a course which meets the requirements of the maintenance and custodial training required under the AHERA regulations at 40 CFR 763.92(a)(2). Class IV workers must have at least two hours of awareness training equivalent to the training described in the AHERA regulations at 40 CFR 763.92(a)(1). Notwithstanding the specific training provisions for each class, the OSHA Construction Standard at 29 CFR 1926.1101(k)(9) requires employers to ensure that employees performing Class I–IV projects and employees who are

likely to be exposed in excess of the PEL are trained in the basic elements currently identified in the WPR at 40 CFR 763.121(k)(3)(iii).

The OSHA Construction Standard also includes the requirements to provide employees with smoking cessation information as well as information concerning posting signs and affixing labels and their meaning that were proposed by EPA in 1994 (29 CFR 1926.1101(k)(9)(viii)(J)). Finally, the OSHA Construction Standard requires employers to teach Class III–IV workers the contents of "Managing Asbestos In Place" (the Green Book) (EPA 20T–2003, July 1990), or its equivalent (29 CFR 1926.1101(k)(9)(viii)(D)).

With regard to training for general custodial employees and brake and clutch repair workers, this proposal would adopt the OSHA General Industry Standard, which includes required training elements similar to those found in the current WPR (29 CFR 1910.1001(j)(7), 40 CFR 763.121(k)(3)(iii)).

o. *Housekeeping.* By adopting the OSHA General Industry and Construction Standards by cross-reference, this proposal would establish requirements for resilient floor covering maintenance by State and local government employees. The Standards ban sanding, allow stripping only using wet methods with a low abrasion pad at slow speeds, and prohibit dry buffing unless the finish on the floor is sufficient to prevent the pad from coming into contact with the floor material (29 CFR 1910.1001(k)(7), 29 CFR 1926.1101(l)(3)). The Standards are generally consistent with EPA's existing guidance on floor maintenance (Ref. 19).

p. *Medical surveillance.* The WPR currently requires medical surveillance for persons exposed at or above the action level of 0.1 f/cc for 30 or more days per year (40 CFR 763.121(m)). For general custodial workers and brake and clutch repair workers, this proposal would adopt by cross-reference the OSHA General Industry Standard requirement for medical surveillance for all workers exposed to asbestos concentrations at or above the PELs for any number of days per year (29 CFR 1910.1001(l)). For construction workers, this proposal would require, by cross-reference to the OSHA Construction Standard, medical surveillance for employees who perform Class I, II, or III work on, or who are exposed at or above a PEL for, 30 or more days per year (Class II or III work for an hour or less on intact ACM does not count as a day for the purposes of this requirement) (29 CFR 1926.1101(m)(1)(i)(A)).

q. *Recordkeeping.* The current WPR recordkeeping requirements would not be changed by this proposal, except that data used to rebut the presumption that TSI, surfacing material, or resilient floor covering is ACM must be retained by the employer for as long as the data are relied upon to rebut the presumption (40 CFR 763.121(n); 29 CFR 1919.1001(n); 29 CFR 1926.1101(n)). This proposal would also permit employers to use competent organizations to maintain necessary records.

r. *Competent person.* The current WPR requires a competent person to supervise asbestos abatement projects that are greater than small-scale, short-duration activities (40 CFR 763.121(e)(6)). The OSHA Construction Standard at 29 CFR 1926.1101(o), which this proposal would adopt by cross-reference, extends the competent person supervision requirement to all construction projects and associated custodial work. The Construction Standard also expands and clarifies the responsibilities and required training for competent persons. Competent persons who supervise Class I or Class II projects must be MAP-accredited contractor/supervisors or the equivalent. Equivalent training is permitted unless the project being supervised involves friable material in a school or a public or commercial building. Competent persons who supervise Class III or Class IV activities must have at least 16 hours of training which meets the requirements of 40 CFR 763.92(a)(2) for local education agency maintenance and custodial staff, or its equivalent in stringency, content and length. The competent person must make regular inspections of the worksite, at least once per workshift for Class I projects, and must also be available for inspections upon request. Competent persons are generally responsible for ensuring compliance with the various regulatory requirements, including notifications and initial exposure assessments. The competent person requirements do not apply to brake and clutch repair operations or to general custodial activities not associated with construction projects.

3. *Proposed amendment to the Asbestos-in-Schools Rule.* As in 1994, EPA is again proposing to amend the Asbestos-in-Schools Rule to remove the provisions that extend WPR protections to employees of public school systems when they are performing operations, maintenance and repair (O&M) activities (40 CFR 763.91(b)). The expanded scope of the proposed WPR would make these provisions unnecessary.

The current WPR covers State and local government employees, including employees of public schools who are involved in friable asbestos abatement projects. The Asbestos-in-Schools Rule (40 CFR part 763, subpart E), issued under the authority of AHERA, extends WPR protections to employees of public local education agencies when they are performing small-scale, short-duration O&M activities involving asbestos-containing materials. Appendix B to the Asbestos-in-Schools Rule describes appropriate worker protection practices for these employees.

Since this proposal would provide coverage for all construction work, including O&M activities, to employees of public local education agencies in States without OSHA-approved State plans, the specific provisions at 40 CFR 763.91(b) covering O&M activities by employees of public local education agencies, as well as the provisions of Appendix B, would be unnecessary. EPA is therefore proposing to delete Appendix B and amend § 763.91(b) to refer readers to the WPR.

4. *Plain language.* EPA has drafted the revised regulatory text of the WPR taking into account the June 1, 1998, Presidential Memorandum on Plain Language (available at http://www.plainlanguage.gov/cites/memo.htm), and its implementing guidance. Using plain language clarifies what the WPR requires, and saves the government and the private sector time, effort, and money. EPA has used plain language to give the WPR a logical organization and easy-to-read design features. In the process, EPA has deleted from the proposed rule the current sections on enforcement and inspections (40 CFR 763.125 and 763.126). These sections are unnecessary, as they restate requirements in TSCA sections 11, 15, 16, and 17. Accordingly, EPA will continue to enforce the WPR and conduct inspections.

5. *State exemptions.* The 1994 proposal would have revised § 763.122 to adopt a process of State exclusions from the WPR that was substantively the same as that followed under the Asbestos-in-Schools Rule (40 CFR 763.98). EPA has re-examined its authority under TSCA section 18, and is not including those changes in this proposed rule. Instead, EPA is proposing to revise the current language to conform to TSCA section 18 and to use plain language. This proposal would also redesignate this section as § 763.123 because of other structural changes to 40 CFR part 763, subpart G.

B. What is the Agency's Authority for Taking this Action?

1. *Finding of unreasonable risk.* Under TSCA section 6(a), if EPA finds that the manufacture, processing, distribution in commerce, use or disposal of a chemical substance or mixture, or any combination of these activities, presents, or will present, an unreasonable risk of injury to health or the environment, EPA shall by rule apply requirements to the substance or mixture to the extent necessary to protect adequately against the risk. Asbestos is a chemical substance or mixture that falls within the scope of this authority. In deciding whether to propose this rule under TSCA section 6(a), EPA considered:

- The health effects of asbestos.
- The magnitude of human exposure to asbestos.
- The environmental effects of asbestos and the magnitude of the exposure of the environment to asbestos.
- The benefits of asbestos for various uses and the availability of substitutes for those uses.
- The reasonably ascertainable economic consequences of the proposed rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health.
- The social impacts of the proposed rule.

See 15 U.S.C. 2601(c) and 2605(c)(1). EPA's consideration of these factors in proposing this rule is summarized in this unit. Additional information on many of these factors can be found in the Economic Analysis (Ref. 18).

a. *Health effects of asbestos.* Asbestos is found in building products such as insulation, ceiling and floor tiles, spackling tape for drywall, and roofing products. In general, asbestos contained in such products is considered harmless unless the matrix of asbestos fibers is disturbed or deteriorates. A disturbance occurs when ACM is abraded, cut, torn or penetrated in such a way that fibers are separated from one another and are released into the air where workers and others can inhale them. The primary route of human exposure is through the respiratory system, although other exposure routes (through ingestion or dermal contact, for example) are possible. Five respiratory illnesses are associated with asbestos exposure.

- *Carcinoma of the lung (lung cancer).* Carcinoma of the lung is a term used to refer to several types of cancer of lung tissue. The cancers usually affect the larger airways in the lungs, but may sometimes also appear in the smaller airways and peripheral parts of the lungs. Asbestos-related lung cancer occurs primarily in people with some degree of asbestosis (especially moderate to severe asbestosis) who also smoke. The combination of asbestos exposure and smoking is between additive and multiplicative; some studies cite a 5-fold increase in the risk of lung cancer in asbestos-exposed nonsmokers versus a 60-fold increase in asbestos-exposed smokers. Lung cancer usually occurs many years after asbestos exposure, and is nearly always fatal.
- *Malignant mesothelioma of the pleura and peritoneum.* Mesothelioma is a form of cancer that produces malignancies in the lining of the lung and chest cavity (pleura) and the lining of the abdominal organs and cavity (the peritoneum). The disease appears to be largely or wholly unrelated to smoking. Unlike lung cancer, which occurs in asbestos-exposed and unexposed smokers alike, malignant mesotheliomas occur mainly in asbestos-exposed individuals. Like lung cancer, mesothelioma usually occurs many years after exposure, and is always fatal. Mesothelioma is much less common than lung cancer, representing about 10% of lung cancer incidents.
- *Asbestosis.* Asbestosis is a chronic and progressive lung disease caused by inhaling asbestos fibers, which penetrate and irritate the outer parts of the lungs. This, in turn, causes inflammation and, eventually, increasingly severe pulmonary fibrosis (thickening and scarring of lung tissue). As the tiny airways, air sacs, and related lung tissue become thicker and scarred. there is less space for air to pass through, so lung capacity declines. In addition, the lung tissue stiffens, making it more difficult to push air in and out. In the extreme, extensive fibrosis of the lungs causes the airways and air sacs to become so scarred and stiff that they cannot function well enough to sustain life, and respiratory failure and death ensue. The time from asbestos exposure to onset of asbestosis varies with the level of exposure, with higher exposures reducing the time till onset. Asbestosis will exacerbate other respiratory diseases (e.g., carcinoma of the lung) and will hasten death in individuals with other respiratory risk factors (i.e., smokers).
- *Pleural effusion leading to diffuse pleural thickening.* Inhalation of asbestos fibers can lead to pleural conditions as the fibers become trapped on the pleural membranes. Asbestos-related pleural effusion is an accumulation of fluid between the two pleural membranes caused when asbestos fibers become trapped between the pleural membranes. One pleural membrane lines the lungs, while the other membrane lines the chest cavity. Normally, the two membranes lie very close to each other, sliding gently across each other during breathing. Accumulation of fluid causes the membranes to separate in the area of the fluid, usually making breathing more difficult and painful. Pleural effusion can cause the pleural membranes to thicken from irritation and infiltration of immune cells. Occasionally, the pleural membranes may fold in on themselves, crowding and trapping a piece of lung tissue. The resulting condition, called rounded atelectasis, is more likely to be symptomatic, but nevertheless is fairly benign, although the folding and lung tissue trapping can become larger over time, decreasing lung capacity and leading to shortness of breath. Pleural effusion usually occurs 10 to 15 years after continuous exposure to asbestos, and is rarely fatal.
- *Pleural plaques.* Deposits of asbestos fibers on the pleural membrane can sometimes become calcified, forming asbestos-related pleural plaques. Local areas of pleural thickening resemble pleural plaques and have similar clinical features. Pleural plaques are more common in overweight people, including many smokers. By causing portions of lung tissue to stiffen, they can impair lung function, making it harder to breathe, especially during exertion. In general, though, they are relatively benign and rarely fatal. Pleural plaques occur approximately 10 to 15 years after asbestos exposure.

b. *Human exposure to asbestos.* The proposed rule would provide protection for State and local government employees involved in asbestos-related work in States that do not have OSHA-approved State plans. The activities that would be covered by the proposed rule include the following six categories of work:

- *New construction activities,* which include all projects involving the installation of new asbestos-containing building materials, expected to be predominately asbestos-cement sheet and asbestos-cement pipe.
- *Abatement activities,* which include the removal of asbestos-containing TSI from pipes and boilers and other types of ACM or presumed ACM in buildings.
- *Renovation activities,* which include general building renovation projects. EPA believes that most of these projects will involve the demolition of drywall that has been sealed with asbestos-containing taping materials, and the removal of asbestos-containing roofing felts.

• *Maintenance activities*, which include repair and maintenance of pipes, boilers, furnaces, roofing, drywall, floor and ceiling tiles, lighting, and ventilation, heating, and air conditioning systems.

• *Custodial work*, which includes dusting, sweeping and vacuuming.

• *Brake and clutch repair work.*

The following table summarizes the baseline asbestos exposures for workers performing these activities, as well as the incremental exposure reductions expected to be achieved through this rulemaking. For most activity categories, EPA estimates that worker exposures will decrease by at least one order of magnitude.

EXPOSED POPULATION AND EXPOSURE LEVELS

Activity	Class/category of work	Population exposed in the initial year of the rule (FTEs)	Exposure levels	
			Baseline	Post-rule
New Construction				
A/C pipe installation	NA	8	0.0350	0.0025
A/C sheet installation	NA	100	0.1000	0.0072
Subtotal		108		
Abatement				
Building abatements	I	25	0.1801	0.0104
Boiler/pipe abatements	I	15	0.1801	0.0104
Subtotal		40		
Renovation				
Drywall demolition	II	2,050	0.1130	0.0065
Roofing felt removal	II	89	0.0900	0.0063
Subtotal		2,140		
Maintenance (Class III)				
Repair leaking pipes	III	70	0.1624	0.0014
Repair/maintain furnaces/boilers	III	72	0.1624	0.0094
Repair roofing	III	148	0.0900	0.0063
Repair drywall	III	226	0.1130	0.0002
Repair/replace floor tiles	III	376	0.0240	0.0003
Subtotal		892		
Maintenance (Class IV)				
Repair/replace ceiling tiles	IV	4	0.0714	0.0018
Repair/adjust ventilation/lighting	IV	68	0.0319	0.0008
Repair heating/air conditioning	IV	62	0.0319	0.0008
Other work above drop ceilings	IV	19	0.0492	0.0013
Subtotal		153		
Custodial work	IV	51,752	0.0459	0.0004
Brake and clutch repair				
Low pressure/wet cleaning method	GI	2.032	0.0041	0.0041
Aerosol spray method	GI	1,451	0.0141	0.0041
Wet methods	GI	2,322	0.0122	0.0041
Subtotal		5,805		
Building occupants	NA	4,007,710	0.00008	0.00004
School children	NA	20,781,696	0.00008	0.00004
Totals				
All activities		24,850,296		
All activities, excluding school children.		4,068,600		
All activities, excluding school children and building occupants.		60,890		

See Table 3–3 of the Economic Analysis (Ref. 18).

EPA finds that reducing asbestos worker exposures will also result in reduced exposures for incidentally exposed populations, i.e., individuals who are exposed to asbestos without actually performing work on ACM. These populations are:

• *School children.* The proposed rule covers State and local government employees performing asbestos-related work in States without OSHA-approved State plans. A number of the activities that would be covered by the proposed rule occur in public schools. Thus, one incidentally exposed population that would benefit from the proposed rule would be individuals exposed to asbestos as children while attending public schools in the covered States. EPA expects that these individuals primarily face risks from lung cancer and mesothelioma as adults based on their exposure as children.

• *Building occupants, workers' families, and other individuals who enter buildings covered by the proposed rule.* OSHA has determined that building occupants where asbestos work takes place (e.g., office workers), construction workers performing non-asbestos related work, individuals entering buildings where asbestos work is taking place (e.g., building visitors), and workers' families are at risk of harmful asbestos exposure. NIOSH has determined that workers' families may be at particular risk of developing asbestosis or mesothelioma from the contaminated clothes of asbestos workers in the family. The proposed rule takes steps to reduce asbestos exposure among family members through the use of decontamination units (29 CFR 1926.1101(j)) and the use of protective clothing that remains at the workplace or is disposed of (29 CFR 1926.1101(i)). Except for building occupants, custodial workers and school children, no quantitative estimates are available regarding the number of people that are incidentally exposed or their exposure level. The provisions of the proposed rule would decrease the

potential of harmful exposure for these individuals and consequently decrease the expected incidence of asbestos-related death and disease among family members.

The preceding table also presents the estimated exposure reductions attributable to this rule for school children and other building occupants. EPA believes that the controls that would be imposed by this proposal would reduce the incidental asbestos exposures for these populations by 50%.

c. *Environmental effects of asbestos.* This proposed rule is directed at risks posed by asbestos in the workplace, not in the ambient environment. EPA therefore did not consider the environmental effects of asbestos in proposing this rule.

d. *The benefits of asbestos for various uses and the availability of substitutes for those uses.* This proposed rule would protect workers exposed to asbestos during construction work and during automotive brake and clutch repair work. Some of this work could involve removal of asbestos. This proposed rule would not, however, require any person to remove asbestos from an existing installation. The person responsible for managing existing installations of asbestos must make the decision whether the benefits of retaining or managing that installation exceed the benefits of removing the asbestos and replacing it with another material. As part of that decision, that person will evaluate the cost and availability of substitutes for asbestos. If the person concludes that satisfactory substitutes are not available at an acceptable price, the person is free to decide that the benefits of maintaining the installation exceed the costs of removing it, and on that basis may leave the asbestos in place. EPA therefore did not consider the benefits of asbestos for various uses and the availability of substitutes for those uses in proposing this rule.

e. *Economic consequences of this proposed rule.* This proposed rule would reduce workers' and building occupants' exposure to asbestos, and would thereby reduce the incidence of cancer and other injurious health effects among these populations. The Economic Analysis for this proposed rule (Ref. 18) provides a detailed analysis of the economic benefits associated with the reduced incidence of these diseases. This proposal would also impose new requirements on State and local governments that would require these entities to incur compliance costs. The Economic Analysis also analyzes in detail the incremental costs to State and local governments of complying with the proposed rule. In evaluating these incremental costs, EPA assumes that affected State and local governments are in compliance with requirements of the current WPR, the asbestos National Emission Standard for Hazardous Air Pollutants (40 CFR part 61, subpart M), and the Asbestos-in-Schools Rule (40 CFR part 763, subpart E). These incremental benefits and compliance costs are summarized in this unit.

i. *Economic benefits.* EPA has assessed the economic benefits of the proposed rule and has provided quantitative estimates for some of these benefits.

• *Avoided cases of lung cancer and mesothelioma.* Sixty-five years of exposure reduction under the proposed rule would reduce the number of lung cancer and mesothelioma cases among exposed workers and building occupants by 71.58 cases. A majority of these avoided cases occur among custodial workers, where 58.14 cases (81.2% of the number of cases among exposed workers and building occupants) are avoided. The next largest number of avoided cases, 3.96, occurs among building occupants. The proposed rule would also affect some activities in public schools in States without OSHA-approved State plans. This would result in a reduction in the risk to school children in these States. EPA estimates that 65.3 million students over a 65-year period would benefit from reduced exposure under the proposed rule. EPA estimates that 65 years of exposure reduction under the proposed rule would result in 65.65 avoided cancer cases among individuals exposed as school children.

The Economic Analysis supporting this proposed rule uses a "value of statistical life" (VSL) technique to associate a dollar value with these avoided cancer cases. There are several types of economic studies that have attempted to determine the VSL. Of these, most use labor market data to determine workers' trade-offs between wages and risk. In addition, some researchers have used contingent valuation to evaluate willingness to pay to avoid risk. One researcher reviewed a large number of studies, with a range of $2 million to $11 million per statistical life, and recommended use of the entire range. The most recent review of the results of research using these approaches found a range of values from $700,000 to $16.2 million. EPA's Office of Indoor Air selected 26 studies and calculated their mean estimated value of life to be $5.5 million (1994 dollars), with a standard deviation of $3.6 million. The Economic Analysis accompanying this proposed rule uses the Office of Indoor Air estimate, updated to $6.53 million in anticipated 2001 dollars. The Economic Analysis uses the VSL estimate to value avoided risk at the point of exposure reduction, and discounts the value of avoided risk occurring in years beyond 2001 back to 2001, using a discount rate of 3%.

Based on a VSL analysis, this proposed rule would result in $405.45 million in monetized benefits attributable to 137.23 avoided cases of lung cancer and mesothelioma. EPA estimates that the 65-year present monetary value of reducing cancer incidence among exposed workers and building occupants under the proposed rule is $248.09 million. Avoided cancer cases among custodial workers represent the largest share of the total, with a 65-year present monetary value of $202.34 million (81.6% of the total). In addition, EPA estimates the present monetary value of the avoided cancer risk among individuals exposed as school children to be $157.36 million.

• *Avoided cases of asbestosis.* EPA estimates that approximately five cases of asbestosis would be avoided under the proposed rule. EPA does not include this estimate among the quantified benefits of the proposed rule, however, because of the uncertainties about applying the available models to activities involving the relatively low doses to which construction, custodial, and brake and clutch repair workers are exposed. In addition, EPA has determined that many individuals who develop asbestosis also develop lung cancer, so presenting estimates of the number of avoided asbestosis cases in conjunction with estimates of the number of avoided lung cancer cases may result in double-counting (i.e., some of the asbestosis cases may also be cases of lung cancer). EPA considers this estimate of avoided asbestosis cases to be only an indication of the potential magnitude of the number of avoided asbestosis cases.

• *Avoided productivity losses associated with non-fatal diseases.* In addition to lung cancer and mesothelioma, asbestos exposure is associated with numerous other diseases such as pleural plaques and pleural effusion. These conditions are caused by the inhalation of asbestos fibers that eventually become lodged in the lungs and airways of exposed individuals. Reducing asbestos exposure levels, along with the use of protective equipment such as respirators, would reduce the amount of asbestos fibers inhaled by exposed individuals, reducing the risk of developing these conditions. However, EPA was not able to quantify the reduction in these cases.

Although these conditions are not fatal, workers who develop them may need to reduce their work time or retire early, resulting in lost productivity. Lost productivity during the period of illness represents a cost associated with the disease. Exposure models that predict the number of these diseases and conditions are not available, making it impossible to quantify the number of cases and the resulting loss in productivity. Nonetheless, a reduction in asbestos exposure would decrease the incidence of non-fatal asbestos-related disease and thus productivity losses associated with these conditions. The reduced incidence of non-fatal diseases would in turn reduce the number of workers who are out of work due to illness. Thus the proposed rule would reduce the amount of lost productivity due to illness, but by an unknown amount.

• *Avoided medical costs associated with non-fatal diseases.* Medical costs are also incurred by individuals who experience non-fatal asbestos-related diseases (pleural plaques and pleural effusion). Estimates of the costs of treating these illnesses, as well as models that predict their incidence, are not available. A reduction in asbestos exposure will reduce the incidence of asbestos-related disease and consequently the medical costs associated with treating those diseases. Reduced exposures should also decrease the severity of cases of illness not prevented by the proposed rule. Less severe cases will require less medical care and lower medical care costs. Thus this proposal would also reduce medical costs of non-fatal asbestos-related diseases, but by an unknown amount.

• *Decreased risk for exposed individuals not working with asbestos, including workers' families.* Occupants of buildings where asbestos work takes place (e.g., office workers), construction workers performing non-asbestos related work, individuals entering buildings where asbestos work is taking place (e.g., building visitors), and workers' families may be incidentally exposed to asbestos. NIOSH has determined that workers' families may be at particular risk of developing asbestosis or mesothelioma from the contaminated clothes of asbestos workers in the family. The proposed rule takes steps to reduce asbestos exposure among family members through the use of decontamination units and the use of protective clothing that remains at the workplace or is disposed of.

Except for building occupants, custodial workers and school children, no quantitative estimates are available regarding the number of people that are incidentally exposed or their exposure level. The provisions of the proposed rule would decrease the potential of harmful exposure for these individuals and consequently decrease the expected incidence of asbestos-related death and disease among family members.

ii. *Compliance costs.* EPA estimates that the proposed rule would impose first-year compliance costs of $63.34 million. Annually thereafter, the real compliance costs are assumed to decline due to attrition of buildings from the stock of those that contain asbestos (i.e., due to abatements or demolitions). Over the 65-year time frame of exposure reduction, the present value of compliance costs is estimated to be $1.12 billion. The following table provides a summary of the estimated compliance costs (both first-year costs and the 65-year present value of costs) by paragraph of the OSHA Standard, and by the individual requirements for those paragraphs. In the construction sector, the "Methods of compliance" paragraph of the OSHA Construction Standard (29 CFR 1926.1101(g)) accounts for the greatest share of compliance costs. This paragraph results in estimated costs of $35.84 million in the first year and $636.16 million over the 65-year period, which represent 56.6% of the total costs of the proposed rule. Within this paragraph, the wet methods requirement accounts for the greatest share of compliance costs. The estimated costs of the wet methods requirement are $21.65 million in the first year and $384.35 million over the 65-year period, representing 34.2% of the total costs of the proposed rule.

SUMMARY OF COMPLIANCE COSTS BY PARAGRAPH AND REQUIREMENT

Requirement	First-year compliance Cost ($millions)	65-year present value of compliance costs ($millions)	Percent of total costs
CONSTRUCTION ACTIVITIES:			
29 CFR 1926.1101(d)—Multi-employer worksites			
Second employer inspections	$0.39	$6.91	0.61%
Paragraph subtotal	$0.39	$6.91	0.61%
29 CFR 1926.1101(e)—Regulated areas			
Signs and tape	$3.10	$55.02	4.89%
Paragraph subtotal	$3.10	$55.02	4.89%
29 CFR 1926.1101(f)—Exposure assessment and monitoring			
Initial exposure assessment	$0.61	$10.75	0.96%
Paragraph subtotal	$0.61	$10.75	0.96%
29 CFR 19261101(g)—Methods of compliance			
HEPA vacuums	$10.31	$183.09	16.28%
Wet methods	$21.65	$384.35	34.18%
Leak-tight containers	$0.37	$6.61	0.59%
Local exhaust ventilation	$0.60	$10.58	0.94%
Impermeable drop cloths	$1.80	$31.96	2.84%
Critical barriers	$0.06	$1.00	0.09%
Plastic around HVAC systems	$0.01	$0.25	0.02%
Negative pressure enclosures	$0.00	$0.00	0.00%
Glove bag systems	$1.03	$18.32	1.63%
Paragraph subtotal	$35.84	$636.16	56.58%
29 CFR 1926.1101(h)—Respiratory protection			
Respirators	$3.63	$64.42	5.73%
Develop respirator programs	$0.76	$13.52	1.20%
Fit testing for respirators	$0.03	$0.53	0.05%
Paragraph subtotal	$4.42	$78.46	6.98%
29 CFR 1926.1101(i)—Protective clothing			

SUMMARY OF COMPLIANCE COSTS BY PARAGRAPH AND REQUIREMENT—Continued

Requirement	First-year compliance Cost ($millions)	65-year present value of compliance costs ($millions)	Percent of total costs
Provide clothing	$0.00	$0.00	0.00%
Inspect clothing	$0.05	$0.80	0.07%
Paragraph subtotal	$0.05	$0.80	0.07%
29 CFR 1926.1101(j)—Hygiene facilities and practices			
Paragraph subtotal	$0.00	$0.00	0.00%
29 CFR 1926.1101(k)—Communication of hazards			
Notify employees	$1.46	$25.99	2.31%
Notify other employees/employers	$1.47	$26.01	2.31%
Training	$2.97	$52.71	4.69%
Paragraph subtotal	$5.90	$104.71	9.31%
29 CFR 1926.1101(l)—Housekeeping			
Paragraph subtotal	$0.00	$0.00	0.00%
29 CFR 1926.1101(m)—Medical surveillance			
Medical exams	$0.75	$13.27	1.18%
Paragraph subtotal	$0.75	$13.27	1.18%
29 CFR 1926.1101(n)—Recordkeeping			
EPA access to records	$2.37	$42.14	3.75%
Employee access to records	$0.26	$4.67	0.41%
Paragraph subtotal	$2.64	$46.81	4.16%
29 CFR 1926.1101(o)—Competent person			
Training	$5.96	$105.76	9.41%
Inspection by competent person	$0.01	$0.22	0.02%
Paragraph subtotal	$5.97	$105.98	9.42%
TOTAL FOR CONSTRUCTION	$59.65	$1,015.68	94.17%
GENERAL INDUSTRY BRAKE AND CLUTCH REPAIR:			
29 CFR 1910.1001(d)—Exposure monitoring			
Establish exemption	$0.40	$7.16	0.64%
Paragraph subtotal	$0.40	$7.16	0.64%
29 CFR 1910.1001(f)—Work practices and controls			
Adopt low pressure/wet cleaning method	$1.24	$21.99	1.96%
Paragraph subtotal	$1.24	$21.99	1.96%
29 CFR 1910.1001(j)—Hazard communication			
Notify employees	$1.72	$30.54	2.72%
Paragraph subtotal	$1.72	$30.54	2.72%
29 CFR 1910.1001(k)—Housekeeping			
Leak-tight containers	$0.32	$5.65	0.50%
Paragraph subtotal	$0.32	$5.65	0.50%
29 CFR 1910.1001(m)—Recordkeeping			
EPA access to records	$0.01	$0.18	0.02%
Employees access to records	$0.001	$0.022	0.00
Paragraph subtotal	$0.01	$0.20	0.02%
TOTAL FOR GENERAL INDUSTRY	$3.69	$108.74	5.83%
GRAND TOTALS	$63.34	$1,124.42	100.00%

See Table 4--11 of the Economic Analysis (Ref. 18).

In the brake and clutch repair sector, compliance costs are highest for the "Communication of hazards to employees" paragraph of the OSHA General Industry Standard (29 CFR 1910.1001(j)), which includes one requirement applicable to brake and clutch repair work, namely to notify employees. This paragraph results in estimated compliance costs of $1.72 million in the first year and $30.54 million over the 65-year time period. This represents 2.72% of the total costs of the proposed rule. The "Methods of compliance" paragraph of the OSHA General Industry Standard (29 CFR 1910.1001(f)) contains one requirement applicable to brake and clutch work, namely to adopt the low pressure/wet cleaning method. This requirement accounts for $1.24 million in first year compliance costs and $21.99 million over the 65-year period, representing 1.96% of the total costs of the proposed rule.

iii. *Other effects.* TSCA section 6(c)(1)(D) also requires EPA, when considering the economic consequences of the rule, to take into account effects on the national economy, small business, technological innovation, the environment, and public health. The effects of this rule on the national economy are addressed in the Economic Analysis (Ref. 18) and Unit IV. As this rule affects only State and local government employers, there are no anticipated impacts on small businesses. The impacts on small government entities are evaluated in the Economic Analysis (Ref. 18) and Unit IV. With respect to technological innovation, EPA does not believe that this rule will be unduly restrictive, since the underlying OSHA Construction and General Industry Standards allow sufficient flexibility for the development of new technology for asbestos-related work. In addition, this rule's impacts on technology issues in general and the use of technical standards are discussed in Unit IV. As described in Unit II.B.1.c., EPA did not consider environmental effects in this rulemaking as it is directed towards asbestos exposures in the workplace. Finally, the public health effects of this rule are discussed in Units II.B.1.a. and b.

f. *Social and other qualitative effects.* TSCA section 2 requires EPA, when taking any action under TSCA, to consider the social as well as environmental and economic impacts of

the action. EPA considers social and other non-economic beneficial impacts when determining whether a particular level of risk is "unreasonable" and requires mitigation under TSCA section 6. In evaluating the reasonableness of the risk posed by occupational asbestos exposures to State and local government workers, EPA considered the following social and other qualitative effects of the proposed rule.

• *Equity.* One important social consequence of the proposal would be the elimination of inequitable legal protections for classes of persons based solely upon the identity and location of their employers. Currently, private sector building maintenance and custodial workers enjoy comprehensive protection from excessive asbestos exposures under the OSHA Construction Standard. State and local government building maintenance and custodial workers in the 23 States with OSHA-approved State Plans already enjoy this same level of protection, since the protection afforded by such plans must be as effective as that provided to workers in the private sector. However, asbestos workers engaged in the same activities in the remaining 27 States are currently unprotected. There is an obvious inequity in offering different levels of protection to employees who are performing the same tasks, or even working side-by-side in a common job space. These inequitable conditions are unreasonable, and the fact that 23 States have already provided equivalent protections for their State and local government employees is evidence of the strong general societal interest in providing State and local government workers with a level of protection similar to that enjoyed by their counterparts in the private sector.

• *Reduced implementation burdens.* Having a uniform set of standards for construction and brake and clutch repair employees would have the added social benefit of easing implementation burdens. The OSHA standards are highly detailed and complex, but many excellent training, guidance, and reference resources are available. See http://www.osha-slc.gov/SLTC/asbestos/. Yet, because of the lack of consistency between the WPR and the OSHA standards, State and local government workers and their employers in 27 States cannot take advantage of these resources. The burden on the regulated community of essentially re-creating these resources to reflect the minor differences between the WPR and the OSHA standards exists only because of the difficulty in amending the WPR to keep pace with changes in the OSHA standards. Adoption of the proposal would also avoid potential confusion and mistakes by allowing all workers and their supervisors to learn a single standard and know the requirements that apply to their work without additional training if such workers or supervisors move from the public sector to the private sector or vice-versa.

• *Environmental justice.* Many of the employees who would benefit from the protections of this proposed rule are members of minority and low-income populations. In testimony before OSHA in 1991, the Service Employees International Union (SEIU) described building maintenance workers as being among the "least protected members in our society—largely comprised of ethnic minority groups, new immigrants to our country, what economists refer to as the working poor, many forced to work permanent part-time..." (Ref. 20). As discussed in the Economic Analysis, some minorities are disproportionally represented in certain occupations that would be regulated by this proposal. In addition, EPA's analysis has determined that the median weekly income of workers in most of the occupations that would be covered by this rule is below the median income of all workers nationwide. No segment of the population, regardless of race, color, national origin, or income, should, as a result of EPA's policies, programs, or activities, be more affected by adverse health effects, and all people should live and work in clean, healthy, and sustainable environments.

• *Quality of life.* The health effects of asbestos are discussed in detail in Unit II.B.1.a. Two forms of cancer, carcinoma of the lung and malignant mesothelioma, can result from inhaling asbestos fibers. Another asbestos-related disease, asbestosis, is a chronic and progressive lung disease causing extensive fibrosis of the lungs and, in extreme cases, respiratory failure and death. Exposure to asbestos can cause other respiratory diseases, that, while non-fatal, can significantly impair lung function, reduce lung volume, and cause lung stiffness, making breathing difficult and very painful. Pleural effusion impairs lung function by causing an accumulation of fluid in the lung membranes; and pleural plaques cause a stiffening of the lung tissue that particularly affects breathing during exertion. All these diseases cause physical and psychological pain for the diseased person and psychological pain for friends and family. Reducing the incidence of asbestos-related diseases improves the quality of life for both workers and workers' friends and families by mitigating these negative consequences. The legislative history of TSCA shows that quality of life was an important Congressional concern as the provisions of TSCA were debated and enacted.

• *Children's health.* EPA's analysis indicates that the proposed rule would significantly reduce the incidence of cancer among individuals with childhood asbestos exposures from school buildings. EPA estimates that 65.65 such cases would be avoided under this rule as a result of exposure reductions over a period of 65 years. Children are more vulnerable than adults to the risks of asbestos for a number of physiological reasons. Children have less well-developed defense mechanisms, they breathe more rapidly, and their metabolic rates are different. The smaller respiratory systems of children may be less likely to clear particles than adult respiratory systems. EPA places a high priority on identifying and assessing environmental health risks and safety risks that may disproportionately affect children. By reducing ambient asbestos concentrations in school buildings, this rule would help protect children from the disproportionate asbestos exposure risk they face.

g. *Finding of unreasonable risk.* Therefore, having considered the factors discussed in Unit II.B.1., including the serious and irreversible health effects of exposure to asbestos; the present exposure levels among State and local government employees; the economic benefits of the proposed rule, including avoided cases of lung cancer and mesothelioma; the costs to State and local governments of complying with the proposed rule; and the beneficial social and other qualitative consequences of the proposal, especially that of equity; EPA finds under TSCA section 6 that the current exposure to asbestos among unprotected State and local government employees during use or disposal in construction work, custodial work, and brake and clutch repair work presents an unreasonable risk of injury to human health, and that rulemaking is necessary to provide adequate protection against that risk.

2. *Selection of least burdensome requirements.* Under TSCA section 6(a), once EPA has determined that a chemical substance or mixture presents an unreasonable risk to health or the environment, EPA must use the least burdensome requirements to protect against that risk. This standard requires EPA to consider the alternative regulatory options presented in TSCA section 6(a), and to choose the least burdensome option. The options set out

in TSCA section 6(a), and EPA's analysis of those options, follows.

a. *A requirement prohibiting or limiting the manufacture, processing, or distribution in commerce of asbestos (TSCA section 6(a)(1)).* EPA did not select this option because such a requirement would only protect workers from the risks of future uses of asbestos. This proposal would protect workers from the risks posed by both future asbestos uses and existing installations of asbestos, which have already been manufactured, processed, or distributed in commerce and are now in use. Moreover, prohibiting or limiting the manufacture, processing, or distribution in commerce of particular uses of asbestos would be an unduly burdensome way to protect State and local government construction, custodial and brake and clutch repair workers from the risks of exposure to asbestos. There may still be appropriate uses for asbestos and products containing asbestos. It is not necessary to burden the economy by prohibiting or limiting the manufacture, processing, or distribution in commerce of asbestos in order to protect a small segment of the population from exposure to asbestos from such products.

b. *A requirement prohibiting or limiting the manufacture, processing, or distribution in commerce of asbestos for a particular use or for a particular use in excess of a specified concentration (TSCA section 6(a)(2)).* As with the option under TSCA section 6(a)(1), EPA did not select this option because such a requirement would only protect workers from the risks of future uses of asbestos. This proposal would protect workers from the risks posed by both future asbestos uses and existing installations of asbestos, which have already been manufactured, processed, or distributed in commerce and are now in use. Moreover, prohibiting or limiting the manufacture, processing, or distribution in commerce of particular uses of asbestos would be an unduly burdensome way to protect a small segment of the population from exposure to asbestos from such uses.

c. *A requirement that asbestos and asbestos-containing material be marked or accompanied by a warning and instructions for its use, distribution in commerce, and/or disposal (TSCA section 6(a)(3)).* This proposal would require, in effect, that employers ensure their employees comprehend warning signs, labels, and instructions posted where asbestos is present, using, if necessary, such techniques as foreign languages, pictographs, graphics, and awareness training. Markings, warnings, or instructions by themselves, however, would not adequately reduce State and local government workers' exposure to asbestos. These workers' exposure to asbestos during construction work or brake and clutch repair and service work is dependent on the industrial hygiene practices in the workplace, which are largely in the control of the employer. Therefore, this rule would require employers to provide additional protections to reduce their employees' exposure to asbestos.

d. *A requirement controlling manufacture and processing of asbestos and requiring manufacturers and processors to keep records of their manufacturing or processing processes and monitor those processes (TSCA section 6(a)(4)).* EPA did not select this option because such a requirement would only protect workers from the risks of future uses of asbestos. This proposal would protect workers from the risks posed by both future asbestos uses and existing installations of asbestos, which have already been manufactured, processed, or distributed in commerce and are now in use. Moreover, controlling the manufacture or processing of particular uses of asbestos would be an unduly burdensome way to protect a small segment of the population from exposure to asbestos from such uses.

e. *A requirement prohibiting or otherwise regulating any manner or method of commercial use of asbestos (TSCA section 6(a)(5)).* The asbestos present in buildings and in vehicles was sold as commercial products. Therefore, construction work or brake and clutch repair is commercial activity subject to this section. This proposed rule would regulate the manner and method of use of these commercial products by establishing worker protection, training, and hazard communication requirements for State and local government employers whose employees install and maintain these products.

f. *A requirement prohibiting or otherwise regulating any manner or method of disposal of asbestos by anyone who manufactures, processes, uses, or disposes of asbestos for commercial purposes (TSCA section 6(a)(6)).* The removal of asbestos is disposal for commercial purposes subject to this section. Management of asbestos in place is use for commercial purposes. This proposed rule would regulate the manner and method of disposal of these commercial products by establishing worker protection, training, and hazard communication requirements for State and local government employers whose employees remove these products.

g. *A requirement directing manufacturers or processors of asbestos to notify distributors of asbestos, and others in possession of or exposed to asbestos, of unreasonable risks of injury from asbestos, to give public notice of those risks, and to replace or repurchase asbestos (TSCA section 6(a)(7)).* EPA did not select this option for this proposed rule. As with labeling and marking requirements, notifications by themselves would not adequately reduce State and local government workers' exposure to asbestos. These workers' exposure to asbestos during construction work or brake and clutch repair and service work is dependent on the industrial hygiene practices in the workplace, which are largely in the control of the employer. This proposed rule would require employers to use appropriate engineering controls and work practices, and provide their employees with personal protection equipment to reduce their employees' exposure to asbestos. A requirement for the manufacturers to replace or repurchase asbestos-containing building products would also not protect the State and local government workers who must remove installed building products.

h. *Conclusion.* Therefore, having considered the regulatory options in TSCA section 6(a)(1) through 6(a)(7), EPA finds that the least burdensome option for protecting State and local government employees is a regulation based on TSCA sections 6(a)(3), 6(a)(5), and 6(a)(6). This determination is specific to this rulemaking, and EPA may, if warranted, take additional actions to address asbestos risks in the future. If any commenter believes that there is a feasible, less burdensome alternative to the action proposed here that would sufficiently mitigate the unreasonable risk that is the subject of this rulemaking and outweigh the Agency's strong interest in consistency and equity, the commenter should identify this option in the comments and explain how it would sufficiently mitigate the unreasonable risk in a less burdensome manner than the option proposed by the Agency.

3. *Consideration of other Federal laws.* TSCA sections 6(c) and 9 require EPA to consider whether other Federal statutes and regulations are available to address a risk that would otherwise merit regulatory action under TSCA section 6(a). EPA's consideration of other relevant Federal authorities follows.

a. *Actions under other Federal laws administered by EPA.* Under TSCA section 6(c), EPA may not promulgate a rule under TSCA section 6(a) if EPA

determines that a risk of injury to health or the environment could be eliminated or reduced to a sufficient extent by actions taken under another statute administered by EPA, unless EPA finds it is in the public interest to protect against the risk by action under TSCA. (See also TSCA section 9(b).) EPA has analyzed other statutes administered by EPA and concludes that none provide sufficient authority to eliminate or reduce the risks to State and local government workers from asbestos.

• *Clean Air Act (CAA).* On April 6, 1973, EPA used the authority of the CAA to list asbestos as a hazardous air pollutant, establish a "no visible emissions" standard for manufacturers, and ban the use of spray-applied asbestos-containing material as insulation in buildings (Ref. 21). EPA amended this regulation on October 12, 1975, to ban asbestos-containing pipe lagging (Ref. 22), and on June 19, 1978, extended the ban to all uses of sprayed-on asbestos (Ref. 23). Under the CAA, EPA also regulates operations involving the demolition or renovation of buildings containing friable asbestos and the disposal of wastes generated by such operations. However, the CAA does not apply directly to the protection of workers exposed to indoor air. Consequently any possible additional use of that statute could leave many workers inadequately protected from asbestos in indoor air.

• *Resource Conservation and Recovery Act (RCRA).* Under RCRA, 42 U.S.C. 6901–6992k, EPA could list asbestos as a hazardous waste and subject asbestos waste to general requirements designed to protect human health. However, RCRA jurisdiction is limited to those materials that the Agency has determined are wastes. Many of the activities covered by this rule do not involve handling of asbestos as waste. For example, this proposed rule would adopt by cross-reference standards for repair, maintenance and installation of asbestos-containing materials referenced at 29 CFR 1926.1101(a)(3) and (4). While RCRA authority could extend to reduction of worker exposure to the extent activities covered by this proposed rule involve waste handling, it could not cover all the risks these activities pose to workers. Thus, RCRA regulations could not reduce risks to a sufficient extent.

b. *Actions under Federal laws not administered by EPA.* Under TSCA section 9(a), EPA is required to review other Federal authorities not administered by EPA to determine whether action under those authorities may prevent or reduce a given risk. The only statute not administered by EPA that addresses risks from workplace exposure to asbestos is the OSH Act. However, the OSH Act does not apply to State and local government employees. The OSH Act does provide that a State can adopt an asbestos standard as part of its own State worker protection plan, subject to approval by the Secretary of Labor. Twenty-three States have implemented State plans. Twenty-seven States do not have OSHA-approved State plans. EPA has therefore determined that there is no statute administered by another Federal agency that can prevent or reduce the risk of asbestos exposure presented to State and local government employees not covered by OSHA-approved State plans during asbestos-related construction and brake and clutch repair work. EPA's analysis of this issue is discussed in the **Federal Register** of April 25, 1986 (Ref. 2).

c. *Consultation and coordination with other Federal agencies.* TSCA section 9(d) directs that in implementing TSCA, EPA consult and coordinate with other Federal agencies for the purpose of achieving the maximum enforcement of TSCA while imposing the least burdens of duplicative requirements on those who must comply with those requirements. As a result of the close working relationship with OSHA, EPA finds that the most effective way of eliminating duplication and overlap and ensuring consistency between the WPR and the OSHA Asbestos Standards is by cross-referencing the OSHA Asbestos Standards set out at 29 CFR 1910.1001 and 29 CFR 1926.1101.

The goals both of Congress and of the Administration would be advanced by ensuring that the WPR and the OSHA Asbestos Standards offer consistent protections and offer them at the same time to both public and private sector workers. The legislative history of TSCA reflects Congress' concern that some of the greatest risks from exposure to toxic chemicals occur in the workplace. Congress clearly intended that TSCA be available to address those risks, but, at the same time, acknowledged OSHA's expertise in establishing workplace standards. TSCA section 9(d) reflects Congress' desire that EPA and OSHA work together in identifying and protecting against risks to workers from toxic chemicals. Therefore, EPA has, since 1985, exercised its authority under TSCA section 6 to fill the gap in coverage in the OSH Act by protecting State and local government employees from the risks of asbestos, and has done so in a way that imposes the least burden of duplicative requirements by maintaining consistency where possible between the WPR and the OSHA Asbestos Standards.

While it has always been EPA policy to maintain consistency between the WPR and the OSHA Asbestos Standards, prior to this proposal EPA has implemented this policy by reprinting those requirements in full at 40 CFR part 763, subpart G. However, OSHA has frequently revised its standard (the CFR lists thirteen rules revising the Asbestos Standard since 1986). EPA must wait until the OSHA revisions are finalized before initiating conforming changes to the WPR. By the time EPA's conforming changes take effect, OSHA has issued new revisions to the Asbestos Standard. The result is that the WPR has, in fact, rarely been completely consistent with the OSHA Standards, and, as more protective and less burdensome standards have gone into effect for the private sector, protections for State and local government employees have lagged behind. If the WPR cross-referenced the OSHA Asbestos Standards instead of reprinting them in full, revisions to the OSHA standard would take effect at the same time in the WPR, and public and private sector employees would be protected equally against the risks of asbestos.

d. *Conclusion.* Therefore, having considered whether other Federal statutes and regulations are available to address the risks from exposure to asbestos among State and local government employees during use or disposal in construction work and in brake and clutch repair work, EPA concludes that rulemaking under TSCA section 6 is necessary to provide adequate protection against that risk to State and local government employees who are not otherwise covered under an OSHA-approved State plan that is as effective as the OSHA regulations, or a State asbestos worker protection plan exempted from the requirements of the WPR by EPA under 40 CFR 763.123.

4. *Analysis of regulatory alternatives.* EPA considered and analyzed four regulatory alternatives or options in developing this proposed rule:

• *Option A.* Both the PEL and the scope of the proposed rule remain unchanged (i.e., no action).

• *Option B.* The PEL is lowered from 0.2 f/cc to 0.1 f/cc, but the scope of the proposed rule remains the same.

• *Option C.* The PEL remains the same, but the scope of the proposed rule is expanded to include new construction, maintenance, renovation, custodial, and brake and clutch repair activities.

• *The proposed rule.* The PEL is lowered from 0.2 f/cc to 0.1 f/cc, and the

scope of the proposed rule is expanded to include new construction, maintenance, renovation, custodial, and brake and clutch repair activities.

SUMMARY OF REGULATORY OPTIONS

Option	PEL	Scope
A (no action)	0.2 f/cc	Abatement activities only
B	0.1 f/cc	Abatement activities only
C	0.2 f/cc	New construction, abatement, maintenance, renovation, custodial, and brake and clutch repair activities
Proposed rule	0.1 f/cc	New construction, abatement, maintenance, renovation, custodial, and brake and clutch repair activities

See Table 5–1 of the Economic Analysis (Ref. 18). For each of the four options, the State-level coverage would remain the same: The rule (or option) would continue to cover State and local government employees in States without OSHA-approved State plans.

a. *Quantified costs and benefits.* EPA estimated the costs and benefits for Options A, B, C, and the proposed rule. In estimating the benefits for each option, EPA estimated the number of avoided cancer cases among exposed workers, building occupants, and school children, associated with 65 years of reduced asbestos exposure. EPA also placed a monetary value on the avoided risk associated with the 65 years of reduced exposure and then calculated the present monetary value of the avoided cancer risk. EPA estimated compliance costs by calculating the first-year compliance cost of each option. This estimate was extrapolated over 65 years of exposure reduction, assuming building attrition would cause the costs of abatement, renovation, maintenance, and custodial activities to decline over time, while administrative, new construction, and brake and clutch repair activity costs would not be affected by building attrition.

• *Option A—PEL unchanged, scope unchanged (baseline).* Under Option A, the current version of the WPR (40 CFR part 763, subpart G) would remain in effect. The PEL would remain unchanged at 0.2 f/cc and the proposed rule would apply only to abatement activities. This option would result in no incremental costs or benefits.

• *Option B—reduced PEL, scope unchanged.* Under Option B, the PEL would be reduced from 0.2 f/cc to 0.1 f./cc, but the scope of the proposed rule would remain unchanged. Thus, compared to the current rule, Option B would reduce exposure to asbestos among abatement workers and incidentally exposed populations in affected buildings, but would not apply to additional activities. EPA estimates that, over 65 years, Option B would reduce asbestos exposure to a total of 201,275 people, of whom 65 would be exposed workers and the remainder would be building occupants and school children. EPA estimates that this exposure reduction would, over 65 years, prevent 0.36 cases of asbestos-related cancer among this total population, which translates into an estimated present value of $1.07 million. Excluding building occupants and school children, Option B results in 0.17 avoided cancer cases associated with 65 years of exposure reduction, which has an estimated present value of $0.59 million. The estimated 65-year present value of compliance costs for Option B is $24.00 million.

• *Option C—PEL unchanged, expanded scope.* Option C would leave the PEL unchanged from the current WPR at 0.2 f/cc, but would expand the scope of the WPR to include new construction, maintenance, renovation, custodial, and brake and clutch repair activities, in addition to the abatement activities covered by the current WPR. Compared to the current rule, Option C would provide an expanded scope of coverage, but would not increase the level of protection (i.e., the PEL would remain 0.2 f/cc). EPA estimates that, over 65 years, Option C would reduce asbestos exposure for a total population of 71.9 million individuals, 102,700 of whom would be directly exposed workers and the remainder of whom would be incidentally exposed building occupants and school children. EPA estimates that 65 years of exposure reduction would lead to 26.85 avoided cases of asbestos-related cancer among this total population, with an estimated present value of $83.46 million. Among exposed workers, the reduction in cancer incidence is estimated to be 17.2 cases associated with 65 years of exposure reduction, which has an estimated present value of $59.48 million. The estimated 65-year present value of total compliance costs for Option C is $939.53 million.

• *The proposed rule—reduced PEL, expanded scope.* The proposed rule would lower the PEL from 0.2 f/cc to 0.1 f/cc and expand the scope of the asbestos WPR to include new construction, maintenance, renovation, custodial, and brake and clutch repair activities in addition to the abatement activities covered by the current WPR. The proposed rule would provide protection to a total population of 71.9 million over 65 years of exposure reduction, 102,765 of whom are exposed workers. Furthermore, the proposed rule would reduce the number of asbestos-related cancers associated with 65 years of exposure by 137.23 cases, valued at an estimated present value of $405.45 million. Excluding building occupants and school children (i.e., focusing on just exposed workers), the proposed rule results in 67.63 avoided cancer cases associated with 65 years of exposure reduction, with an estimated present value of $234.32 million. The estimated 65-year present value of compliance costs is $1,124.42 million.

b. *Comparison of quantified costs and benefits.* For each option and the proposed rule, EPA estimated the costs, benefits, and net benefits for all populations (exposed workers, building occupants, and school children) and for exposed workers only. The cost, benefit, and net benefit estimates for exposed workers are singled out because the rule is directed at reducing the exposure of this population and because building occupants and school children are only incidentally exposed. EPA compared the four options using six quantitative criteria.

• *Protectiveness.* The proposed rule and Option B would set the PEL at 0.1 f/cc, while Options A and C would set the PEL at 0.2 f/cc. Thus, the proposed rule and Option B are both more protective than Options A and C.

• *Scope.* The proposed rule and Option C would both provide

incremental protection to significantly larger populations than Options A and B. Both the proposed rule and Option C would provide incremental protection to a population of 71.9 million, of which slightly less than 103,000 are exposed workers. Option B would provide additional protection to a population of only 201,275 (0.28% of the population protected by the proposed rule), of which 65 are exposed workers (0.06% of the exposed workers protected by the proposed rule). Option A, which would not change the current asbestos WPR, would not provide additional protection to any populations.

• *Estimated benefits.* The proposed rule would result in significantly more avoided cancer cases and, consequently, a significantly larger level of monetized benefits when compared with the other regulatory options. The proposed rule would reduce the incidence of asbestos-related cancers associated with 65 years of exposure reduction by 137 cases, which would result in a monetary benefit of $405 million. Among exposed workers, the proposed rule would reduce the incidence of asbestos-related cancer associated with 65 years of exposure reduction by 68 cases, valued at $234 million. Option C would reduce the asbestos-related cancer incidence by only 27 cases (19.6% of the proposed rule's total), valued at $83 million (20.6% of the proposed rule's total). Among exposed workers, Option C would reduce the incidence of asbestos-related cancer by 17 cases (25.4% of the proposed rule's total), valued at $59 million (25.4% of the proposed rule's total). Option B would result in approximately $1.0 million in monetized benefits while Option A would result in no incremental avoided cases and thus no incremental monetized benefits.

• *Estimated compliance costs.* Option A is the least costly of the four options, resulting in no ($0) incremental compliance costs because no incremental action would be required. The proposed rule is the most costly option, resulting in a 65-year present value compliance cost of $1.1 billion. For Option B, the 65-year present value of compliance costs is $24.00 million (2.1% of the proposed rule's total), while for Option C, the 65-year present value of compliance costs is $939.53 million (83.6% of the proposed rule's total).

• *Efficiency.* Option A would result in the largest monetized net benefit (monetized benefits minus monetized costs), which is $0. Each of the other options would result in negative net benefits, or a net cost. The proposed rule would result in the second largest net cost, with costs exceeding estimated benefits by $719 million. The estimated costs for Option C exceed its estimated benefits by $856 million (19.1% larger than the net cost for the proposed rule), and the estimated costs for Option B exceed its estimated benefits by $22.93 million (3.2% of the proposed rule's total).

• *Ratio of estimated compliance costs to estimated benefits.* . The following table presents the cost-benefit ratio for each option. The cost-benefit ratio, measured as the ratio of compliance costs to monetized benefits, measures the cost that would be incurred for each dollar of benefits. The proposed rule has the lowest (i.e., most preferable) cost benefit ratio for both all exposed populations (2.77) and exposed workers alone (4.80). Option C has a cost-benefit ratio of 11.26 for all exposed populations (4.07 times the cost-benefit ratio for the proposed rule) and 15.80 for exposed workers alone (3.29 times the cost-benefit ratio for the proposed rule). Option B has a cost-benefit ratio of 22.43 for all exposed populations (8.10 times the cost-benefit ratio for the proposed rule) and 40.68 for exposed workers alone (8.48 times the cost-benefit ratio for the proposed rule). Cost-benefit ratios could not be calculated for Option A because costs and monetized benefits are both $0.

SUMMARY OF ESTIMATED COSTS, BENEFITS, AND NET BENEFITS FOR ALTERNATIVE REGULATORY OPTIONS

Option/section	PEL (f/cc)	Incremental population protected	Estimated benefits		Present value of compliance costs ($millions)	Estimated net benefit ($millions)	Cost-benefit ratio
			Avoided cancer cases	Present monetary value ($millions)			
Proposed Rule—PEL Reduced, expanded scope:							
All populations	0.1	71,887,159	137.23	$405.45	$1,124.42	($718.97)	2.77
Exposed workers	0.1	102,765	67.63	$234.32	$1,124.42	($890.09)	4.80
Option A (baseline)—PEL unchanged, scope unchanged:							
All populations	0.2	0	0.00	$0.00	$0.00	$0.00	.....
Exposed workers	0.2	0	0.00	$0.00	$0.00	$0.00	.....
Option B—PEL Reduced, scope unchanged:							
All populations	0.1	201,275	0.36	$1.07	$24.00	($22.93)	22.43
Exposed workers	0.1	65	0.17	$0.59	$24.00	($23.41)	40.68
Option C—PEL unchanged, expanded scope:							
All populations	0.2	71,886,942	26.85	$83.46	$939.53	($856.07)	11.26
Exposed workers	0.2	102,548	17.20	$59.48	$939.53	($880.05)	15.80

See Table 5–8 of the Economic Analysis (Ref. 18).

Based on these comparisons, EPA has selected the proposed rule as the preferred option for the following reasons:

• The proposed rule would be the most protective (i.e., would result in the lowest PEL).

• The proposed rule would provide incremental protection to the largest population.

• The proposed rule would result in the largest benefits.

• The proposed rule would offer the lowest ratio of costs to benefits.

The proposed rule, however, would also be the most costly and would result in the second largest net cost among the four options. Nevertheless, EPA has determined that the increased cost and net cost are justified by the additional benefits and protection offered by the proposed rule. In moving from Option C to the proposed rule, the compliance costs increase by a factor of 1.2 ($1.1 billion ÷ $939.53 million), but the number of avoided cancer cases increases by a factor of 5.1 (137.23 cases ÷ 26.85 cases). Likewise, in moving from Option B to the proposed rule, the compliance costs increase by a factor of 46.85 ($1.1 billion ÷ $24.00 million), but the number of avoided cancer cases increases by a factor of 381 (137.23 cases ÷ 0.36 cases). EPA does not consider Option A to be a viable option because it does not result in any additional protection.

c. *Comparison of non-quantified benefits.* EPA has identified a number of benefits that could not be quantified (see Unit II.B.1.a.). Included among these benefits are:

• Reductions in the incidence of asbestosis.

• Reductions in the incidence of pleural plaques and pleural effusion.

• Reductions in productivity losses associated with non-cancerous health effects.

• Reductions in medical costs associated with non-cancerous health effects.

• Improved quality of life.

• Decreased risk for individuals who may be incidentally exposed to asbestos, including building visitors and members of workers' families.

As discussed in Unit II.B.1.a., EPA was unable to provide quantitative estimates for the benefit categories listed in this unit. It is possible, however, to compare the four options in terms of their protectiveness and scope, and draw some conclusions with regard to the option that would provide the largest level of benefits for each benefit category. Each of the benefits listed in this unit are positively influenced by the level of protection (i.e., a lower PEL implies more benefits) and by the incremental population covered (i.e., a larger incremental population implies more benefits). Thus, options can be compared and ranked based on these two criteria.

The following table provides EPA's ranking of the proposed rule and the three alternative options in terms of the level of the benefit that each would provide. In the table, a ranking of 1 indicates that EPA expects that option to provide the largest level of benefits among the four options, while a ranking of 4 indicates that EPA expects that option to provide the least benefits among the four options.

These rankings reveal three distinct trends in comparing the four options. First, the proposed rule is always expected to produce the largest level of benefits. The proposed rule is at least as protective (i.e., in terms of value of the PEL) as each of the other options and provides protection to a larger incremental population than the other three options. Based on these two considerations, the proposed rule should provide a larger level of each non-quantified benefit, compared to the other options. This is consistent with ranking of the quantified benefits, where the proposed rule would result in the largest reduction in asbestos-related cancer. Second, Option A would provide the lowest level of benefits in each non-quantified benefit category. This follows from the fact that Option A involves no changes to the current WPR. Thus, since the proposed rule and both Options B and C provide either additional coverage or a reduced PEL, all three options must provide a larger level of benefit compared to Option A. Finally, it is not possible to determine the relative ranks of Options B and C. On the one hand, Option B offers more protection (in terms of a lower PEL) but on the other hand Option C provides incremental protection to a larger population.

RANKING OF PROPOSED RULE AND OPTIONS A, B, AND C FOR THE NON-QUANTIFIED BENEFITS OF REDUCING ASBESTOS EXPOSURE

Non-quantified benefit	Proposed rule	Option A	Option B	Option C
Reductions in the incidence of asbestosis	1	4	2	2
Reductions in the incidence of pleural plaques and pleural effusion	1	4	2	2
Reductions in productivity losses associated with non-cancerous health effects	1	4	2	2
Reductions in medical costs associated with non-cancerous health effects	1	4	2	2
Improved quality of life	1	4	2	2
Decreased risk for individuals who may be incidentally exposed to asbestos, including workers' families	1	4	2	2

Note: These are subjective rankings based on EPA's best professional judgement only.

See Table 5–9 of the economic Analysis (Ref. 18).

d. *Qualitative measures of costs and benefits.* This proposed rule would establish consistency between the protections offered under the WPR to State and local government employees working with asbestos-containing materials and under the OSHA Construction and General Industry Standards to private sector employees working with those materials. Fairness and equity dictate equivalent protection for all persons who work with asbestos-containing materials, whether those persons are employed by the private sector or by a specific State or local government. Currently, all private sector workers, as well as State and local government employees in the 23 States that have OSHA-approved State plans, are protected by the more stringent OSHA regulations. EPA is proposing to achieve equity for the remaining State and local government workers by amending the WPR to adopt recent amendments to the OSHA Asbestos Standards that provide additional worker protections.

The OSHA Asbestos Standards, as amended in 1994, establish a PEL of 0.1 f/cc for all exposed workers. EPA's current asbestos WPR covers only abatement workers and sets a PEL of 0.2 f/cc. Thus, the current EPA rule is less protective (i.e., is based on a higher PEL) and covers fewer exposed workers (i.e., only abatement workers) than the OSHA standards. The proposed rule would eliminate these inequities by providing identical protection and coverage to State and local government employees performing asbestos-related work in States without OSHA-approved State plans.

Options A, B, or C would not provide these State and local government employees with the same protection and

coverage as the OSHA Standards provide to private sector workers. Option A would provide less protection (i.e., a higher PEL) and would cover workers in fewer activities compared to those covered by OSHA. Option B would provide the same level of protection (i.e., the same PEL), but would cover workers in fewer activities compared to those covered by OSHA. Option C would cover the same number of activities, but would provide less protection (i.e., a higher PEL).

Therefore, the proposed rule is preferable to the other three options considered because it would provide equity in terms of protectiveness and coverage between workers in the private sector and State and local government employees.

e. *Summary.* Based on its comparison of the four options' estimated quantified costs and benefits, estimated non-quantified benefits, and qualitative measures of costs and benefits, EPA has determined that the proposed rule provides the greatest net benefits compared to the other three options considered, especially in light of the equity considerations discussed in Unit II.B.4.

- *Estimated quantified costs and benefits.* The proposed rule is the most protective (i.e., lowest PEL), provides incremental protection to the largest exposed population, results in the largest benefits, and offers the lowest ratio of costs to benefits. The proposed rule, however, is the most costly and results in the second largest net cost among the four options (though all options with the exception of Option A result in a negative net benefit). Nevertheless, EPA finds that the increased cost is justified by the additional benefits and protection offered by the proposed rule.
- *Estimated non-quantified benefits.* EPA expects that the proposed rule would result in a larger level of benefits for each unquantifiable category of benefits in comparison with each of the other three options. EPA bases this conclusion on the fact that the proposed rule is at least as protective (i.e., in terms of value of the PEL) as each of the other options and provides protection to a larger incremental population than the other three options.
- *Qualitative measures of costs and benefits.* The proposed rule is the only option that would provide coverage comparable to the OSHA Asbestos Standards. The proposed rule would provide public employees in States without approved OSHA State plans with the same level of protection (i.e., the PEL) and would cover the same set of activities as is covered in the OSHA standards. The other options would provide less protection (Options A and C) or less scope of coverage (Options A and B) compared to OSHA's Asbestos Standards.

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IV. Regulatory Assessment Requirements

A. Regulatory Planning and Review

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB), because this action is not likely to result in a rule that meets any of the criteria for a "significant regulatory action" provided in section 3(f) of the Executive Order.

EPA has prepared an analysis of the potential impact of this action, which is estimated to cost $63.34 million in the first year of the rule and then decline annually thereafter. The analysis is contained in a document entitled "Economic Analysis of the Asbestos Worker Protection Rule" (Ref. 18). This document is available as a part of the public version of the official record for this action (instructions for accessing this document are contained in Unit I.B.), and is briefly summarized in Unit II.B.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, EPA hereby certifies that this proposed action, if promulgated as proposed, will not have a significant economic impact on a substantial number of small entities. The factual basis for EPA's determination is presented in the small entity impact analysis prepared as part of the Economic Analysis for this proposed rule (Ref. 18), and is briefly summarized here.

For purposes of analyzing potential impact on small entities, EPA used the definition for small entities in RFA section 601. Under RFA section 601, "small entity" is defined as:

1. A small business that meets Small Business Administration size standards codified at 13 CFR 121.201.

2. A small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000.

3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Of the three categories of small entities, only small governmental jurisdictions are affected by this proposed rule. As such, EPA's analysis of potential small entity impacts assesses the potential impacts on small governmental jurisdictions.

Based on the definition of "small government jurisdiction," no State-level government covered by the asbestos WPR can be considered small. Therefore, the small government entities potentially impacted by the proposed asbestos WPR are local governments (e.g., county, municipal, or towns) and school districts.

The proposed amendments to the asbestos WPR may impact local governments in the 27 States without approved OSHA State plans by imposing incremental compliance costs for asbestos-related maintenance, renovation, and brake and clutch repair. There are 24,495 small government jurisdictions that are potentially impacted by the asbestos WPR. However, the estimated amounts of the impact are all extremely low. In each of the States, the impact for all small local governments is estimated to be less than 0.1% of revenues available for compliance. EPA estimated that the largest impact would occur for small local governments in Arkansas and Delaware, where the upper bound estimate of compliance costs as a percent of available revenues is estimated to be 0.051%. For small local governments as a whole, compliance costs associated with the asbestos WPR are estimated to represent 0.024% of available revenues. Therefore, the Agency has concluded that the asbestos WPR will not have a significant impact on small government entities.

Small school districts are defined as school districts serving a resident population of less than 50,000. In the 27 covered States, there are 17,846 small school districts that are potentially impacted by the asbestos WPR. The estimated impact of compliance costs on all small school districts is estimated to be 0.01% of available revenues. The largest impact is estimated for Mississippi where compliance costs as a percent of available revenues are estimated to equal 0.013%. The Agency has therefore concluded that the proposed asbestos WPR will not have a significant effect on the revenues of small school districts.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA is interested in comments and suggestions for further reducing the potential impact for small entities. In particular, EPA is interested in how any further reductions might be achieved while ensuring that the WPR remains consistent with the OSHA Asbestos Construction and General Industry Standards. EPA requests comment on opportunities for burden reduction and other issues related to impacts on small entities.

Additional details regarding EPA's basis for this certification are presented in the Economic Analysis (Ref. 18), which is included in the public version of the official record for this action. This information will also be provided to the SBA Chief Counsel for Advocacy upon request. Any comments regarding the impacts that this action may impose on small entities should be submitted to the Agency in the manner specified in Unit I.C.

C. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, 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, after appearing in the preamble to the final rule, are listed in 40 CFR part 9, and included on the related collection instrument.

The information collection requirements contained in this proposed rule have been submitted to OMB for

review and approval pursuant to the PRA and OMB implementing regulations at 5 CFR 1320 *et seq*. The burden and costs related to the information collection requirements contained in this proposed rule are described in an Information Collection Request (ICR). This ICR proposes to amend the existing ICR for the current WPR which is approved through September 30, 2001, under OMB No. 2070-0072 (EPA ICR No. 1246.06). A copy of this ICR, which is identified as EPA ICR No. 1246.07, has been included in the public version of the official record described in Unit 1.B.2., and is available electronically as described in Unit I.B.1., at http://www.epa.gov/opperid1/icr.htm, or by e-mailing a request to farmer.sandy@epa.gov. You may also request a copy by mail from Sandy Farmer, Collection Strategies Division, Environmental Protection Agency (2822), Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460, or by calling (202) 260–2740.

As described in Unit II.A.2., this amendment would require employers to collect, disseminate, and maintain information relating to employee asbestos exposures, respiratory protection, medical surveillance, and training. The records maintained as a result of this information collection will provide EPA with the data necessary for effective enforcement of the WPR, as authorized under TSCA sections 6 and 8.

The public reporting burden for this collection of information is estimated to average, on an annual basis, 21.96 hours per respondent, including the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. EPA estimates that 25,312 respondents would incur these burdens, for a total annual respondent burden of 555,870 hours.

As defined by the PRA and 5 CFR 1230.3(b), "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.

Comments are requested on EPA'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. Send comments on the ICR to EPA as part of your overall comments on this proposed rule in the manner specified in Unit I.C. Send a copy of your comments on the ICR to OMB as specified by 5 CFR 1320.11(a), by mailing them to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after April 27, 2000, a comment to OMB is best assured of having its full effect if OMB receives it by May 30, 2000. In developing the final action, EPA will consider any OMB or public comments received regarding the information collection requirements contained in this proposal.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, (UMRA), Public Law 104–4, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. As discussed in the Economic Analysis accompanying this proposed rule, the rule would result in estimated expenditures of at most $63.34 million in any 1 year. In addition, EPA has determined that this proposed rule would not significantly or uniquely affect small governments. For small local governments as a whole, compliance costs associated with the WPR represent 0.024% of revenues assumed to be available for compliance. Moreover, the impact of compliance costs on small school districts as a whole would be 0.01% of available revenues. Thus, this proposed rule is not subject to the requirements of UMRA sections 202, 203, 204, and 205.

E. Federalism

Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local government officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local government officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local government officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (i.e., the rules 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). Those requirements include providing State and local government officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local government officials regarding the conflict between State law and federally protected interests within the agency's area of regulatory responsibility.

This proposed rule does not have federalism implications. This proposal would amend the existing WPR to cover additional asbestos-related activities and to bring the WPR into conformance with recent changes to the OSHA Asbestos Standards. The proposed changes are not expected to result in a significant intergovernmental mandate under the UMRA, and thus, EPA concludes that the rule would not impose substantial direct compliance costs. Nor would the rule substantially affect the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Those relationships have already been

established under the existing WPR, and these amendments would not alter them. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

This proposed rule would preempt State and local law in accordance with TSCA section 18(a)(2)(B). By publishing and inviting comment on this proposed rule, EPA hereby is providing State and local government officials notice and an opportunity for appropriate participation. Thus, EPA has complied with the requirements of section 4 of the Executive Order.

F. Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments.

This rule does not significantly or uniquely affect the communities of Indian tribal governments, nor does it impose substantial direct compliance costs on such communities. Since the OSHA Asbestos Standards cover tribal governments and tribal employees, the WPR does not apply to these groups (Ref. 24.). Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

G. Environmental Justice

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 has considered environmental justice-related issues with regard to the potential impacts of this action on the environmental and health conditions in minority and low-income populations. As discussed above in Unit II.B.1.e., many of the employees who would benefit from the protections of this proposed rule are members of minority and low- income populations. By providing protection for currently unprotected State and local government building maintenance and custodial employees and their families, this rule would address the lesser levels of protection in the workplace experienced by minority and low-income populations among State and local government employees. In other words, the proposed rule would not impose disproportionately high and adverse human health or environmental effects on minority or low-income populations, but would actually decrease such effects.

Public participation is an important environmental justice concern. EPA encourages State and local government employees, and organizations representing them, to participate in this rulemaking process by submitting comments (see Unit I.C.). In addition, interested persons or organizations may request that EPA hold an informal public hearing on this proposed rule, at which they may present oral comments (see Unit I.C.3.). If EPA decides to hold an informal hearing, it will publish a notice in the **Federal Register** announcing the time, place, and date of the hearing, explaining how interested persons or organizations can request to participate in the hearing, and describing the hearing procedures.

EPA has considered the comments submitted on its November 1, 1994, proposal in developing this modified proposal. Labor organizations representing State and local government employees were among the commenters. EPA also met with those organizations prior to developing this modified proposal.

H. Children's Health

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), does not apply to this proposed rule because it is not "economically significant" as defined under Executive Order 12866. However, it is EPA's policy to consistently and explicitly consider risks to infants and children in all risk assessments generated during its decisionmaking process, including the setting of standards to protect public health and the environment.

EPA has determined that children are physiologically more vulnerable to asbestos exposures than adults, and that this rule would prevent approximately 65.65 cancer cases among persons with childhood exposures to asbestos from school buildings. EPA also expects that this proposed rule would result in other benefits associated with lower asbestos exposures, such as a reduced incidence of non-cancerous health effects such as asbestosis, pleural plaques, and pleural effusion. EPA expects the proposed rule to substantially benefit children by reducing the incidental exposures children face while attending affected schools. By reducing ambient asbestos concentrations in school buildings, this rule would help protect children from the disproportionate asbestos exposure risk they face. Additional details are contained in Unit II.B.1.f. and in the Economic Analysis (Ref. 18).

I. National Technology Transfer and Advancement Act

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

This rulemaking involves several technical standards and EPA has searched for potentially applicable voluntary standards. The results of this search are described in this unit. However, EPA's primary goal in proposing these amendments to the WPR is to achieve consistency with the 1994 OSHA Standards. As noted elsewhere in this preamble, EPA has determined that having different standards for public and private sector workers is inefficient and unfair, and that EPA should generally defer to OSHA's expertise in the matter of worker protection. Therefore, EPA finds that any voluntary consensus standard which is inconsistent with the applicable OSHA Standards is impractical under NTTAA section 12(d)(3).

One of the technical standards in the WPR is the method for analyzing personal air monitoring samples. Under the 1987 WPR, personal air monitoring samples must be analyzed using the method prescribed in Appendix A to 40 CFR 763.121 (phase-contrast microscopy) or an equivalent method. The 1994 OSHA Standards, which this proposal would adopt by cross-reference, contain the identical requirement and analytical method. EPA has performed a search to identify any potentially applicable voluntary consensus standards, but is unable to identify any alternatives to the current method of analysis. In addition, as discussed in Unit II.A.2.d., EPA's 1994 proposal would have allowed an alternative PEL based on personal air monitoring samples analyzed through

transmission electron microscopy. Commenters called into question the scientific basis for setting the alternative PEL and, as a result, EPA is withdrawing that portion of its 1994 proposal.

These amendments to the WPR adopt specific engineering controls and work practices, which could be considered a technical standard for conducting asbestos construction work and brake and clutch repair operations. EPA has identified several voluntary consensus documents that address aspects of the proper performance of asbestos abatement actions and asbestos operations and maintenance activities. The National Institute of Building Sciences (NIBS) has developed two documents to assist building owners and employers who are performing asbestos abatement and operations and maintenance projects. "Asbestos Abatement and Management in Buildings, Model Guide Specifications" (Ref. 25), is designed to be used as a guide to developing appropriate contract specifications. In addition to particular provisions for minimizing worker exposure to asbestos, the comprehensive "Model Guide" includes specifications for all other aspects of worker safety and fire prevention, as well as general contract language establishing the rights and responsibilities of the contractor and building owner.

NIBS has also developed guidance materials for building operations and maintenance projects that involve asbestos-containing materials. The "Guidance Manual, Asbestos Operations and Maintenance Work Practices" (Ref. 26), is designed to help the building owner or employer properly manage in-place asbestos-containing materials. The "Manual" contains extensive recommendations, including sample checklists and forms, on the administration of a building operations and maintenance program. The "Manual"also provides explicit guidance on how to protect workers and building occupants from asbestos exposure during normal building maintenance activities such as pipe repair, wiring installation, and floor cleaning and polishing.

EPA highly recommends the use of these NIBS documents for building owners and employers. Both of these documents were revised in 1996 to reflect the 1994 amendments to the OSHA Standards, and EPA believes that the use of these documents would facilitate compliance with the asbestos abatement and building operations and maintenance requirements in the proposed WPR. However, since each of these documents are extremely detailed and encompass many circumstances beyond the scope of this rulemaking, EPA does not believe that it is practical or appropriate to incorporate these consensus documents into the WPR. In addition, the Preface to the "Guidance Manual" explicitly states that this particular document is not intended to be used for regulatory purposes.

The American Society for Testing and Materials (ASTM) has developed two potentially applicable documents: "Standard Practice for Visual Inspection of Asbestos Abatement Projects" (Ref. 27), and "Standard Practice for Encapsulants for Spray-or-Trowel-Applied Friable Asbestos-Containing Building Materials" (Ref. 28). The ASTM documents also represent state-of-the-art knowledge regarding the performance of these particular aspects of asbestos abatement and operations and maintenance activities, and EPA highly recommends their use. However, as with the NIBS documents, EPA is not proposing to incorporate them into the WPR because, in many instances, the specifications are more comprehensive and rigorous than the requirements of the current OSHA standard. As a result, EPA has determined that adoption of the ASTM and NIBS documents would be impractical under NTTAA section 12(d)(3).

Finally, EPA is proposing to adopt by cross-reference the appropriate provisions of the OSHA Respiratory Protection Standard at 29 CFR 1910.134. As discussed in Unit II.A.2.j., the OSHA Respiratory Protection Standard establishes comprehensive requirements for the selection, use, and maintenance of respirators. When this Standard was amended in 1998, OSHA incorporated nearly all of the provisions of the ANSI Z88.2-1992 respiratory protection standard, a voluntary consensus standard (Ref. 29). OSHA's limited number of departures from the ANSI standard involved instances where OSHA determined on the record that the ANSI standard was either insufficiently protective or unduly burdensome. The preamble to the OSHA Respiratory Protection Standard (Ref. 14, pp.1152-1300) discusses in detail the differences between the OSHA Standard and the ANSI standard. EPA agrees with OSHA's analysis on the incorporation of the ANSI standard. Therefore, by proposing to adopt, by cross-reference, the revised OSHA Respiratory Protection Standard, EPA is incorporating a voluntary consensus standard to the maximum practical extent under the NTTAA.

EPA welcomes comments on this aspect of the proposed rulemaking. The public is specifically invited to identify potentially applicable voluntary consensus standards and to explain why the benefits of using such standards in this regulation would outweigh the problems associated with promulgating a worker protection regulation that differs from the OSHA Standards.

J. Constitutionally Protected Property Rights

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this 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.

K. Civil Justice Reform

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

List of Subjects in 40 CFR Part 763

Environmental protection, Asbestos, Schools, Hazardous substances, Reporting and recordkeeping requirements, Worker protection.

Dated: April 20, 2000.

Carol M. Browner,

Administrator.

Therefore, it is proposed that 40 CFR chapter I, subchapter R, be amended as follows:

PART 763—[AMENDED]

1. The authority citation for part 763 would continue to read as follows:

Authority: 15 U.S.C. 2605, 2607(c), 2643, and 2646.

2. By revising § 763.91(b) to read as follows:

§ 763.91 Operations and maintenance.

* * * * *

(b) *Worker protection.* See subpart G of this part.

* * * * *

Appendix B to Subpart E [Removed and reserved]

3. By removing and reserving Appendix B to subpart E.

4. By revising subpart G to read as follows:

Subpart G—Asbestos Worker Protection

Sec.

Subpart G—Asbestos Worker Protection

§ 763.120 What is the purpose of this subpart?

This subpart protects certain State and local government employees who are not protected by the Asbestos Standards of the Occupational Safety and Health Administration (OSHA). This subpart applies the OSHA Asbestos Standards in 29 CFR 1910.1001 and 29 CFR 1926.1101 to these employees.

§ 763.121 Does this subpart apply to me?

If you are a State or local government employer and you are not subject to a State asbestos standard that OSHA has approved under section 18 of the Occupational Safety and Health Act or a State asbestos plan that EPA has exempted from the requirements of this subpart under § 763.123, you must follow the requirements of this subpart to protect your employees from occupational exposure to asbestos.

§ 763.122 What does this subpart require me to do?

If you are a State or local government employer whose employees perform:

(a) Construction activities identified in 29 CFR 1926.1101(a), you must:

(1) Comply with the OSHA standards in 29 CFR 1926.1101.

(2) Submit notifications required for alternative control methods to the Director, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

(b) Custodial activities not associated with the construction activities identified in 29 CFR 1926.1101(a), you must comply with the OSHA standards in 29 CFR 1910.1001.

(c) Repair, cleaning, or replacement of asbestos-containing clutch plates and brake pads, shoes, and linings, or removal of asbestos-containing residue from brake drums or clutch housings, you must comply with the OSHA standards in 29 CFR 1910.1001.

§ 763.123 May a State implement its own asbestos worker protection plan?

This section describes the process under which a State may be exempted from the requirements of this subpart.

(a) *States seeking an exemption.* If your State wishes to implement its own asbestos worker protection plan, rather than complying with the requirements of this subpart, your State must apply for and receive an exemption from EPA.

(1) *What must my State do to apply for an exemption?* To apply for an exemption from the requirements of this subpart, your State must send to the Director of EPA's Office of Pollution Prevention and Toxics (OPPT) a copy of its asbestos worker protection regulations and a detailed explanation of how your State's asbestos worker protection plan meets the requirements of TSCA section 18 (15 U.S.C. 2617).

(2) *What action will EPA take on my State's application for an exemption?* EPA will review your State's application and make a preliminary determination whether your State's asbestos worker protection plan meets the requirements of TSCA section 18.

(i) If EPA's preliminary determination is that your State's plan does meet the requirements of TSCA section 18, EPA will initiate a rulemaking, including an opportunity for public comment, to exempt your State from the requirements of this subpart. After considering any comments, EPA will issue a final rule granting or denying the exemption.

(ii) If EPA's preliminary determination is that the State plan does not meet the requirements of TSCA section 18, EPA will notify your State in writing and will give your State a reasonable opportunity to respond to that determination.

(iii) If EPA does not grant your State an exemption, then the State and local government employers in your State are subject to the requirements of this subpart.

(b) *States that have been granted an exemption.* If EPA has exempted your State from the requirements of this subpart, your State must update its asbestos worker protection regulations as necessary to implement changes to meet the requirements of this subpart, and must apply to EPA for an amendment to its exemption.

(1) *What must my State do to apply for an amendment?* To apply for an amendment to its exemption, your State must send to the Director of OPPT a copy of its updated asbestos worker protection regulations and a detailed explanation of how your State's updated asbestos worker protection plan meets the requirements of TSCA section 18. Your State must submit its application for an amendment within 6 months of the effective date of any changes to the requirements of this subpart, or within a reasonable time agreed upon by your State and OPPT.

(2) *What action will EPA take on my State's application for an amendment?* EPA will review your State's application for an amendment and make a preliminary determination whether your State's updated asbestos worker protection plan meets the requirements of TSCA section 18.

(i) If EPA determines that the updated State plan does meet the requirements of TSCA section 18, EPA will issue your State an amended exemption.

(ii) If EPA determines that the updated State plan does not meet the requirements of TSCA section 18, EPA will notify your State in writing and will give your State a reasonable opportunity to respond to that determination.

(iii) If EPA does not grant your State an amended exemption, or if your State does not submit a timely request for amended exemption, then the State and local government employers in your State are subject to the requirements of this subpart.

[FR Doc. 00–10517 Filed 4–26–00; 8:45 am]
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Federal Register

Thursday,
April 27, 2000

Part VII

Environmental Protection Agency

Department of Justice

40 CFR Chapter IV

Accidental Release Prevention Requirements; Risk Management Programs Under the Clean Air Section 112(r)(7); Distribution of Off-Site Consequence Analysis Information; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter IV

[FRL–6584–7]

RIN 2050–AE80

DEPARTMENT OF JUSTICE

40 CFR Chapter IV

[AG Order No. 2299–2000]

RIN 1105–AA70

Accidental Release Prevention Requirements; Risk Management Programs Under the Clean Air Act Section 112(r)(7); Distribution of Off-Site Consequence Analysis Information

AGENCIES: Environmental Protection Agency and Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) and the Department of Justice (DOJ) are proposing a rule that would provide for access to information concerning the potential off-site consequences of hypothetical accidental chemical releases from industrial facilities. Under section 112(r) of the Clean Air Act, facilities handling large amounts of extremely hazardous chemicals are required to include this information in risk management plans which are submitted to EPA. As required by the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act, the proposed rule would provide for access by the members of the public and government officials to this information in ways that are designed to minimize the likelihood of accidental releases, the risk to national security associated with posting the information on the Internet, and the likelihood of harm to public health and welfare.

DATES: Comments: Comments on the proposed rule must be received by June 8, 2000. Hearings: A public hearing to discuss this proposed rule will be held on May 9, 2000, at 9 a.m.

ADDRESSES: Docket and Comments. Comments should be mailed to: Environmental Protection Agency, Office of Air and Radiation, Docket and Information Center, Ariel Rios Building, M6102, 1200 Pennsylvania Avenue, NW, Washington DC, 20460, Attn: Docket No. A–2000–20. By Federal Express or Courier: Waterside Mall, Room M1500, 401 M Street, S.W., Washington DC, 20460, Attn: Docket No. A–2000–20. Comments may be submitted on a disk in Wordperfect or Word formats. Please submit comments and any written testimony prepared for the public hearing in triplicate. Supporting information used to develop these proposed regulations is available for public inspection and copying from 8:00 a.m. to 5:30 p.m., Monday through Friday (except government holidays), at EPA's Air Docket at Waterside Mall, Room 1500, 401 M Street, S.W., Washington, DC 20460. A reasonable fee may be charged for copying. The assessments upon which this proposed rule is based also are available on the Internet at *www.usdoj.gov* and *www.epa.gov/ceppo*.

Hearings: The public hearing will be held at the EPA Auditorium at Waterside Mall, 401 M Street, S.W., Washington, DC 20460. People who want to testify at this hearing should call John Ferris, (202) 260–4043, or Vanessa Rodriguez, (202) 260–7913.

FOR FURTHER INFORMATION CONTACT: Brenda Sue Thornton, Trial Attorney, Criminal Division, Terrorism and Violent Crime Section, Department of Justice, 601 D Street, N.W., Room 6500, Washington, DC 20530, (202) 616–5210; John Ferris, Chemical Engineer, (202) 260–4043, or Vanessa Rodriguez, Chemical Engineer, (202) 260–7913, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency (5104),1200 Pennsylvania Avenue, N.W., Washington, DC 20460; or the Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346 (in the Washington, DC metropolitan area, (703) 412–9810). You may wish to visit the Chemical Emergency Preparedness and Prevention Office (CEPPO) Internet site at *www.epa.gov/ceppo*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

A. Background

The federal government's efforts to prevent and mitigate chemical accidents have come largely in the wake of the 1984 chemical release in Bhopal, India, that killed thousands of people and injured hundreds of thousands more. Congress responded to the threat of chemical accidents in this country by enacting several pieces of legislation, including section 112(r) of the Clean Air Act (CAA), 42 U.S.C. 7412(r). In that section, Congress established a general duty on industrial facilities handling any extremely hazardous chemicals to do so safely (CAA section 112(r)(1)), and required EPA to establish a regulatory program to ensure that facilities that pose the greatest risk develop and implement a risk management program to detect and prevent or minimize accidental chemical releases (CAA section 112(r)(7)). Congress further directed that facilities submit to EPA risk management plans (RMPs) summarizing their risk management programs and including information about the potential effects on the public and environment of hypothetical worst-case and alternative scenario releases (CAA section 112(r)(7)(B)(ii)). Congress also provided that the RMPs shall be available to the public (CAA section 112(r)(7)(B)(iii)).

In accordance with CAA section 112(r), EPA issued a rule in 1994 listing the most potentially hazardous toxic and flammable chemicals and establishing a threshold of concern for each (59 FR 4478, January 31, 1994) (the "List rule"). In 1996, EPA issued a rule requiring every facility with more than a threshold quantity of a listed chemical to develop and implement an accident prevention program based on an assessment of the hazards at that facility (61 FR 31668, June 20, 1996) (the "RMP rule"). As required by CAA section 112(r), EPA specified in the RMP rule that the hazard assessment include an analysis of the potential consequences of worst-case and alternative scenario

chemical releases, and that the results of the off-site consequence analysis (OCA) information be reported in the facility's RMP. To date, approximately 15,000 facilities have submitted RMPs to EPA. (The list and RMP rules are codified as the Chemical Accident Prevention Provisions at 40 CFR part 68.)

B. What is Reported in an RMP

1. In General

An RMP is intended to provide information about the risk a facility poses to the surrounding community and to summarize the facility's program to manage that risk. Each RMP consists of nine sections and contains an executive summary, which is a prose description of a facility's risk management program, including a "brief description" of the potential off-site consequences of one or more hypothetical accidental releases from the facility. The rest of the data in the RMP generally consists of yes/no, check-off box, and numerical answers to standard questions. There are additional areas where facilities may include prose explanations for various entries, but (with the exception of the executive summary) these are optional. This format, while allowing the data to be easily submitted, compiled, and managed in electronic form, generally precludes facilities from submitting detailed information. More information on the content and form of RMPs is available at the CEPPO website (*www.epa.gov/ceppo*) and in the assessment prepared by EPA for this rule, which is available in the rulemaking docket.

2. OCA Data Elements in Sections 2 Through 5 of RMPs

For each covered process at a facility, the facility's RMP will contain the results of off-site consequence analyses for one or more hypothetical accidental worst-case and/or alternative release scenarios. Worst-case scenarios assume the release of the greatest amount of a regulated substance held in a single vessel or pipe under specified ambient and process conditions, taking into account administrative controls that limit the maximum quantity of the release and the effects of any passive mitigation features such as dikes or berms. Alternative release scenarios assume a release that is more likely to occur than the worst case, using release parameters chosen by the facility owner as appropriate for the scenario, and accounting for both passive and active mitigation features. The data elements comprising the OCA information for these scenarios are reported in sections 2 through 5 of the RMP. For toxic chemicals, sections 2 and 3 contain data on worst-case scenarios and alternative scenarios, respectively. For flammable chemicals, sections 4 and 5 report data on worst-case scenarios and alternative scenarios, respectively. A list of the data elements appears in Table A–1.

TABLE A–1.—DATA REPORTED IN OCA SECTIONS OF AN RMP

RMP sections	Data elements
2.1, 2.2, 3.1, 3.2, 4.1, 5.1	Chemical name, percent concentration, and physical state.
2.3, 3.3, 4.2, 5.2	Dispersion model used to conduct the analysis (e.g., "lookup" table, RMP*Comp software).
2.4, 3.4, 4.3, 5.3	Release scenario (e.g., gas leak, liquid spill and vaporization, pipe leak, etc.)
4.5, 5.5	Consequence endpoint assumed (e.g., explosion over pressure, radiant heat level) (flammable scenarios only; toxic endpoints are mandated by rule).
2.5, 2.6, 2.7, 3.5, 3.6, 3.7, 4.4, 5.4	Quantity released, release rate, and release duration (for worst-case, release rate and release duration are specified by rule).
2.8, 3.8	Wind speed (for worst-case, must be 1.5 meters/sec unless facility has other data).
2.9, 3.9	Atmospheric stability class (for worst-case, must be most stable [F] unless facility has other data).
2.10, 3.10	Topography of area surrounding the process or facility (urban or rural).
2.11, 3.11, 4.6, 5.6	Distance in miles to either the toxic or flammable endpoint.
2.12, 3.12, 4.7, 5.7	Estimated residential population within the endpoint distance.
2.13, 3.13, 4.8, 5.8	Public receptors (e.g., schools, residences, recreation areas, etc.) within the endpoint distance.
2.14, 3.14, 4.9, 5.9	Environmental receptors (e.g., national or state parks, etc.) within the endpoint distance.
2.15, 3.15, 4.10, 5.10	Passive mitigation considered (i.e., equipment that functions without human, mechanical, or energy input that is designed to limit a release).
3.16, 5.11	Active mitigation considered (alternative scenarios only).
	Graphics file name (optional). Facilities may include a map or other graphic to illustrate a release scenario.

C. The Passage of CSISSFRRA

As one way of satisfying CAA section 112(r)'s requirement that RMPs be made available to the public, EPA had considered posting RMPs on the Internet. In the RMP rule, after public notice and comment, EPA announced plans for an electronic centralized system for submitting and managing RMPs. With the help of a federal advisory committee, EPA designed an RMP form that lends itself to the creation of an electronic database. Many members of the advisory committee recommended that CAA section 112(r) would best be satisfied by placing RMPs on the Internet to afford the public easy access to them. Before EPA had implemented any plan for doing so, however, the Federal Bureau of Investigation and other representatives of the law enforcement and intelligence communities raised law enforcement and national security concerns about making RMPs electronically available. Specifically, the law enforcement and intelligence communities voiced concerns that releasing the OCA portions of RMPs via the Internet would enable Internet users anywhere in the world to search electronically for industrial facilities in the U.S. to target for purposes of causing a planned industrial chemical release, and that no record of such a query would be made.

These concerns eventually led to the passage of the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (CSISSFRRA), Public Law 106–40. In response to the concerns raised by the law enforcement and national security communities, EPA decided not to place the OCA portions of RMPs on the Internet. Similar concerns were next raised, however, that amendments to the Freedom of Information Act (FOIA) would nevertheless compel EPA to release the OCA portions of RMPs in electronic

format. Congress responded by passing CSISSFRRA, which in relevant part added a new subparagraph (H) to CAA section 112(r)(7).

D. What CSISSFRRA Does

CSISSFRRA exempts "[OCA] information" (CAA section 112(r)(7)(H)(iii)) from FOIA, 5 U.S.C. 552, and limits public access to OCA information for at least one year while the federal government assesses both the risks of posting the information on the Internet and the chemical safety benefits of providing public access to the information, and then issues regulations governing distribution of the information based on those assessments (CAA section 112(r)(7)(H)(ii)). In particular, the statute requires the President to assess "(aa) the increased risk of terrorist and other criminal activity associated with the posting of [OCA] information on the Internet" and "(bb) the incentives created by public disclosure of [OCA] information for reduction in the risk of accidental releases" (CAA section 112(r)(7)(H)(ii)(I)). It then provides that, based on those assessments, the President must "promulgate regulations governing the distribution of [OCA] information in a manner that, in the opinion of the President, minimizes the likelihood of accidental releases and the risk described in subclause (I)(aa) and the likelihood of harm to public health and welfare" (CAA section 112(r)(7)(H)(ii)(II)). CSISSFRRA defines "[OCA] information" as "those portions of a [RMP], excluding the executive summary of the plan, consisting of an evaluation of 1 or more worst-case release scenarios or alternative release scenarios, and any electronic data base created by the Administrator [of EPA] from those portions" (CAA section 112(r)(7)(H)(i)(III)). In effect, "[OCA] information" means sections 2 through 5 of RMPs and any electronic database EPA creates from those sections.

CSISSFRRA also requires that the regulations promulgated by the President meet certain additional requirements for public and governmental access. The regulations must, for example, "allow[] access by any member of the public to paper copies of [OCA] information for a limited number of stationary sources located anywhere in the United States, without any geographical restriction," as well as "allow[] other public access to [OCA] information as appropriate" (CAA section 112(r)(7)(H)(ii)(II)(aa) & (bb)). They also must guarantee access to "[OCA] information" to government officials, referred to in the statute as "covered persons," for their "official use" (see CAA sections 112(r)(7)(H)(i)(I) & (II) and (H)(ii)(II)(cc)-(ee)). Government officials include officers and employees of federal, state, or local government or their agents or contractors, and officers and employees of state and local emergency response organizations or their agents or contractors (see CAA section 112(r)(7)(H)(i)(I)). Emergency response officials include members of State Emergency Response Commissions (SERCs) and Local Emergency Planning Committees (LEPCs) created under the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA, 42 U.S.C. 11001 *et seq*).

While CSISSFRRA guarantees covered persons access to OCA information, it prohibits them from disseminating the information to the public except as authorized by the statute or the regulations issued under it (CAA section 112(r)(7)(H)(v)(I)). This prohibition on dissemination, however, applies only to OCA information disseminated "in the form of a [RMP] or an electronic data base created by the Administrator [of EPA] from [OCA] information" (CAA section 112(r)(7)(H)(xii)(II)). Thus, CSISSFRRA prohibits disclosure of RMP sections 2 through 5, and of OCA data conveyed in the "form" of those sections, and prohibits disclosure of EPA's OCA database. CSISSFRRA does not prohibit disclosure of the substance of OCA information, i.e., the individual pieces of OCA data reported in the OCA sections of RMPs, when the data is disclosed in a form different than those RMP sections (sections 2 through 5) or EPA's OCA database. State and local covered persons, then, may communicate to the public about the potential off-site consequences of chemical accidents in any way they choose, as long as they do not hand out copies of, or otherwise replicate, sections 2 through 5 of the RMPs, or provide direct access to the database. CSISSFRRA also prohibits covered persons from disclosing "any statewide or national ranking of identified stationary sources derived from" OCA information (CAA section 112(r)(7)(H)(v)(I)). Any covered person who willfully violates any of these prohibitions is subject to criminal penalties of up to $1,000,000 for violations committed in any one year (CAA section 112(r)(7)(H)(v)(II)).

CSISSFRRA also permits the public other means of access to the substance of OCA information (CAA section 112(r)(7)(H)(i)(II)). For example, it exempts RMP executive summaries from the definition of "[OCA] information" (CAA section 112(r)(7)(H)(i)(III)). In addition, CSISSFRRA requires virtually all covered facilities to conduct a public meeting or to post a public notice that summarizes their OCA information by February 5, 2000 (CSISSFRRA section 4(a)). CSISSFRRA also allows facilities to release their OCA information to the public without restriction, and once a facility has so released its OCA information, covered persons may do so as well (CAA section 112(r)(7)(H)(v)(III)). CSISSFRRA provides further access to this information, including access for qualified researchers (see CAA section 112(r)(7)(H)(iv); section 112(r)(7)(H)(vii); and section 112(r)(7)(H)(viii)).

E. The Delegation to DOJ and EPA

In a memorandum dated January 27, 2000 (published in the **Federal Register** at 65 FR 8631 (February 22, 2000)), the President delegated to the Attorney General and the Administrator of EPA authority to perform the required assessments and to promulgate the required regulations. The President assigned to the Attorney General the responsibility for assessing the increased risk of terrorist and other criminal activity associated with posting OCA information on the Internet (the "risk assessment"). He assigned to the Administrator of EPA the responsibility for assessing the incentives for reduction in the risk of accidental chemical releases created by public disclosure of OCA information (the "benefit assessment"). The President also jointly delegated to the Attorney General and the Administrator his duty to promulgate the regulations, subject to review and approval by the Office of Management and Budget (OMB). In this action, we (i.e., EPA and DOJ) are jointly proposing regulations pursuant to CSISSFRRA and the President's delegation. OMB has reviewed and approved the proposed rule.

II. The Assessments

This section summarizes the findings of the required risk and benefit assessments that, under CSISSFRRA, must form the basis for this proposed rule. These assessments, respectively, are available on the Internet at *www.usdoj.gov* and *www.epa.gov/ceppo*.

A. The Risk Assessment

Based upon an analysis of trends in international and domestic terrorism and upon the burgeoning interest in weapons of mass destruction (WMD) [1]

[1] Federal law defines WMD in 18 U.S.C. 2332a(c)(2) as any destructive device as defined in 18 U.S.C. 921, which includes explosive,

among criminals and, in particular, terrorists, the risk assessment concludes that the risk of terrorists attempting in the foreseeable future to cause a potentially catastrophic chemical release is both real and credible. Terrorists increasingly engineer their attacks to cause mass casualties to the populace and/or large-scale damage to property. In recent years, criminals have with increasing frequency attempted to obtain or to produce WMD to achieve these goals. However, traditional means of creating or obtaining WMD are generally difficult to execute. In contrast, breaching a containment vessel of an industrial facility with an explosive, or otherwise causing a chemical release, may appear less difficult to a terrorist and may also appear attractive in light of the pervasiveness of industrial facilities possessing toxic or flammable chemicals and their proximity to high-population areas. Certain types of facilities submitting RMPs, moreover, such as U.S. military, federal, and infrastructure facilities in the United States, are preferred terrorist targets. While security at some of these sites may reduce the concern that they will be targeted, no security is foolproof and not everyone intent on terrorist activity will be dissuaded by security measures.

Although no criminal or terrorist has yet successfully caused a chemical release from an industrial facility on U.S. soil, the risk assessment points out that domestic terrorist groups have, during the past two years, twice been caught by law enforcement plotting to cause industrial chemical releases for terroristic purposes at U.S. facilities. In addition, the assessment notes that foreign militaries and certain terrorist groups indigenous to other countries have successfully caused releases from industrial facilities using bombs or explosive material. These efforts have in effect converted the facilities into makeshift WMD.

The risk assessment concludes that posting certain portions of OCA information on the Internet would increase the risk that terrorists or other criminals will attempt to cause an industrial chemical release in the United States. Easy access to OCA information would be helpful to someone seeking to cause such a release because it would provide "one-stop shopping" for refined targeting information, allowing terrorists to select potential targets from among the 15,000 facilities that have submitted OCA information. The assessment finds that, in particular, the following pieces of OCA information would assist someone seeking to target and maximize an industrial chemical release:

- The name of the chemical involved in the worst-case and alternative release scenarios;
- The scenarios that produce the worst-case and alternative release scenarios (e.g., transfer hose failure, pipe leak, etc.);
- The projected quantity of chemical released in the worst-case or alternative release scenarios;
- The release rate for alternative release scenarios;
- The duration of the release in alternative release scenarios;
- Distance to endpoint or the distance that the chemical release will extend in the worst-case or alternative release scenarios;
- The endpoint for a flammable alternative release scenario;
- The residential population within the affected area in the worst-case or alternative release scenarios;
- The public receptors within the affected area (schools, residences, hospitals, prison/correctional facilities, recreation areas, or commercial/industrial areas) of the worst-case or alternative release scenarios;
- The environmental receptors within the affected area (national or state parks, forests, or monuments; officially designated wildlife sanctuaries, preserves, or refuges; federal wilderness area) of the worst-case or alternative release scenarios;
- Active mitigation systems in the worst-case or alternative release scenarios;
- Passive mitigation systems in the worst-case or alternative release scenarios; and
- Map or other graphic that illustrates a worst-case or alternative release scenario.

The risk assessment also finds that the increased risk of terrorist or other criminal activity associated with posting these portions of OCA information on the Internet varies among the specific pieces of information. The assessment thus separates OCA information that would be helpful to a terrorist or other criminal into three categories. The first category of OCA information provides a general account of the consequences of a chemical release in terms of the damage that it might inflict on the community. It consists of the distance to endpoint, the residential population within the distance to endpoint, the public receptors, the environmental receptors, and the map or graphic of the worst-case or alternative release scenario. The assessment finds that, because these pieces of OCA information would allow someone to compare the relative damage that could be caused by chemical releases from different sites and choose the best target from which to attempt to cause a release, they would be of the greatest value to terrorists and hence would present the greatest risk.

The second category of information consists of OCA information that provides a rough sketch of what is involved in triggering a release from an RMP facility. Included in this category are the name of the chemical involved in the worst-case or alternative release scenario; the projected quantity of chemical released; the release rate; the duration of the release; and the scenario that results in the release. The risk assessment concludes that this category of information, while less sensitive than the first category, still would pose an appreciable risk if posted on the Internet.

The third category of information consists of OCA information on passive and active mitigation measures. The assessment finds that this category of information, while it would be relevant to an attempt to cause a chemical release, is the least likely to be exploited by a terrorist, or else is already easily accessible to the public so that the incremental risk of releasing it in OCA data form would not significantly add to the risk already posed by its public availability.

The risk assessment concludes that Internet access to categories one and two of OCA information poses the greatest risk that they will be used in relation to an attempted industrial chemical release. The assessment notes that the method of dissemination and the degree to which OCA information is disseminated are of paramount concern in evaluating the risk posed by the release of that information to the public. The assessment finds that Internet access to OCA information would pose the greatest risk because of the wide dissemination of the information and the anonymity of the access. Paper copies of OCA information, if they were permitted to be carried away, would pose a similar risk because they could be easily scanned and converted into electronic copy that could then be posted on the Internet.

Although the substance of some of the OCA information that is cause for concern is already publicly available through means other than RMPs, the risk assessment finds (as does the benefit assessment summarized in the next section) that the category one information discussed above that would be most helpful to terrorists is not currently available in as readily accessible and user-friendly a format as the OCA information sections of an RMP. Moreover, the assessment finds that category two information,

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incendiary, or gas devices; any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors; any weapon involving a disease organism; or any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.

particularly for alternative release scenarios, is also largely unavailable. Even if information comparable to that contained in categories one or two is currently publicly available, the assessment finds that it can only be converted to targeting information by someone with some degree of technical proficiency and background in such information. If those portions of OCA information that represent refined targeting or chemical release information were posted on the Internet, however, they would be accessible to anyone anywhere in the world who has access to the Internet, including agents of hostile foreign countries. Such unmonitored dissemination of this information in a manner that permits the recipient to obtain it anonymously and in a form that is easily understandable greatly increases the risk of its misuse.

B. The Benefit Assessment

The benefit assessment concludes that public disclosure of OCA information would likely lead to a significant reduction in the number and severity of accidental chemical releases. The prevention program requirements of the RMP rule are performance-based, in part because EPA considered that the public availability of RMPs would help ensure that facilities take all reasonable steps to reduce their risk of accidents. In addition, widespread access to OCA information would serve the function Congress originally intended in enacting the CAA—to inform members of the public and allow them to participate in decisions that affect their lives and communities. The public is not likely to generate the data contained in the OCA sections of RMPs on its own, and thus the greater the restrictions on access to OCA information, the greater the potential that public safety benefits are diminished. In support of these conclusions, the benefit assessment finds specifically as follows:

- Chemical accidents continue to impose considerable costs in terms of human lives and health, property, and public welfare. Facilities covered by the RMP rule reported that from mid-1994 to mid-1999 there were about 1,900 serious accidents that caused 33 deaths, 8,300 injuries, and the evacuation or sheltering of 221,000 people. These accidents cost the affected facilities more than $1 billion in direct damages and two to four times that in business interruption losses. These accidents also represent less than 10 percent of all unintended releases of hazardous substances reported to the government during this period.
- Given the opportunity, the public uses hazard information to take action that leads to risk reduction. Various segments of the public have strong incentives to use OCA information in ways that reduce risk. For example, the national publication of the Toxics Release Inventory (TRI) data by the government, followed by analysis by citizens' groups and the news media, appears to have spurred action by industry to reduce emissions. Nationally, reported TRI emissions have fallen 43 percent since 1988, a time in which industrial production has risen 28 percent. Although other factors contributed to the decline in emissions, negative press coverage appears to have led some facilities to reduce their TRI emissions.
- Ease of access to information is critical to public use and risk reduction. Data available in paper form on request from state or local agencies are rarely sought. For example, data on the location and identity of hazardous chemicals are requested about 3,500 times a year from LEPCs. (There are about 3,200 LEPCs in the country and about 560,000 facilities subject to requirements to report information on hazardous chemicals to LEPCs.) Meanwhile, environmental data on the Environmental Defense Fund's "Scorecard" website are at least 250 times more likely to be reviewed by the public than is information from LEPCs. Likewise, early indications are that meetings required by CSISSFRRA to explain OCA information to the public have drawn very few attendees even when citizens received individual invitations. In contrast, when industry has gone out to places the public already frequents (for example, a shopping mall) and provided consequence information directly to citizens, outreach and communication about chemical accident risks have been more successful.
- Information that puts hazards into context is far more likely to be used by the public than are "raw" data. The importance of such "interpreted" information (already analyzed in order to be understandable) is demonstrated by the increased use of TRI data when they were made available as part of Scorecard on the Internet. Although TRI data are available electronically through EPA's Envirofacts and the Right-To-Know Network (RTK-Net) websites, Scorecard ranks each facility on various indicators by county, state, and nation, and explains the health effects of chemicals emitted by that facility. The raw TRI data on RTK-Net were drawing 240,000 searches a year; Scorecard draws over a half million page views a month. OCA information is interpreted in that it reflects the results of analysis of data that the public might otherwise find difficult to understand. Ultimately, the best and most effective interpreted information would be generated during dialogue about OCA information and RMP data at the local and national levels among the public, government (particularly emergency response officials), and facilities.
- Although the substance of OCA information could be derived from other available data, the public is unlikely to do so. Derivation of such information requires some technical knowledge and time. While motivated and skilled individuals and organizations can use widely available existing data, guidance, and models to estimate off-site consequences with relative ease, the general public is unlikely to be able and willing to do so.
- A complete RMP containing OCA data is necessary to understand the extent of the hazard posed by a particular facility in comparison to other facilities in an area, within an industrial sector, or handling the same chemicals. The accident prevention rule requires facilities to conduct OCAs in a specified, systematic manner so that the public and others can understand the relative hazards and risks posed by facilities as a result of the type and amount of chemicals handled and the mitigation measures used. While the OCA information addresses the hazard, the complete RMP also addresses the steps to control the hazard. Understanding the extent of a hazard and how it is controlled leads to understanding the risk posed by a facility.
- Multiple segments of the public, particularly citizens, citizens' groups, and the media, are likely to become more interested in chemical safety and chemical release risk reduction to the extent they become aware of the potential consequences associated with worst-case and alternative release scenarios. The interest and concern about potential consequences will likely trigger comparisons and detailed analyses not only of OCA information but also of the safety and environmental performance of facilities. Widespread awareness of the comparisons and analyses would provide the public with a better understanding of accident risk; combining this understanding with other environmental risk information would likely stimulate better dialogue at the local and national levels among the public, government, and facilities to reduce chemical accident risks.
- Although CSISSFRRA provides for access to OCA information for state and local officials, including emergency planners and responders, and allows those officials to disseminate the substance of OCA information to the public, the penalties for disclosure contained in CSISSFRRA are having a chilling effect. Many of these officials are not willing to obtain OCA information or to communicate its substance and thereby risk accidental or inadvertent disclosure of OCA information, even though CSISSFRRA penalizes only its willful disclosure.

III. The Proposal

In developing our proposed approach, we have relied, as CSISSFRRA requires us to do, on the specific findings of the two assessments in a way that we believe most effectively minimizes the likelihood of accidental releases, the increased risk of terrorist activity associated with the posting of OCA information on the Internet, and the likelihood of harm to public health and welfare from chemical releases. In consideration of the two assessments, our proposed approach seeks to disseminate in an appropriately controlled manner those pieces of OCA information that the risk assessment found posed the greatest risk of being used in planning a terrorist or other criminal event and, in particular, to

minimize the risk associated with the posting of those pieces of information on the Internet.[2] To that end, we propose to make OCA information available in reading rooms geographically distributed across the United States. At the same time, our proposed approach recognizes that several pieces of OCA information pose less risk of being used for criminal purposes or are otherwise widely available already and, where that is the case, seeks to provide the data over the Internet. Placing OCA information on the Internet gives the public a fast and convenient way to obtain this information. While the Internet provides a tremendous benefit by offering people easy access to a wealth of information, we also recognize that it provides a new means for criminals and terrorists to carry out traditional criminal activities. We therefore have attempted to balance these interests by making as much information as appropriate available online, but not posting the information that the risk assessment found poses a significant risk for terrorist or criminal purposes. Further, to address the statute's requirement that we minimize the likelihood of harm to the public from chemical releases, our proposed rule includes several components intended to complement reading-room access to OCA information by providing additional information in easily accessible ways that would help the public better understand chemical accident risk and prevention. We anticipate that the proposed measures, taken together, would stimulate and enhance needed dialogue among members of the public, government, and industry at the local and national levels about how to minimize the risk of chemical accidents, however caused.

The assessments reveal that some OCA information is already publicly available to varying degrees. The substance of some OCA information is capable of being assembled from various public sources, although the actual OCA information itself represents the most up-to-date and complete information available. Furthermore, compiling other publicly available information into a form comparable to OCA information would require both extensive effort and technical proficiency. We have factored the issue of the public availability of OCA-like data into our decisions regarding how various pieces of OCA information should be treated. For example, while certain pieces of OCA information would otherwise have been considered to pose law enforcement and national security concerns, such as the passive and active mitigation systems considered in the worst-case scenarios, we believed that the public availability of almost identical information in other parts of RMPs meant that those pieces of OCA information should be handled as less sensitive pieces of OCA information and, hence, have treated them as such.

Finally, we have taken careful note of the benefit assessment's conclusions regarding the role of risk-related information in risk reduction and the ways that the public acquires and uses such information. In response to these conclusions, the proposal would ensure that all of the OCA information would be available to the public in some fashion, and some OCA information would be available in several forms. As explained above, any member of the public would have access to OCA information without geographical restriction for a limited number of facilities in federal reading rooms. In addition, the proposed rule would make as many OCA data elements as appropriate available to the public on the Internet, providing easy access to that information. The proposal also would make available on the Internet a "risk indicator system" which would provide the public a means of understanding some aspects of the risk expressed by OCA information without disclosing the actual OCA information itself. The indicator proposal responds to the finding that information that is already interpreted, easily understood, or put into context is far more likely to be used by the public in taking action that leads to risk reduction.

Further, the proposed rule would seek to enhance local access to OCA and related information. It would clarify that members of SERCs, LEPCs, and fire departments (as covered persons) may, even now, communicate to the public the substance, although not the form, of OCA information, and thereby contribute to public awareness and discussion of chemical risk reduction efforts and opportunities. It also would authorize members of SERCs, LEPCs, and local fire departments to provide read-only access to OCA information itself for all of the sources in an LEPC's jurisdiction and for sources with a vulnerable zone that extends into the LEPC's jurisdiction. This aspect of the proposal would potentially provide the public with more convenient access to OCA information for local facilities.

Together, the proposal's public access provisions would facilitate widespread public awareness of information regarding the safety and environmental performance of facilities. That awareness, in turn, would likely stimulate dialogue among members of the public, government, and industry about what further steps might be taken to reduce chemical risk. We believe that this scheme effectively responds to the benefit assessment's conclusion that it is the interaction of the public, government, and facilities that will ultimately yield the most benefit in reducing the risks of chemical accidents.

A. Public Access to OCA Information

1. Access to Paper Copies of OCA Information

In accordance with CSISSFRRA, this proposed rule would provide the public with access to paper copies of OCA information for a limited number of facilities located anywhere in the United States, without geographical restriction (see CAA section 112(r)(7)(H)(ii)(II)(aa)). Under the proposed rule, OCA information for facilities nationwide would be accessible to the public at reading rooms located at designated sites throughout the country, such as EPA regional offices and other federal facilities. There would be at least 50 reading rooms geographically distributed across the United States so that the public would have reasonable access to them. At these sites, members of the public would have access to OCA information for any facility and would be able to read it and to take notes from it. Members of the public would not, however, be permitted to remove the OCA portions of RMPs from a reading room or to mechanically reproduce those portions. Each reading room would be authorized to provide any member of the public with access to OCA information for up to 10 stationary sources per calendar month. Based on an analysis of the geographic distribution of RMP-covered facilities (available as part of the benefits assessment), we believe that, in most cases, this would permit members of the public to have access to OCA information about facilities in whose "vulnerable zone" they live or work, as well as to OCA information about additional facilities for purposes of comparison. At the same time, it would minimize the criminal risk associated with Internet access to the most sensitive pieces of OCA information by making it difficult to obtain large quantities of that information and to convert it to an electronic format for Internet posting.

[2] CSISSFRRA requires that the regulations allow access by any member of the public to paper copies of OCA information for a limited number of facilities without geographic restriction, and also permits other means of access as appropriate.

To implement the proposed limit on the number of facilities for which an individual could obtain access to paper copies of OCA information, the proposed rule would require that reading room personnel ask each individual to show a piece of personal identification issued by a federal, state, or local government agency (e.g., a driver's license) before the individual is given access to OCA information. This requirement is necessary because without checking personal identification, reading room personnel could not keep track of the number of facilities for which the individual had been given access to OCA information. Requiring reading room personnel to ask for personal identification also would decrease the likelihood that OCA information would be obtained by individuals seeking it for terrorism or other criminal purposes, because such individuals prefer to hide their activities from public view.

We anticipate that reading rooms would keep daily sign-in sheets that would record the names of each individual requesting OCA information, how many facilities' OCA information the individual had received to read, and which facilities those were. Whenever someone requested access to OCA information, reading room personnel would review the sign-in sheets for that day and the previous days during the month to determine how many, if any, facilities' OCA information that person already had received that month. These sign-in sheets would be protected under the Privacy Act (5 U.S.C. 552a). We envision that they will be retained for three years.

We also anticipate that reading rooms would generally provide access to RMP*Info, an electronic public access database on the Internet that includes the full text of RMPs except for the OCA sections. Where RMP*Info is not available for use by the public, we anticipate that the entire copy of each RMP would be made available to those who request it so that the OCA information may be reviewed in the context of the larger risk management plan.

We believe that the sort of reading-room access just described, in conjunction with the other provisions of this proposed rule, achieves the overall goal of the statute—to minimize the risk to the public posed by chemical releases, however caused, from the facilities submitting state, or local government agency (e.g., a driver's license) before the individual is given access to OCA information. This requirement is necessary because without checking personal identification, reading room personnel could not keep track of the number of facilities for which the individual had been given access to OCA information. Requiring reading room personnel to ask for personal identification also would decrease the likelihood that OCA information would be obtained by individuals seeking it for terrorism or other criminal purposes, because such individuals prefer to hide their activities from public view.

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We believe that the sort of reading-room access just described, in conjunction with the other provisions of this proposed rule, achieves the overall goal of the statute—to minimize the risk to the public posed by chemical releases, however caused, from the facilities submitting RMPs. While we considered permitting the actual release of paper copies to members of the public upon their request, we concluded that this would pose too great a risk because such copies could easily be converted into electronic format for Internet posting. Instead, we believe that a better approach would be a series of graduated means of access, starting with the above-described system of reading rooms which will be geographically distributed across the United States and which will provide any member of the public with access to all OCA information for any facility located anywhere in the United States, contingent upon some reasonable limitations such as a maximum number of facilities (10) per calendar month as to which an individual can obtain OCA information. We suggest augmenting this access, as set forth below, by providing two different additional means of Internet access to OCA information, and an alternative means by which members of the public can obtain access to paper copies of OCA information for the localities in which they live or work. Because this last avenue of access would be geographically limited to localities, we propose providing access to OCA information without the types of restrictions that would exist in the national reading rooms, such as limits on the number of facilities about which information could be obtained.

2. Internet Access to Selected OCA Information

In an effort to provide robust access to as much OCA information as practicable, the proposed rule also makes some OCA information available to the public through the Internet by posting it on EPA's website. The following pieces of OCA information for both the worst-case and alternative release scenarios would be posted on the Internet, along with other RMP data elements available in EPA's RMP*Info[3]:

- The concentration of the chemical (RMP Sections 2.1.b; 3.1.b);
- The physical state of the chemical (RMP Sections 2.2; 3.2);
- The duration of the chemical release for the worst-case scenario (RMP Section 2.7);
- The statistical model used (RMP Sections 2.3; 3.3; 4.2; 5.2);
- Endpoint used for flammables for the worst-case scenario (RMP Section 4.5);
- Wind speed during the chemical release (RMP Sections 2.8; 3.8);
- The atmospheric stability (RMP Sections 2.9; 3.9);
- The topography of the surrounding area (RMP Sections 2.10; 3.10);
- The passive mitigation systems considered (RMP Sections 2.15; 3.15; 4.10; 5.10); and
- The active mitigation systems considered (RMP Sections 3.16; 5.11).

The proposed rule would exclude the following pieces of OCA information from being posted on the EPA website:

- The name of the chemical involved (RMP Sections 2.1.a; 3.1.a; 4.1; 5.1);
- The scenario involved (RMP Sections 2.4; 3.4; 4.3; 5.3);
- The quantity of chemical released (RMP Sections 2.5; 3.5; 4.4; 5.4);

[3] Certain pieces of OCA information are being released because they are fixed values and are widely available to the public. The values for the duration of a chemical release and the endpoint used for flammables for the worst-case scenario are fixed numbers that can be found in EPA's guidance for submitting worst-case scenario data and on the RMP form.

- The release rate of the chemical involved for the worst-case scenario (RMP Section 2.6);
- The release rate of the chemical involved in the alternative release scenario (RMP Section 3.6);
- The duration of the chemical release in the alternative release scenario (RMP Section 3.7);
- Distance to endpoint (RMP Sections 2.11; 3.11; 4.6; 5.6);
- Endpoint used for flammables for the alternative release scenario (RMP Section 5.5);
- Residential population within the distance to endpoint (RMP Sections 2.12; 3.12; 4.7; 5.7);
- Public receptors within the distance to endpoint (RMP Sections 2.13; 3.13; 4.8; 5.8);
- Environmental receptors within the distance to endpoint (RMP Sections 2.14; 3.14; 4.9; 5.9); and
- Map or other graphic used to illustrate a scenario (RMP Sections 2.16; 3.17; 4.11; 5.12).

These pieces are not being posted on the Internet in view of the risk assessment's findings that Internet posting of these OCA data elements would increase the risk of a chemical release caused by a terrorist or criminal.

Our proposal to post some but not all OCA information on the Internet is guided by the findings in the two assessments. The pieces of OCA information that would not be posted are restricted to those that the risk assessment found to pose a significant risk of being used for terrorist or other criminal purposes. The pieces of OCA information that would be posted, by contrast, pose less incremental risk, and we anticipate that Internet release of these pieces of information would have the benefit of facilitating dialogue between members of the public, state and local officials, and the facilities. Information about active and passive mitigation systems that has been included in worst-case and alternative release scenarios, for example, would provide the public with knowledge about measures that industry is taking to limit the potential damage that could result from a chemical release. Finally, the pieces of information that would not be posted would remain accessible to members of the public at federal reading rooms and potentially at the local level through various other means provided for by this proposed rule. We anticipate that these additional means of access would help ensure that members of the public have meaningful access to the full range of OCA information, while reducing the risk that the most sensitive pieces of that information would be used for criminal purposes.

3. Risk Indicator System

The proposed rule would set up a "risk indicator" system that would provide the public a means of understanding, via Internet inquiry, some aspects of the risk expressed by OCA information without giving them via the Internet the actual OCA information itself or individual portions thereof. The risk indicator system would consist primarily of query and response software located in RMP*Info. Members of the public would be able to enter a specific address (such as that of a home, school, or place of employment) and learn if that address might be within the "vulnerable zone" (*i.e.*, within the worst-case or alternative release scenario's "distance to endpoint") of at least one facility currently submitting an RMP to EPA. (As discussed further below, because the data reported in RMPs is not sufficient to precisely map the vulnerable zones for chemical releases, the indicator could not definitively state whether an address is or is not within a vulnerable zone.) Members of the public who do not have access to the Internet would be able to obtain the same information by calling the EPA hotline or by mailing a request to the Administrator of EPA.

The risk indicator system also would inform individuals of several means by which they can obtain additional information. Any federal reading rooms and relevant local reading rooms under this proposed rule, for example, would be sources for identifying the facility or facilities whose vulnerable zones extend to the address entered into the indicator system. EPA would revise RMP*Review, the software designed for use by federal, state, and local "covered persons," so that it would include a version of the indicator with the capability easily to identify the names of the facilities whose vulnerable zones may extend to an address. Therefore, individuals could potentially obtain this information from federal, state, and local "covered persons." (We understand that provision of this information by state and local officials could require additional resources and therefore that not all state and local officials may be able to respond to requests for the information.) Our intention is that all of this contact information would be readily accessible or linked to the indicator located in RMP*Info.

We believe that the risk indicator system would encourage members of the public to seek additional information about the risk of chemical releases in their communities and about steps that they may take to reduce that risk, and thereby would encourage the sort of dialogue among community members, government agencies (especially LEPCs), and industry that is vital to prevention of chemical accidents. Once an individual learned the identity of facilities that could present a risk, he or she could refer to those facilities' RMPs in RMP*Info to learn more about them, including their accident histories and the steps that each facility is taking to prevent accidents. If the individual wanted to view all of the OCA information for a facility, he or she could contact the facility directly (facilities are encouraged but not required to provide the actual OCA information) or could visit one of the designated OCA information reading rooms. Finally, the individual could gain this and further information on risk by contacting an LEPC, SERC, local fire department, or other state or local "covered person." As we explain in the next section, federal, state, and local covered persons are authorized and encouraged by the proposed rule to provide reading-room access to copies of OCA information. They also are permitted to convey and discuss the substance of OCA information, so long as they do so in a way that does not replicate the OCA sections of RMPs or EPA's OCA database. LEPCs also have access to, and are free to provide individuals with, hazardous chemical inventory reports submitted by facilities, local emergency response plans, and other information beyond that contained in RMPs.

We have some concerns with the precision of the risk indicator system because it would utilize the latitude/longitude and the distance to endpoint portions of OCA information reported by facilities. Because the latitude/longitude readings reported by facilities can be taken at any point within the facilities, and because some facilities can be quite large, we are concerned that some addresses would be reported to be in a vulnerable zone of a facility when in fact they are not. However, we believe that these concerns are outweighed by the usefulness of the risk indicator system as a means of stimulating members of the public to pursue more precise and accurate information about local risk. To the extent that the indicator helps members of the public to understand that they may be in a vulnerable zone, it provides valuable information above that which is currently available. At this time, RMP*Info allows an individual to learn only the names of facilities that have submitted RMPs in a particular city or county; there is currently no easy way of finding out if the off-site

consequences of any of the facilities' worst-case scenarios could affect particular addresses. The proposed indicator would provide such information.

4. Enhanced Access to Local OCA Information

Enhancing public access to OCA information for local sources is another key element of today's proposed rule. We believe that chemical safety is most effectively addressed at the local level, and the benefit assessment confirms that members of the public and local officials working together and with industry have the potential to promote chemical accident prevention. LEPCs and fire departments are closest to the facilities subject to accident prevention rules and the communities potentially affected by any accidents at those facilities. For more than a decade, EPA has endeavored to strengthen LEPCs so that they can realize their potential to prevent and respond to accidental releases. We therefore believe that LEPCs and fire departments can and should be encouraged to play an important role in the communication of OCA information to members of the public. Also, to the extent federal outlets for reading-room access to paper copies of OCA information may be located some distance from some members of the public, gaining access through LEPCs or other local government officials may be a preferable alternative. While we would not require local officials to provide such access, we would strongly encourage them to do so, particularly in light of their key role in chemical safety at the local level.

The proposed rule includes several provisions for achieving this objective. The proposed rule authorizes members of LEPCs or local fire departments to set up reading rooms or other facilities where members of the public could read, but not remove or mechanically copy, paper copies of the OCA information for all of the sources in the LEPC's jurisdiction and for any sources whose vulnerable zone extends into the LEPC's jurisdiction. A LEPC could, for example, have a binder of OCA information for all of the sources meeting this criterion and provide the public with access to the binder. Members of the public would be permitted to read and take notes from the OCA information, but not to remove or mechanically reproduce it. The proposed rule would impose no limit on the number of facilities for which members of the public may review paper copies of OCA information made available by LEPCs or fire departments and would not require LEPCs to ask members of the public to show any identification to gain access to the information. SERCs would be permitted to provide a person the same access to paper copies of OCA information as that person would receive at his or her LEPC. Members of LEPCs, fire departments, and SERCs who provide public access to OCA information in this manner would not be subject to criminal liability or penalties under CSISSFRRA.

As mentioned above, the benefit assessment revealed that many local government officials are reluctant to obtain OCA information from EPA or to share the substance of that information with the public, at least in part out of concern that criminal penalties attach to unauthorized disclosure of OCA information. To address this concern, the proposed rule includes a provision in the section governing disclosure of OCA information that makes clear what CSISSFRRA already allows—that covered persons, including local government officials, may share with the public data reported in the OCA sections of RMPs, just not the OCA sections of the forms themselves. In other words, a covered person may convey, orally or in writing, the OCA results for a facility, so long as he or she does not hand out a copy of, or otherwise replicate, the OCA sections of the facility's RMP form itself or provide access to EPA's OCA database. A local official, for instance, may prepare a hand-out for a community meeting that includes OCA data for local (and other) facilities in a format different than that used for sections 2 through 5 of RMPs.

We believe that these proposals for enhanced local access to OCA information would help to realize the benefits of public disclosure of OCA information identified in the benefit assessment and would help satisfy the public's interest in access at the local level to information about the sources of chemical accident risks that could affect them directly. We anticipate that members of the public seeking OCA information held by LEPCs and local fire departments would be more likely to ask about the other information available from LEPCs under EPCRA regarding chemical hazards in the community. This would enhance the already-important role of the LEPCs in local chemical safety and accident prevention. At the same time, by limiting local access to paper copies of OCA information to a relatively small number of sources (those that are directly relevant to the community in question), this proposal addresses the legitimate security concerns discussed in the risk assessment.

5. Additional Information on Chemical Accident Risk

As a supplement to the provisions of the proposed rule, EPA also would make available to the public additional information on chemical accident risk through an Internet website. The information would enable citizens to become better informed about the nature and consequences of chemical accidents in general and the different ways chemical accident risks might be addressed. Citizens could then use this information together with any OCA data obtained about specific facilities to engage in productive dialogues at the local, state, and federal levels about preventing chemical accidents and minimizing the consequences of any accidents that do occur.

As described further below, EPA would provide the following information about chemical accident risk at or through the Internet website, *http://www.epa.gov/ceppo*. Some version of much of this information is already available there. EPA would seek to supplement that information as necessary or appropriate to provide the public with a full understanding of chemical accident risk and prevention.

RMPs (except for the OCA information, sections 2 through 5) are currently available to the public through RMP*Info, which is available at the website mentioned above. RMP*Info allows an individual to learn the names of facilities that submitted RMPs in a particular city, town, or county, and then view the RMPs for those facilities. RMP*Info is part of EPA's Envirofacts, a data warehouse which provides a single point of access to select environmental data. Through Envirofacts, the public can have easy access to other information about facilities that have submitted RMPs.

EPA will make available an updated list of LEPC, SERC, and other emergency response contacts. From the EPA website, industry and the public can access the LEPC/SERC Net, a page maintained by EPA and the Unison Institute, which provides a list of LEPC and SERC contacts searchable by LEPC locality name, city, or state.

EPA has facilitated research on accident histories based on the data provided in RMPs. The Wharton School at the University of Pennsylvania is looking at RMP data to compare accident histories by process, chemical, and industry sector. The results of the Wharton School's analysis will be posted on EPA's website when they become available. In addition, the EPA website provides links to various websites with information and

databases concerning accident histories, including the National Reporting Center; the Emergency Response Notification System (ERNS); the Accidental Release Information Program (ARIP) database; the Chemical Safety Board accident investigations and database; and several databases of worldwide incidents.

EPA maintains contact information and external site links to organizations from industry, government, and community groups with experience in fostering risk communication and chemical accident risk reduction. Many of these organizations have published guidance or primers on risk communication which can be obtained through the Internet or through EPA's National Service Center for Environmental Publications. EPA maintains additional external links to trade associations and other organizations that may provide information to assist facilities with RMP compliance and safe chemical management practices. EPA will expand the number of links to environmental organizations, industry trade groups, and academic institutions to provide the public with a comprehensive means of finding chemical risk and safety information.

EPA and other organizations have developed guidance to assist community members to work with facility management and local officials to better understand and manage the risks posed by the storage of large quantities of toxic or flammable chemicals. EPA has revised the guide, "Chemicals in Your Community," and made it available electronically on EPA's website. The guide provides a checklist of suggestions for how community members can work with facility management and local officials to better understand and assess the risks posed by the storage of large quantities of toxic or flammable chemicals.

Through a cooperative agreement with EPA, the National Safety Council (NSC) has revised "Chemicals, the Press & the Public," which is a journalist's guide to chemical information which will be available on the NSC website at *http://www.nsc.org* (which is linked to EPA's website). Copies are also available from EPA's document center at (800) 490–9198.

EPA is developing examples of facilities and industries that can serve as models for "best practices" in chemical accident risk prevention. EPA has developed RMP Network, which is designed to share successful practices in RMP implementation, risk communication, and use of data. Projects undertaken by industry, small businesses, state and local government, non-profits, citizen groups, and others will be represented in this series. The projects detailed in RMP Network are easily reproducible and low cost, and promote partnership-building in the community. Under a cooperative agreement with EPA, NSC will also post summaries of industry best practices on their website.

EPA and other organizations are developing background information about the nature of chemical accident risk, and that information will be posted on EPA's website when it becomes available. EPA's website also has links to a web-based Chemical Guide (*http://chemicalguide.com*). This chemical guide is a tool to help the public better understand the chemicals used in their community. Another link to assist the public is the NSC website (*http://www.nsc.org/xroads.cfm*). This website is aimed at the news media and provides suggestions for information to request of facility management and local officials, for approaches to sifting through the information, and for presenting the information in a way that helps communities interpret local RMPs. This website also includes five guides to chemical risk management that assist communities in evaluating chemical risks.

Through a cooperative agreement between EPA and Clean Air Action (a non-profit organization), a primer will be developed for lay persons on basic risk management terms and principles that would help to provide a basis for understanding chemical accident risks.

Taken together, these tools will help give the public a better understanding of the general nature of the risks associated with potential accidental releases posed by hazardous chemicals. They provide assistance in understanding the data that is available and how it can be used to build a snapshot of chemical use in a community. They also encourage the public to contact key groups and organizations and provide guidance on how to become directly involved in decisions at the local level that affect public health and safety.

B. Access to OCA Information by Government Officials

Today's proposed rule also addresses, in Subpart C, how the Administrator of EPA would provide access to OCA information to federal, state, and local "covered persons" when they request the information for their "official use." This subpart would essentially codify the provisions of CSISSFRRA that appear in CAA section 112(r)(7)(H)(ii)(II)(cc)–(ee).

IV. Request for Comments

We acknowledge the significant public interest and diversity of views on the issues addressed in this proposal. With this in mind, we are seeking your comments on any and all aspects of this proposed rule, including our overall approach to achieving the goals of the statute, the alternatives we have considered, and any other alternatives commenters may wish to suggest. We are particularly interested in receiving comments in the following areas and on the following issues:

Access to Paper Copies of OCA Information

- What types of federal outlets would be appropriate for providing reading-room access to paper copies?
- Where should reading rooms be located, and how should they be dispersed geographically to provide for optimal public access to paper copies?
- How should reading rooms be operated to best minimize the risk associated with the dissemination of OCA information?
- Is providing access to OCA information for 10 facilities per month an appropriate limit on access to paper copies, or would some other limit (for example, some greater number such as 20 facilities or some other lesser number) better meet the statutory test for overall risk reduction?
- As an alternative to reading room access to OCA information, should paper copies of the information be released to the public upon request, with a limit placed on the number of facilities for which any individual could receive OCA information in a given period? How effectively would this alternative approach provide information to those persons who would benefit from it, what would be the security concerns associated with it, and what steps could be taken to address those concerns?
- Are there other ways of providing access to paper copies of OCA information that would better minimize the overall risk (i.e., both terrorism-and accident-related) of chemical release?

Internet Access to Selected OCA Information

- Should any additional pieces of OCA information, such as those that the risk assessment places in the third risk category, not be posted on the Internet? Should other pieces of OCA information be posted on the Internet that would not be posted under this proposed rule, such as the information in the second risk category?

Risk Indicator System

- Is the proposed risk indicator a useful mechanism for assisting the public in understanding certain aspects of the risk of chemical accidents and for creating incentives that would reduce the risk of accidental releases?
- Should the risk indicator system specify how many facilities have vulnerable zones that extend to a particular address and include the identities of those facilities in its response to queries, thereby allowing members of the public to learn this information without the need to contact "covered persons"?

• What security concerns would be associated with the implementation of the risk indicator system as described in the proposal and with the alternative suggested above? In light of those concerns, would implementation of such a system do more harm than good to the overall statutory goal of minimizing both the terrorism-and accident-related risks of chemical releases?.

• The risk indicator system contemplates that, in response to an inquiry about a particular address, a person would receive information telling him or her whether the address may be in a vulnerable zone and, if so, whom to contact for additional information (such as officials at the relevant LEPC). Would it be useful to provide alternative ways of learning the identities of facilities that may affect a particular address? Federal officials, for example, could provide the identity of facilities through a telephone hotline mechanism to assist individuals for whom obtaining this information at the state or local level is too inconvenient or difficult. In the alternative, federal officials could provide by mail the identities of the facilities whose vulnerable zones affect the address at issue, if the request were accompanied by documentation indicating that the address for which the additional information is sought is that of the requestor's residence, workplace, or school, or that of a family member. What security, practicality, burden, or other concerns, if any, would be associated with implementation of either the hotline or mail system as discussed above? Are there other, better alternatives to substitute for the suggested method of having members of the public contact their local LEPC for additional information?

Enhanced Access to Local OCA Information

• Should LEPCs or local fire departments be allowed to distribute paper copies of OCA information to the public that could be taken away from the local reading site and/or be permitted to mail that information to members of the public, thus eliminating the need to travel to the LEPC's reading site? Or would doing so raise unacceptable terrorism-related security concerns?

• The proposed rule would authorize LEPCs and local fire departments to provide read-only public access to OCA information for facilities in the LEPC's jurisdiction and for any other facility which has a vulnerable zone that extends into the LEPC's jurisdiction. For facilities outside an LEPC's jurisdiction, would it be easier for an LEPC to implement this provision if it were authorized to provide access to OCA information for any facility within 25 miles of the LEPC's boundaries (virtually no vulnerable zones are greater than 25 miles in diameter), or would this approach lead to an inappropriately broad scope of access? Would some other method be preferable for implementing local reading-room access?

• The proposed rule would not require LEPCs, SERCs, and local fire departments to collect identifying information from individuals wishing to view copies of local OCA information. Would it be appropriate to require individuals viewing local OCA information at LEPCs, SERCs, and local fire departments to provide identifying information before doing so, just as they would do at a federal reading room under the proposal? Or would the extra security offered by this approach be outweighed by the burden it would impose on these state and local organizations?

Additional Information on Chemical Accident Risk

• Are there other types of general information about chemical risk and safety that should be made available to facilitate public understanding and dialogue about these issues?

V. Judicial Review

Under CAA section 307(b)(1), 42 U.S.C. 7607(b)(1), judicial review of this rule, once promulgated, would be available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of publication of the final rule. Under CAA section 307(b)(2), 42 U.S.C. 7607(b)(2), the final rule could not be challenged later in civil or criminal proceedings brought by the government to enforce it.

VI. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information that we considered in the development of this rule. The docket is a dynamic file, because it allows members of the public and industries involved readily to identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket serve as the record for purposes of judicial review. (See CAA section 307(d)(7)(A), 42 U.S.C. 7607(d)(7)(A).)

The official record for this rulemaking has been established under Docket No. A–2000–20 (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as Confidential Business Information, is available for inspection from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address specified in the **ADDRESSES** section at the beginning of this document.

B. Executive Order 12866

OMB has determined that this proposed rule would be a "significant regulatory action" under Executive Order 12866, section 3(f), "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). OMB also has determined that the proposed rule would not be economically significant because it would have an annual effect on the economy of less than $100 million and would not affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. Under the terms of Executive Order 12866, OMB has reviewed the proposed rule.

C. Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 5, 1996).

D. Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), does not apply to this rule because it is not economically significant under Executive Order 12866.

E. Executive Order 13084

Under Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments," section 3, Consultation (63 FR 27655, May 19, 1998), federal agencies may not promulgate a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or the regulating agencies consult with those governments before formal promulgation of the rule. Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments or impose substantial direct compliance costs on those communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not appear to apply to this rule.

We welcome comments on the effect of this rule on communities of Indian tribal governments.

F. Executive Order 13132

Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999), requires federal agencies to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct

effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, a federal agency may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or the agency issuing the regulation consults with state and local officials early in the process of developing the proposed regulation. A federal agency also may not issue a regulation that has federalism implications and that preempts state law unless the agency consults with state and local officials early in the process of developing the proposed regulation.

CSISSFRRA currently restricts the dissemination of OCA information by state and local officials and supersedes inconsistent provisions of state or local law. The proposed rule would narrow those restrictions, allowing certain state and local entities to provide the public with read-only access to OCA information for local facilities. We have consulted with state and local representatives of the Accident Prevention Subcommittee of the CAA Advisory Committee (under the Federal Advisory Committee Act (FACA)) about the implementation of the OCA provisions of CSISSFRRA. In response to concerns some have raised about a potentially chilling effect of CSISSFRRA's restrictions on state and local officials' willingness to obtain OCA information and to communicate the substance of that information to the public, the proposed rule includes a provision clarifying that state and local officials can share OCA data with the public as long as they do so in a way that does not disseminate or permit mechanical replication of the OCA sections of RMPs or provide access to EPA's OCA database. As noted above, the proposed rule would also authorize some state and local officials to share OCA information itself in certain ways.

We welcome comments on whether this rule has federalism implications within the meaning of Executive Order 13132. We will continue to consult with state and local representatives of the FACA subcommittee, and other representatives of state and local governments, as the rulemaking proceeds.

G. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), agencies are required to give special consideration to the effect of federal regulations on small entities and to consider regulatory options that might mitigate any such impacts. However, an agency need not prepare a regulatory flexibility analysis if the rule would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

In accordance with 5 U.S.C. 605(b), we certify that today's proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. Although the rule would authorize small governmental jurisdictions to provide read-only access to OCA information, it does not require those jurisdictions to provide that access. The rule contains a prohibition on local government officials (and other government officials) disclosing OCA information to the public except in authorized ways, but that prohibition already exists under CAA section 112(r)(7)(H)(v). Moreover, we do not expect that any burden resulting indirectly from the provisions of this rule would have a significant economic impact on the operations of local governments.

H. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1656.08) and a copy may be obtained from Sandy Farmer by mail at Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., N.W., Washington, DC 20460; by e-mail at farmer.sandy@epamail.epa.gov; or by calling (202) 260–2740. A copy may also be downloaded off the Internet at http://www.epa.gov/icr.

This proposed rule would impose minimal information collection requirements, but would require recordkeeping. The respondent universe for this rule is state and local officials and members of the public.

None of the respondent activities for state and local agencies are mandatory and all depend on the state or local agency deciding to obtain OCA information and/or communicating the substance of the information or the information itself to the public. The respondent activities for these agencies include reading and understanding the Security Notice to federal, state, and local officials and researchers; requesting the OCA information and certifying that they are covered persons; providing secure storage for the CD Rom or paper copies when not in use; learning how to use the database and software, if needed, to produce a copy of an RMP; providing a location for the public to review RMPs for local facilities; ensuring that members of the public do not remove or copy RMPs they review; and making OCA data available in formats other than the RMP format.

The number of respondents undertaking one or more of these activities is estimated to be at least one agency in each of the 50 states; these agencies are assumed to be the SERCs and may be environmental protection agencies, emergency management agencies, or both. In addition, it is assumed that at least one agency in the 3,043 U.S. counties will elect to obtain OCA information and/or make OCA information or the substance of that information available.

The counties are estimated to spend one hour per week and states are estimated to spend four hours per week providing information to the public. Because the work to be performed is either retrieving a paper copy from a file cabinet or downloading a file from the database, then either returning the copy to the file or shredding it, it is assumed that these tasks will be carried out by clerical and administrative staff. It is assumed that one county official per county and one state official per state would submit a written request for the OCA information. The total burden hours for counties and states are estimated to be 169,670 hrs annually (509,010 hours for three years) at a cost of $3,051,170 annually ($9,153,510 million for three years).

For members of the public, the respondent activity includes showing a piece of personal identification and entering their name and the names of the facilities whose OCA information they wish to view at a federal reading room. It is assumed that two people from each county will visit these reading rooms annually. The total burden hours for the public to sign in at the reading rooms and provide personal identification are estimated to be 507 hours annually (1520 hours for three years) at a cost of $9,890 annually ($29,670 for three years).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency. This includes the time needed to review instructions to develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing, and providing information; to adjust existing ways to comply with any previously applicable instructions and requirements; to train personnel; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection 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.

Comments are requested on the federal government's need for the information being collected, the accuracy of the provided burden estimates, and any suggested methods for minimizing the respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., N.W., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after April 27, 2000 a comment to OMB is best assured of having its full effect if OMB receives it by May 30, 2000. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

I. Unfunded Mandates Reform Act of 1995

Today's proposed 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 contains no requirements that might significantly or uniquely affect small governments. Under the proposal, small governments that wish to obtain OCA information would be required to request it, and once they obtained it, would be prohibited from disseminating it except in accordance with the rule. We do not expect that these provisions would impose a significant burden. Moreover, certain members of small governments would be authorized, but not required, to provide public access to OCA information in a manner that is less burdensome than would be required of federal covered persons. Therefore, no actions were deemed necessary under the Unfunded Mandates Reform Act of 1995.

J. Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects in 40 CFR Part 1400

Environmental protection, Chemicals, Chemical accident prevention.

Dated: April 19, 2000.

Carol M. Browner,

Administrator.

Dated: April 19, 2000.

Janet Reno

Attorney General.

For the reasons set forth in the preamble, EPA and DOJ propose to establish chapter IV of title 40 of the Code of Federal Regulations, consisting of subchapter A, part 1400, as follows:

CHAPTER IV—ENVIRONMENTAL PROTECTION AGENCY AND DEPARTMENT OF JUSTICE

SUBCHAPTER A—ACCIDENTAL RELEASE PREVENTION REQUIREMENTS; RISK MANAGEMENT PROGRAMS UNDER THE CLEAN AIR ACT SECTION 112(R)(7); DISTRIBUTION OF OFF-SITE CONSEQUENCE ANALYSIS INFORMATION

PART 1400—DISTRIBUTION OF OFF-SITE CONSEQUENCE ANALYSIS INFORMATION

Subpart A—General

Subpart B—Public Access

Subpart C—Access to Off-Site Consequence Analysis Information by Government Officials

Subpart D—Other Provisions

Authority: Public Law No. 106–40, 113 Stat 207 (42 U.S.C. 7412(r)).

Subpart A—General

§ 1400.1 Purpose.

Stationary sources subject to the chemical accident prevention provisions of 40 CFR part 68 are required to analyze the potential harm to public health and welfare of hypothetical chemical accidents and submit the results of their analyses to the U.S. Environmental Protection Agency as part of risk management plans. This part governs access by the public and by government officials to the portions of risk management plans containing the results of those analyses and certain related materials.

§ 1400.2 Definitions.

For the purposes of this part:

(a) *Accidental* release means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

(b) *Administrator* means the Administrator of the U.S. Environmental Protection Agency or her designated representative.

(c) *Attorney General* means the Attorney General of the United States or her designated representative.

(d) *Federal government official* means—

(1) An officer or employee of the United States; and

(2) An officer or employee of an agent or contractor of the federal government.

(e) *State or local government official* means—

(1) An officer or employee of a state or local government;

(2) An officer or employee of an agent or contractor of a State or local government;

(3) An individual affiliated with an entity that has been given, by a state or local government, responsibility for preventing, planning for, or responding to accidental releases, such as a member of a Local Emergency Planning Committee (LEPC) or a State Emergency Response Commission (SERC), or a paid or volunteer member of a fire or police department; or

(4) An officer or employee or an agent or contractor of an entity described in paragraph (e)(3) of this section.

(f) *LEPC* means a Local Emergency Planning Committee created under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 *et seq.*

(g) *Member of the public* or person means an individual located in the United States.

(h) *Official use* means an action of a federal, state, or local government agency or an entity described in paragraph (e)(3) of this section intended to carry out a function relevant to preventing, planning for, or responding to accidental releases.

(i) *Off-site consequence analysis (OCA) information* means sections 2 through 5 of a risk management plan (consisting of an evaluation of 1 or more worst-case release scenarios or alternative release scenarios) and any electronic database created by the Administrator from those sections.

(j) *Off-site consequence analysis (OCA) data* elements means the results of the off-site consequence analysis conducted by a stationary source pursuant to 40 CFR part 68, subpart B, when presented in a format different than sections 2 through 5 of a risk management plan or any Administrator-created electronic database.

(k) *Off-site consequence analysis (OCA) rankings* means any statewide or national ranking of identified stationary sources derived from OCA information.

(l) *Risk management plan (RMP)* means a risk management plan submitted to the Administrator by an owner or operator of a stationary source pursuant to 40 CFR part 68, subpart G.

(m) *SERC* means a State Emergency Response Commission created under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 *et seq.*

(n) *State* has the same meaning as provided in 42 U.S.C. 7602(d) (a state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

(o) *Stationary source* has the same meaning as provided in 40 CFR part 68 subpart A, § 68.3.

(p) *Vulnerable zone* means the geographical area that could be affected by a worst-case or alternative scenario release from a stationary source, as indicated by the off-site consequence analysis reported by the stationary source in its risk management plan. It is defined as a circle, the center of which is the stationary source and the radius of which is the "distance-to-endpoint," or the distance a toxic or flammable cloud, overpressure, or radiant heat would travel after being released and before dissipating to the point that it no longer threatens serious short-term harm to people or the environment.

Subpart B—Public Access

§ 1400.3 Public access to paper copies of off-site consequence analysis information.

(a) *General.* The Administrator and the Attorney General shall ensure that any member of the public has access to paper copies of OCA information for a limited number of stationary sources located anywhere in the United States, without any geographical restriction, in the manner prescribed by this section.

(b) *Reading-room access.* Paper copies of OCA information shall be available in at least 50 reading rooms geographically distributed across the United States. The reading rooms shall allow any person to read, but not to remove or mechanically reproduce, paper copies of OCA information, in accordance with paragraphs (c) and (d) of this section.

(c) *Limited number.* A reading room established under this section shall provide any person with access to a paper copy of the OCA information for up to 10 stationary sources per calendar month.

(d) *Personal identification.* A reading room established under this section shall provide a person with access to a paper copy of OCA information only after a reading room representative has viewed the person's driver's license or another piece of identification issued by a federal, state, or local government agency.

§ 1400.4 Risk indicator system.

(a) *In general.* The Administrator shall provide access to a computer-based indicator that shall inform any person whether an address specified by that person might be within the vulnerable zone of one or more stationary sources, according to the data reported in RMPs. The indicator also shall provide information about how to contact the appropriate LEPC or SERC, or EPA, to obtain further information.

(b) *Methods of access.* The indicator shall be available on the Internet or by request made by telephone or by mail to the Administrator to operate the indicator for an address specified by the requestor. SERCs, LEPCs, and fire departments are authorized and encouraged to operate the indicator as well.

§ 1400.5 Internet access to certain off-site consequence analysis data elements.

The Administrator shall include only the following OCA data elements in the risk management plan database available on the Internet:

(a) The concentration of the chemical (RMP Sections 2.1.b; 3.1.b);

(b) The physical state of the chemical (RMP Sections 2.2; 3.2);

(c) The statistical model used (RMP Sections 2.3; 3.3; 4.2; 5.2);

(d) Endpoint used for flammables in the worst-case scenario (RMP Section 4.5);

(e) The duration of the chemical release for the worst-case scenario (RMP Section 2.7);

(f) Wind speed during the chemical release (RMP Sections 2.8; 3.8);

(g) The atmospheric stability (RMP Sections 2.9; 3.9);

(h) The topography of the surrounding area (RMP Sections 2.10; 3.10);

(i) The passive mitigation systems considered (RMP Sections 2.15; 3.15; 4.10; 5.10); and

(j) The active mitigation systems considered (RMP Sections 3.16; 5.11).

§ 1400.6 Enhanced local access.

(a) *OCA data elements*—Consistent with 42 U.S.C. 7412(r)(7)(H)(xii)(II), members of LEPCs, SERCs, and fire departments and any other government official may convey to the public OCA data elements orally or in writing, as long as the data elements are not conveyed in a format that replicates sections 2 through 5 of a risk management plan or any electronic database developed by the Administrator from those sections. Disseminating OCA data elements to the public in a manner consistent with this provision does *not* violate 42 U.S.C. 7412(r)(7)(H)(v) and is *not* punishable under federal law.

(b) *OCA information*—

(1) Members of LEPCs or fire departments organized by local government are authorized and encouraged to allow any member of the public to read, but not to remove or mechanically copy, paper copies of OCA information (i.e., sections 2 through 5 of risk management plans) for stationary sources located within the jurisdiction of the LEPC and for any other stationary sources that have a vulnerable zone that extends into that jurisdiction.

(2) Members of LEPCs and fire departments are not required to limit the number of stationary sources for which a person can read OCA information or to view a person's personal identification before allowing the person to read OCA information.

(3) Members of SERCs are authorized and encouraged to allow any person to read, but not to remove or mechanically copy, paper copies of OCA information for the same stationary sources that the LEPC in whose jurisdiction the person lives or works would be authorized to make available to that person.

(4) Any member of an LEPC, SERC, or fire department who allows a person to read OCA information in a manner consistent with this subsection shall not be in violation of 42 U.S.C. 7412(r)(7)(H)(v) or any other provision of federal law.

Subpart C—Access to off-site consequence analysis information by government officials.

§ 1400. 7 In general.

The Administrator shall provide OCA information to government officials as provided in this section. Any OCA information provided to government officials shall be accompanied by a copy of the notice prescribed by 42 U.S.C. 7412(r)(7)(H)(vi).

§ 1400.8 Access to off-site consequence analysis information by federal government officials.

The Administrator shall provide any federal government official with the OCA information requested by the official for his or her official use. The Administrator shall provide the OCA information to the official in electronic form, unless the official specifically requests the information in paper form. The Administrator may charge a fee to cover the cost of copying OCA information in paper form.

§ 1400.9 Access to off-site consequence analysis information by state and local government officials.

(a) The Administrator shall make available to any state or local government official for his or her official use the OCA information for stationary sources located in the official's state.

(b) The Administrator also shall make available to any state or local government official for his or her official use the OCA information for stationary sources not located in the official's state, at the request of the official.

(c) The Administrator shall provide OCA information to a state or local government official in electronic form, unless the official specifically requests the information in paper form. The Administrator may charge a fee to cover the cost of copying OCA information in paper form.

(d) Any state or local government official is authorized to provide, for official use, OCA information relating to stationary sources located in the official's state to a state or local government official in a contiguous state.

Subpart D—Other Provisions

§ 1400.10 Limitation on public dissemination.

Except as authorized by this part and by 42 U.S.C. 7412(r)(7)(H)(v)(III), federal, state, and local government officials, and qualified researchers under 42 U.S.C. 7412(r)(7)(H)(vii), are prohibited from disseminating OCA information and OCA rankings to the public. Violation of this provision subjects the violator to criminal liability as provided in 42 U.S.C. 7412(r)(7)(H)(v) and civil liability as provided in 42 U.S.C. 7413.

§ 1400.11 Limitation on dissemination to state and local government officials.

Except as authorized by this part and by 42 U.S.C. 7412(r)(7)(H)(v)(III), federal, state, and local government officials, and qualified researchers under 42 U.S.C. 7412(r)(7)(H)(vii), are prohibited from disseminating OCA information to state and local government officials. Violation of this provision subjects the violator to civil liability as provided in 42 U.S.C. 7413.

§ 1400.12 Qualified researchers.

The Administrator is authorized to provide OCA information, including facility identification, to qualified researchers pursuant to a system developed and implemented under 42 U.S.C. 7412(r)(7)(H)(vii), in consultation with the Attorney General.

[FR Doc. 00–10641 Filed 4–25–00; 1:03 pm]
BILLING CODE 6560–50–P

Federal Register

Thursday,
April 27, 2000

Part VIII

The President

Memorandum of April 19, 2000—Report to the Congress Regarding Conditions in Burma and U.S. Policy Toward Burma

Presidential Determination No. 2000–19 of April 21, 2000—Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization

Federal Register
Vol. 65, No. 82
Thursday, April 27, 2000

Presidential Documents

Title 3—

The President

Memorandum of April 19, 2000

Report to the Congress Regarding Conditions in Burma and U.S. Policy Toward Burma

Memorandum for the Secretary of State

Pursuant to the requirements set forth under the heading "Policy Toward Burma" in section 570(d) of the FY 1997 Foreign Operations Appropriations Act, as contained in the Omnibus Consolidated Appropriations Act (Public Law 104–208), a report is required every 6 months following enactment concerning:

1) progress toward democratization in Burma;

2) progress on improving the quality of life of the Burmese people, including progress on market reforms, living standards, labor standards, use of forced labor in the tourism industry, and environmental quality; and

3) progress made in developing a comprehensive, multilateral strategy to bring democracy to and improve human rights practices and the quality of life in Burma, including the development of a dialogue between the State Peace and Development Council (SPDC) and democratic opposition groups in Burma.

You are hereby authorized and directed to transmit the report fulfilling these requirements to the appropriate committees of the Congress and to arrange for publication of this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, April 19, 2000.

[FR Doc. 00–10707
Filed 4–26–00; 8:45 am]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 2000–19 of April 21, 2000

Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization

Memorandum for the Secretary of State

Pursuant to the authority vested in me under section 538(d) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000, as contained in the Consolidated Appropriations Act for Fiscal Year 2000 (Public Law 106–113), I hereby determine and certify that it is important to the national security interests of the United States to waive the provisions of section 1003 of the Anti-Terrorism Act of 1987, Public Law 100–204.

This waiver shall be effective for a period of 6 months from the date of this memorandum. You are hereby authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, April 21, 2000.

[FR Doc. 00–10708
Filed 4–26–00; 8:45 am]
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H.R. 1658/P.L. 106–185

Civil Asset Forfeiture Reform Act of 2000 (Apr. 25, 2000; 114 Stat. 202)

S.J. Res. 43/P.L. 106–186

Expressing the sense of Congress that the President of the United States should encourage free and fair elections and respect for democracy in Peru. (Apr. 25, 2000; 114 Stat. 226)

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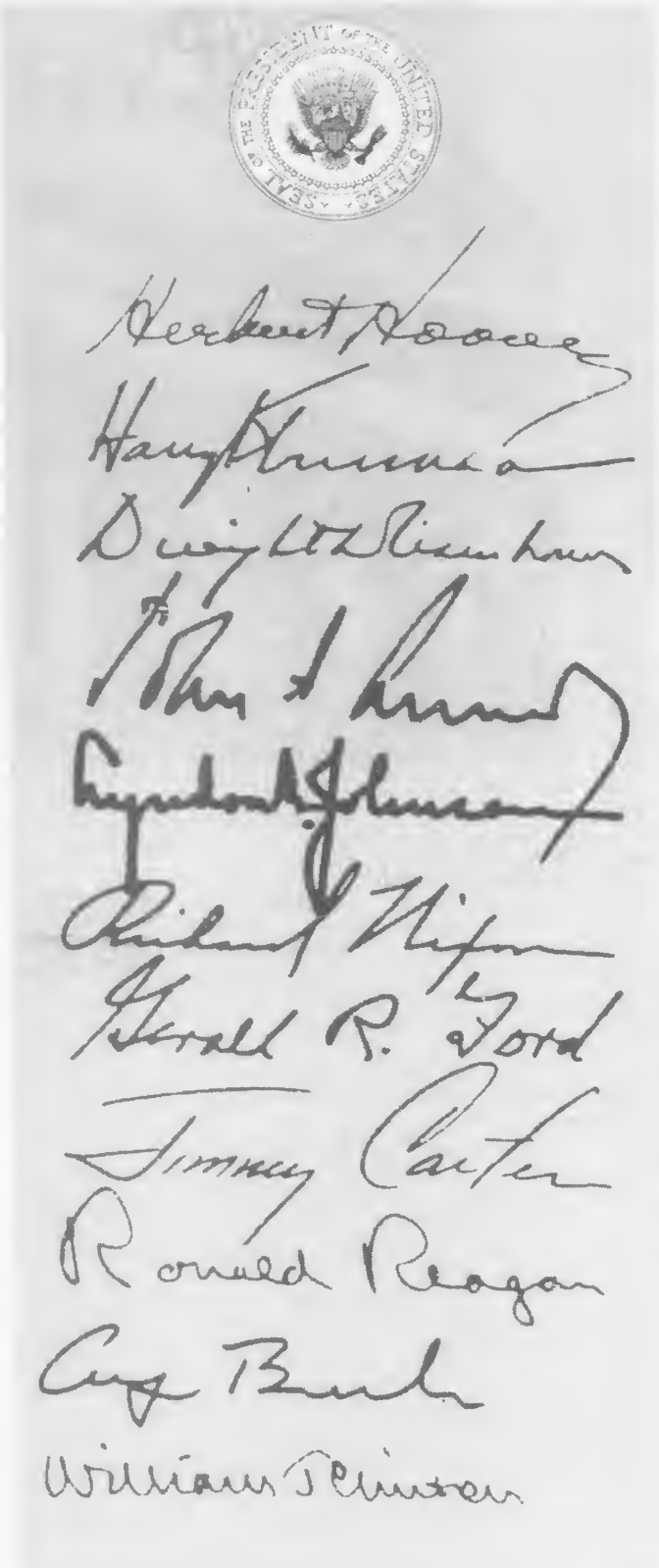

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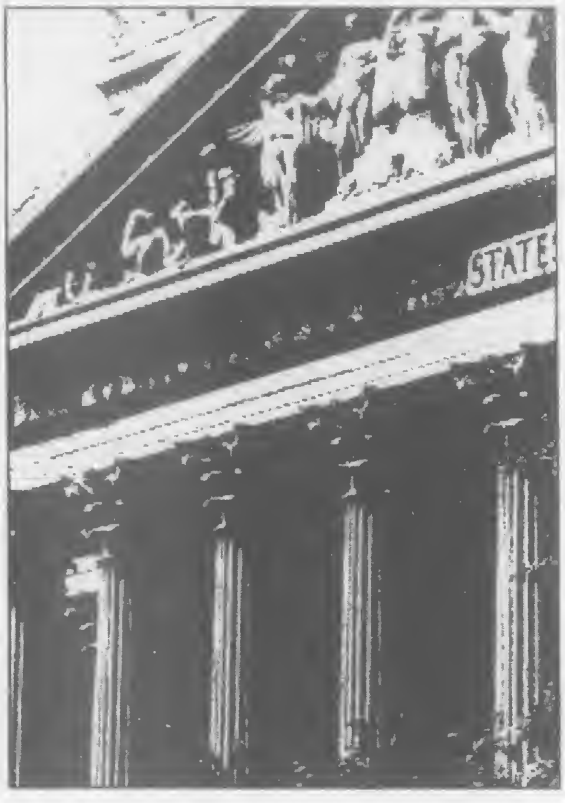

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